

# IVOR

Report



## Implementing Victim-Oriented Reform of the criminal justice system in the European Union



implementing  
victim-oriented reform of the criminal  
justice system in the european union





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# Introduction



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# Introduction

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With many tens of millions of Europeans suffering from crime every year, the difficulties faced by victims of crime are a truly pan-European phenomenon.

The Victims' Directive represents a milestone for the position of victims of crime in criminal proceedings across Europe, sought to improve the rights, support and protection of all victims of crime and thereby aid their recovery.

The impact of the EU Directive on victims of crime and on the actual experience of crime victims across Europe largely depends on the way and the extent to which the Directive's articles will be successful in reorienting victim policy in EU Member States.

Domestic national experience shows that improving the plight of victims of crime can only to a limited degree be entrusted upon changes in the 'letter of the law'. Instead success is in large part contingent upon the practice at street-level: the extent to which rights are supported by sufficient services.

Project IVOR - Implementing victim-oriented reform of the criminal justice system in the European Union (2014-2016) arises from the idea of providing a full overview of current research into and with victims' rights and services, identifying lacunas and offering a vision towards a victim-oriented reform connected with the experience, victimological knowledge and the backdrop of the societal ecology. Translated into a further understanding of the manner in which victim-oriented reform in the diverse countries in Europe could succeed, Project IVOR findings expected to contribute for the development of practical recommendations and measures to promote the implementation of the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

Project IVOR is promoted by the Portuguese Association for Victim Support (APAV), co-financed by the European Commission under the Criminal Justice Programme of the European Union, and developed in partnership with the International Victimology Institute Tilburg (INTERVICT), the University of Leuven (KU Leuven) and Victim Support Europe.

These partners formed a steering group to ensure the regular follow-up of the Project. In this steering group all the partners were represented and consisted of Inge Vanfraechem and Ivo Aertsen (KU Leuven); Antony Pemberton (INTERVICT); David McKenna and Levent Altan (VSE, as associate partner) and Carmen Rasquete (APAV).

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# **Methodology of the Project**



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# Methodology of the Project

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The two-year Project IVOR focused on these three main research questions:

- To what extent has victim assistance been developed in each EU Member State (MS)?
- What are the factors encouraging or discouraging the development of victim assistance in Europe?
- How could victim assistance be further developed in Europe?

In order to answer these questions, Project IVOR was divided into four main workstreams:

1. The analysis of the internal coherence of victim assistance across Europe;
2. The analysis of the external coherence through a review of the ecological background of victims' rights influencing victim assistance across Europe;
3. The examination of the impact of victim assistance on victims' experience through a review of victimological literature on victims' needs and the practical implementation of victims' rights;
4. The integration, through a policy seminar and a final report with recommendations for the implementation of victim assistance and the Victims' Directive.

## Analysis of the internal coherence (workstream 1)

The success of victim assistance (i.e. the measures in and surrounding the criminal justice system geared to protecting and supporting victims, including victims' rights) is largely a function of the extent to which the measures, services and rights afforded to victims form a coherent whole. This in turn is contingent on the extent to which the main actors (incl. police, judiciary, victim support organisations) cooperate and share common goals.

The analysis of the internal coherence of the models of victim assistance across Europe aims to paint a picture of legislation and organisational practice within the MS.

The beginning of the Project IVOR was dedicated to *reviewing existing literature* on the most recent developments concerning victim assistance in each Member State. The researchers involved in the project divided among them the 28 Member States and developed short country summaries based on the previous revision with the following sub-themes, taken from the chapters of the Victims' Directive:

- Recognition
- Information
- Support
- Participation in criminal proceedings
- Restorative justice
- Protection
- Training of practitioners
- Cooperation & transposition

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## Methodology of the Project

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Among others, a main resource for completing these country summaries was a report of a recent project funded by Directorate General for Justice of the European Commission: ‘Protecting Victims’ Rights in the EU: the theory and practice of diversity of treatment during the criminal trial’, coordinated by the Centre for European Constitutional Law (CECL) and published at the end of 2014. All country reports and comparative research is available at [www.victimprotection.eu](http://www.victimprotection.eu).<sup>1</sup>

Based on these country summaries, it was possible to identify gaps in the literature and focus on specific aspects of the Victims’ Directive which needed further attention in order to better understand victim assistance models across Europe. The main lacunas and/or issues found were in the following eight aspects, mostly concerning the practical implementation in existing victim assistance mechanisms:

1. Definition of victim (Art.2)
2. Victim support (Art. 8 & 9)
3. Restorative justice (Art. 12)
4. Victims resident in another Member State (Art. 17)
5. Individual needs assessment (Art. 22)
6. Vulnerable groups (Art. 23 & 24)
7. Training (Art. 25)
8. Cooperation and coordination (Art. 26)

This explains why the *interview guide* developed for questioning national experts of each Member State on factual information about the current victim situation in their country focused exclusively on these aspects of the Victims’ Directive. Additionally, the guide included ‘general questions’ to find out if certain external factors influencing victim assistance would be mentioned by experts.

In Appendix I, a general template of the interview guide is provided, including the prompts used by the interviewers. This template has been adjusted for each country, based on the information collected in the country summaries. The interview guide includes small guiding explanations and reference to the articles of the Victims’ Directive. The document was sent previously to the experts to be interviewed, in order for them to better prepare each question. Additionally, the invited experts were asked to view their country’s report from the CECL, considering in particular possible inaccuracies, omission of important information, new developments (legal or otherwise) since 2013 which necessitate updating and further developments foreseen.

In total, 54 experts from the 28 Member States responded to the interview, either in a phone or Skype interview or in a written form, often sending extra material to complement their interviews. Respondents were experts from the Ministry of Justice (17), victim support (26), research (4), restorative justice (2) and public prosecutor office (5).

Since we have been able to reach experts with different backgrounds and expertise in victim assistance in their Member States, limitations exist in this methodology. The language barrier (i.e. most interviews were conducted in English<sup>2</sup>) may also limit the mutual understanding and interpreting of the law.

The data collected from the interviews with the experts was summarised in country reports, useful for the comparative study (the country factsheets are available online at [www.apav.pt/ivor](http://www.apav.pt/ivor)). Chapter III includes and elaborates on these findings according to the eight themes selected (above).

<sup>1</sup> The reliability of these reports was discussed, if needed, with experts before their interviews (see information on paragraph about Appendix 1).

<sup>2</sup> In some cases, other languages were used for the interviews, either orally or in a written form (Dutch, German, Italian, Spanish, Portuguese), depending on the language knowledge of the interviewer and interviewee.

## Analysis of the external coherence (workstream 2)

Victim assistance does not exist in a vacuum, but is best viewed in a societal ‘ecology’. Other actors, for instance mental health services, insurance providers or social welfare organisations, have more or less overlapping goals in relation to victims of crime. The access to and availability of these services forms a first point of consideration concerning the external coherence: does victim assistance align itself with these auxiliary services and if so, how? More generally the external coherence concerns the historical, cultural and current political reality in MS. Understanding the role that different actors can or should play in victim assistance brings into view the different views that inhabitants of MS across Europe may have of these actors.

This project reviewed this ecological context of victim assistance and analysed the typology of organisational models of victim assistance against this background.

A preliminary model for identifying possible external or auxiliary factors influencing victim assistance across Europe was developed according to a list of societal, institutional and individual factors, as shown below:

**Table 1: Preliminary model of the ecological background of victims’ assistance**

<b>Societal</b>	
<b>Political</b>	Trust in authority [police, judiciary], perceived level of corruption, stability/coherence political system, conflict, rule of law & access to justice, administrative effectiveness, democracy index and historical development of democracy
<b>Social</b>	Vulnerable groups [gender equality, discrimination, ethnicities], media coverage [high profile cases and worry about crime], religion
<b>Economic</b>	Welfare/support system, income, cost of services, financial crisis, internet/telephone access, state budget allocation, economic inequality [gap between rich and poor]
<b>Institutional</b>	
<b>Within justice system</b>	<i>Analysis of the internal coherence</i>
<b>Outside justice system</b>	Victim related: insurance coverage, penal climate, systems of criminal justice, civil society/NGO activity, mental health services, culture of volunteering, role of the church/religious leaders
<b>Individual</b>	
<b>Characteristics of victim population(s)</b>	Mental health, age, gender, education, geographic location, vulnerabilities, employment, religion
<b>High profile cases</b>	Is there any pivotal crime that changed/influenced Victim Support?

Based on this model, the following factors were selected for further analysis:

- Civil society and volunteering
- Systems of criminal justice

- Worry about crime
- Rule of law and access to justice
- Penal climate
- Trust in authorities and corruption
- Welfare, health, insurance

These auxiliary factors were chosen by the steering group as factors that may have a concrete influence on victim assistance, and also because comparable statistical information between the EU Member States, was available. Chapter II of the Report - Viewing victim-oriented reform against the backdrop of the societal ecology - presents the findings of this phase of the research.

### **Examination of the impact of victim assistance (workstream 3)**

During this third phase of the project, a literature review was conducted, focusing on the practical implementation of victims' rights according to the themes selected in the beginning of the project and its relation to victims' needs.

The project provided an overview of current research into and experience with victims' rights and services, identified lacunas in the knowledge base and offered a model which can serve to connect experience and research in one area to another.

### **Integration (workstream 4)**

During this last stage of the project, a final policy seminar has been organised by APAV (Lisbon, 14 January 2016). The seminar brought together 152 participants from 10 countries, mostly police officers, prosecutors, judges, lawyers, psychologists, sociologists, social workers, consultants, representatives of the parliamentary groups and of NGOs. The conference has been a good occasion for researchers to collect further information, especially for writing the recommendations and discuss its results.

This final report represents the ultimate result of the Project. An overview of the structure and highlights of its findings are presented next.

# Overview of the Report



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## Overview of the Report

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Project IVOR - Implementing Victim-Oriented Reform of the Criminal Justice System in the European Union, seeks to ascertain the progress made in the development of the position of victims of crime across Europe. It does so through the first three (interrelated) workstreams, the results of which are described in subsequent chapters. Preceding the chapters are first three key messages from the different workstreams. These are not intended as a full summary of all the material contained in the chapters, but provide a concise insight into the general gist of the report's findings.

Chapter 1 presents the findings from workstream 3, reviewing the existing (academic) knowledge underlying the impact of the implementation of victims' rights on victims' needs and victims' experience? This applies horizontally, i.e. what is known about different topics in the Victims' Directive and vertically, what is known about the position of victims in different EU Member States. It also concerns the issue of victim assistance in particular, i.e. research into the topics mentioned in the Directive as relating to the position of victims of crime, or to the more general assumptions underlying provisions. For instance the issue of training in relationship to attitudinal change and the effectiveness of modes of participation in justice processes in increasing satisfaction with and (positive) impact of criminal justice processes.

Chapter 2 presents the findings from workstream 2 with a review of the societal ecology of the position of victims in the various Member States. The position of victims does not exist in a vacuum. Other actors, for instance mental health services, insurance providers or social welfare organisations, have more or less overlapping goals in relation to victims of crime, while the general historical, cultural, social and political context in Member States has an influence on the treatment of victims of crime. This is particularly true for the penological and criminological climate in Member States. Important underlying factors that differentiate the penal cultures are also relevant to understand victim assistance.

Chapter 3 presents an overview of the findings of workstream 1 about the position of victims in the EU Member States. Using the Victims' Directive as a base a template was developed that was used for analysis of legal statutes of the EU Member States, existing literature, and interviews with selected experts across the European Union. To what extent are Member States meeting the challenges the Directive posed to them? Can victims access their rights, to what extent is a right to a service hampered by its lack of availability?

Chapter 4 presents conclusions concerning the current state of the position of victims in Europe. The evidence of the three interrelated work-streams is brought together to further understanding of the manner in which victim-oriented reform in the diverse countries in Europe could succeed.

The last chapter presents a set of recommendations and measures set by Victim Support Europe (VSE) following the main findings presented in the report. VSE is the leading European umbrella organisation advocating on behalf of all victims of crime, no matter what the crime, no matter who the victim is. VSE represents 40 national member organisations, providing support and information services to more than 2 million people affected by crime every year in 26 countries. Founded in 1990, VSE has been working for over 25 years for a Europe, and a world, where all victims have strong victims' rights and services, whether they report the crime or not.

### **Key message 1: The lack of any empirical foundation of victim-oriented reform in Europe**

Victimological research in much of Europe is an inch deep and a mile wide if its available at all. Even basic understanding of the empirical state of affairs in many EU Member States is largely non-existent. The desire to use victim support, an overall understanding of the experience with criminal justice agencies in the aftermath of victimization, the impact of interaction with the criminal justice process on victims' emotional well-being, the importance of different aspect of victim assistance, there is no good grounds for comparison across EU Member States, given that for most of the European Union there is no empirical research available that would offer an answer. Even for the instances where this is so in principle, for instance the possibility of ascertaining the need for victim support through the International Crime Victim Survey, close scrutiny of the available data begs the question whether or not any conclusions can be drawn. It is of the utmost importance that the frail empirical base of victims' policy is strengthened. At this moment there is no real way of gauging improvements in victims experience as a consequence of the investment in victims' issues, but more pressing is the understanding that it is as yet not clear to what extent instruments, services and rights contribute to victims' well-being in any case.

Certain pockets of victim experience are more heavily researched than others. Recent years has seen more attention to the plight of certain victims of crime (victims of gender-based violence, domestic violence, sexual violence) and certain victimological issues (the experience of victims in restorative justice). However even there this research is largely conducted in a small number of EU Member States, with victimology being in the dark about the lived experience of a large majority of those suffering crime across the European continent. Moreover available research concentrates on a small number of issues, which leaves many pressing questions unanswered.

Key victimological insights underlying different parts of the Directive have yet to receive empirical attention in different parts of the European Union and in fact toute corte. The experience of participation in terms of procedural justice is an example, the scope and magnitude of secondary victimization is another. Beyond this, much of the views underlying the Directive are frequently rehearsed in policy and legislation, but have yet to receive empirical support even in the areas where research has been conducted. An example is the importance of training criminal justice authorities to improve victim experience. This appears to make some common sense but has yet to be subject to any empirical scrutiny.

This is also relevant given that the differences in societal ecology (see key message 2) raises serious questions about the portability of findings from one country to the next. For instance: if victim experience is largely driven by their interaction with the police force, the fact that victims and citizens more generally view the police force very differently across countries is likely to interact with any findings. The participatory modes for victims in criminal justice differ from one country to the next and experience with these modes might even diverge widely within given countries, seeing the importance of practical implementation to victim experience.

The authors of this report see the lack of a sufficient evidence base for much of the views contained in the Directive and similar victims instruments as a serious impediment for our ability to provide victims with effective care, support and protection and rights that contribute to their well-being and interests. This is not to deny the importance of practical and understanding that often is invoked to support the provisions of such legislation. Practical wisdom by and large always trumps generalized and abstract findings in the type of practice to which

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victim support belongs. Nevertheless this does not mean the current academic lacuna is not a cause for concern. There is as yet no way to distinguish acquired practical wisdom from only superficial common sense. In addition unlocking the practical wisdom of those involved in victim assistance across Europe could help practitioners and policy makers elsewhere, while offering insight into the underlying mechanisms and theories will support further development of victimological understanding.

### **Key message 2: The varied societal ecology of victim assistance**

Victim assistance does not exist in a vacuum, but instead exists in a societal ‘ecology’. Other actors, for instance mental health services, insurance providers or social welfare organisations, have more or less overlapping goals in relation to victims of crime. More generally this societal ecology concerns the historical, cultural and current political reality in Member States. Understanding the role that different actors can or should play in victim assistance necessitates understanding the views that inhabitants of Member States across Europe may have of these actors. For instance the trust in and perception of the police and the judiciary varies widely from one country to the next.

If we drew a map of each of the factors (auxiliary indicators) contained in the set examined within the framework of the societal ecology (incl. rule of law, trust in justice, tradition of volunteering) the results would be remarkably similar from one set of indicators to the next. The countries with the relatively accommodating climate for the position of victims are those to the North and West of the EU, while the Member States in the South and East of Europe in contrast have a more hostile societal ecology. This coincides with and is undoubtedly part of the reason of that the countries to the North and the West have a longer history of the development of the position of victims of crime.

This means that the likelihood of legislation, policy and practice receiving a warm welcome is greater in the North/ West, than in the South/ East and is more likely to achieve its purpose there. However given the poorer position in the South/ East improving the position of victims is in fact a more important issue there. It is there that advances are most important to make.

### **Key message 3: The Directive has had some impact on victim policy across Europe, but is it living up to its full promise?**

The shortest summary of the impact of the Directive on the position of victims of crime is probably that it is contributing to an improved standing of the position of victims of crime, but that the extent to which this is felt by victims in practice is still up for debate. The main issues in transposal into national legislation concern differences in interpretation of key terms and concepts, for instance the manner in which the individual needs assessment is conducted, the meaning of the term restorative justice, the duty bestowed on Member States to

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offer additional possibilities to those victimized abroad. Beyond this even similar legislation does not result in similar lived realities, as the organisational structures, the policy priorities and financial support for victim legislation differs widely.

As was already apparent from the evaluation of the Framework Decision the starting point for different Member States concerning the position of victims varies. To the North and West of Europe countries have a relatively strong position for victims of crime, often also because of the relatively large welfare net in these areas, as well as the longer history of victim activism in these areas.

In addition as was clear from the key message 2, the societal ecology of victim assistance differs from one Member States to the next. It does so in a manner that is likely to reinforce rather than ameliorate the differences in organisation, policy priority and financial support. Moreover as key message 1 argued available research and monitoring of the lived reality of victims of crime is concentrated in the same geographical areas of the EU, while it neither offers the possibility of viewing the micro-level experiences of victims against the backdrop of macro-level features of societies, nor provides convincing evidence for the portability of findings and experience from one societal ecology to the next. This limits the extent to which it is possible to ascertain that the limited resources that are available in the Member States that have a combination of a relatively poorly developed position of victims of crime with a relatively unwelcoming societal ecology are put to the best use.

## **Chapter I**

# **Reviewing the empirical foundation of victim-oriented reform throughout Europe**



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## Introduction

### The increasing attention to victim policy

In terms of rights and attention in criminal justice policy, there is no doubt that the position of victims of crime has shown improvement since the 1970's, at least in a number of jurisdictions (Hall, 2010, see also section 1). Thirty years ago it was correct to assert that the victim was the forgotten party of the criminal justice process, while this would be at odds with the actual situation of victims today in a number of different countries (e.g. Groenhuijsen & Letschert, 2008). International bodies like the United Nations and the Council of Europe have developed a number of legal instruments, of which the UN Declaration of Basic Principles for Victims of Crime and Abuse of Power and the Council of Europe Recommendations 85(11) and 2006(8) are the most noteworthy.

The European Union became involved with the Council Directive 2004/80/EC relating to compensation to crime victims and the Framework Decision on the standing of victims in criminal proceedings of the 15th of March 2001. The Council Directive focused on the transmission of cross-border applications for state compensation. The Framework Decision was wider in scope. The main theme of the Framework Decision follows the international consensus of other legal instruments (e.g. Groenhuijsen & Pemberton, 2009). It included the following basic rights for victims of crime:

- A right to respect and recognition at all stages of the criminal proceedings (article 2);
- A right to receive information and information about the progress of the case (article 4);
- A right to provide information to officials responsible for decisions relating to the offender (article 3);
- A right to protection, for victims' privacy and their physical safety (article 8);
- A right to compensation, from the offender and the State (article 9);
- A right to receive victim support (article 13);
- The duty for governments to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure (article 10);

The Framework Decision was the first so-called 'hard law' instrument available at the international level and can therefore be considered to be a milestone in the development of victims' rights (see again Groenhuijsen & Pemberton, 2009). However its impact on the domestic legal orders of the countries in question, did not meet expectations. Perhaps not a failure, but the impact has not been qualitatively different from previous soft-law instruments. Project Victims in Europe (APAV, 2010) as well as the European Commission's own evaluations revealed that in most countries legal transposal did not meet the Framework Decision's requirements, with enforcement of laws in practice lagging further behind. Matters were not improved by the assessment (e.g. Pemberton & Groenhuijsen, 2012) that the Framework Decision had in effect widened the gap between Member States (MS) that already had a reasonable level of victim support and protection and those that did not.

### The EU Victims' Directive and the importance of victimological research

Given the relatively minor impact of the Framework Decision, combined with the urgency of the problems faced by victims of crime across Europe and the enhanced competencies the Treaty of Lisbon afforded to the European Commission, the stage was set for a rapid proposal and adoption of an EU Victims' Directive. This 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 covers roughly the same topics as the Framework Decision, but is a considerably more elaborate and strongly worded document; as a Directive, it has more legislative force than a Framework Decision. In addition, the European Commission has become increasingly active in supporting the Member States in navigating the hurdles in the implementation, as is evidenced by the recent publication of an extensive DG Justice guidance document with the specific aim of securing implementation of the Directive.

The Victims' Directive specifically aims to provide an improved experience of victims of crime in terms of their needs for support, protection and involvement in criminal justice procedure. As the guidance document summarizes *"The goal is to improve the real, day-to-day situation of millions of victims of crime across Europe to the greatest extent possible."* (see also Groenhuijsen & Pemberton, 2009; Pemberton & Groenhuijsen, 2012). Like victim policy more generally the underlying notion of the Directive is that the current lived situation of victims of crime in many jurisdictions can be improved, and that an important vehicle for such improvement lies in establishing rights within and surrounding criminal procedure. The extent to which the Directive succeeds may therefore also and perhaps primarily be viewed in terms of the impact on the victims well-being and experience.

This view is also an element of the provisions stimulating MS to monitor the actual use of victims' rights, and the reach and effectiveness of victims' support and protection. In article 28 and recital 64 of the Directive, specific mention is made of the requirement to deliver statistics and data on the access to the rights afforded by the Directive. Although this is an important requirement, the authors of this report would welcome MS' adoption of the Council of Europe's recommendation to move beyond data and official statistics. As Jan van Dijk (2015) argues statistics of police-recorded crimes have limited utility for cross-country analyses of crime, owing to varying legal definitions, reporting patterns and recording practices. As Jo Goodey generalizes from her analysis of the situation relating to human trafficking: *"This situation is typical of criminal justice data in the area of serious and organized crime, which remains underreported, under-detected and, therefore, under-prosecuted"*. Moreover this data only captures part of the reality of victimization and crime, and needs to be supplemented with research into victims' experiences as well (see van Dijk 2007, 2015). In the Council of Europe Recommendation Rec (2006)8 article 17 specifically addresses research. In article 17.1 it calls upon states to "promote, support, and, to the extent possible, fund or facilitate fund-raising for victimological research, including comparative research by researchers from within or outside their own territory", while article 17.2 sets out the areas of research that should be included: criminal victimization and its impact on victims; prevalence and risks of criminal victimization including factors affecting risk; the effectiveness of legislative and other measures for the support and protection of victims of crime – both in criminal justice and in the community; and the effectiveness of intervention by criminal justice agencies and victim services. The latter two are particularly relevant to estimate the success of the Directive in improving the experience of victims of crime: indeed without reliable, comparative research findings on these issues it will be difficult to assess the extent to which the Directive contributed to improved experiences of victims of crime.

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## What we know and what we do not know

However as this review will show this research is not available yet, at least for large parts of the Directive, and for large areas of the European Union. Much of the victimological wisdom is based upon the experience in a small number of countries, while even there it largely focuses on the experience on victims of particular crimes, with particular characteristics and particular outcomes. This already applies to the impact of crime on victims, and their subsequent needs. Overwhelmingly the evidence base for these matters is drawn from the experience of crime victims in the Anglo-Saxon world, and a small number of primarily Northern and Western European nations (see Darves-Bornoz et al, 2008), although there is progress being made in establishing the prevalence and incidence of the impact of victimization on Post-Traumatic Stress Disorder (PTSD<sup>3</sup>). The drawbacks of this fact are made particularly clear in Ethan Waters' (2010) recent bestseller *Crazy like us: the globalization of the American Psyche*. It illustrates clearly the limited extent to which concepts of mental health and approaches to disaster and despair are portable from one cultural context to the next.

It is even more true when the issue at stake is the impact of (criminal) justice processes or victim assistance on victims' experience. Not only is evidence of this either scant or non-existent in many jurisdictions in Europe, even the available evidence should be treated with caution. We will discuss some of the difficulties with the measures used in crime victim surveys below. Here we echo the words written in a recent (critical) overview of this body of research by Australian professor Kathleen Daly "*With some exceptions, research on conventional and innovative justice responses relies on general measures of victim satisfaction or with elements of procedural justice (e.g., being treated with respect, being listened to). For satisfaction, the dominant question in victim studies is: 'How satisfied were you...?' or 'To what extent were you satisfied?' with a particular justice activity. This is despite the fact that most of us would say that the satisfaction variable is overly simplified, ambiguous, and largely uninterpretable (Pemberton & Reynaers, 2011).*"

The use of satisfaction is problematic for two reasons. The first is a general one. The construct validity of satisfaction is questionable (Bouckaert & van de Walle, 2003). Satisfaction measures many other things than the quality of service. It is influenced by personal expectations and intrinsic aspects of the service (with fire-fighters generally being the most valued public service, irrespective of their performance (Bouckaert & van de Walle, 2003)). Moreover satisfaction is influenced by the frequency of use of the service, the knowledge of the service, the homogeneity of service and the personal nature of contact (Dinsdale & Marson, 1999), regardless of the quality of service. Second, and more specific for victimology, satisfaction has shown to be a poor measure of therapeutic benefit and other impacts. The relationship between satisfaction and dissatisfaction and other effects on well-being is unclear (Kunst et al, 2014). Various studies (McNally, Bryant, & Ehlers, 2003; Zech & Rime, 2005) have documented that satisfaction is not a reliable indicator of therapeutic performance. Psychological debriefing, for example, is a widely used method to mitigate psychological distress and to prevent the emergence of PTSD. The majority of "debriefed" victims describe it as helpful, and report high levels of satisfaction with the intervention. There is no convincing evidence that debriefing reduces the incidence of PTSD, and some controlled studies suggest that it may impede natural recovery (Van Emmerik et al, 2002). McNally et al. (2003:65) concluded: "*we believe that consumers' satisfaction ratings apparently reflect polite expressions of gratitude, rather than intervention efficacy*".

This issue also concerns a more general problem in the development of victims' rights, that the connection of

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<sup>3</sup> E.g. see the results of the ESEMeO Survey, for instance Darves-Bornoz et al. 2008 (for Spain, Italy, Germany, the Netherlands, Belgium, and France) and for instance Florescu et al. 2014 (Romania), Norris et al. 2002 (Poland), Frans et al. 2005 (Sweden) Livanou et al. 2008, (Greece) Czemy, 2011 (Czech Republic), Rechhia et al. 2008 (Luxembourg) and, Fodor and Perczel, 2012 (Hungary).

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rights and measures to victims' interests relies on a common sense understanding of this connection, rather than on a more fully elaborated evidence base. The issue here is that feeling satisfied with support might seem like a logical companion to increased emotional well-being, but as it turns out, often is not. Another example of this phenomenon concerns the notion that training is helpful and even pivotal in enlightening criminal justice professionals to the needs of victims of crime. Again this is portrayed as a matter of self-evidence. In the DG Justice Guidance document the following remarks are made: *“Appropriate training of justice professionals will enhance the public’s trust in the criminal justice system. All practitioners and professionals in contact with victims should be trained, including police, court staff, prosecutors, lawyers, judges, victim support and restorative justice services”*. And even: *“Training is absolutely essential for making the victims’ rights in the Directive real and effective for victims in Europe”*.

However, as we will note below, there is no real evidence for any of these claims, with much of the work on training of criminal justice professionals in similar areas yielding mixed results at best (Haarr, 2001; Sleath & Bull, 2012; Renzetti et al, 2015). Indeed the evidence base for training of criminal justice professionals in victims issues and similar matters is so slim that a committee of the United States National Research Council that while it had long been assumed *“that more and better police training leads to improved officer performance,”* there were *“scarcely more than a handful of studies on the effects of training,”* and that *“research on the effects of training content, timing, instructor qualifications, pedagogical methods, dosage, and long-term effects is virtually nonexistent.”* A key issue for instance is that the importance of training is seen as a means to raise awareness of victims' needs. Where professionals might fail in meeting victims' expectations the DG Justice Guidance document recommends that they could be enticed to *undergo specialised victim awareness training to inform staff of victims’ rights and to raise their awareness of the needs of victims of crime*. But the change required of criminal justice professionals will often run into considerably stronger barriers than a mere lack of awareness. Police and criminal justice values (e.g. Crank, 1998; Corrigan, 2013), organisation structure, as well as more general elements of national culture will often contain stereotypes, heuristics and frames that impact the manner in which victims - in all their diversity - are treated (e.g. Lerner, 1980; Burt, 1981). Awareness of victims needs is undoubtedly a necessary step in overcoming these barriers, but is - as we will discuss below - insufficient in actually doing so, while the possibility of counterproductive effects should be acknowledged.

### Outline of the chapter

This chapter aims to evaluate the Victims' Directive against the backdrop of empirical research into victims' experiences with victim assistance and criminal justice agencies. From the outset it is clear that most jurisdictions in Europe lack a sufficient empirical victimological base against which we can judge the impact of the Directive on victims' experience, in particular if this has to be in any way comparable to the position of victims in other MS. In most areas of Europe Tamarit and colleagues (2010) frank assessment of the situation in Spain applies: *“...with regard to Spain, there has been a lack of global victimization surveys and there is hardly any empirical research aimed at assessing the criminal justice system by the victims”*.

It is therefore all the more unfortunate that there has been no follow-up to the EU-wide crime survey, modelled on the International Crime Victim Survey, in 2004/ 2005 (Van Dijk et al, 2007; Van Dijk, 2007, Van Dijk & Groenhuijsen 2007; Van Dijk, 2015). However even that would have only served as a starting point for further

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research. An example of a possible approach to a more full-fledged evaluation of the quality of victim services, is that piloted in the Project Quality Services for Victims of crime (Project VICS), co-financed by the European Commission under the Criminal Justice Programme, (APAV/ Intervict, 2014). Based on an approach to the monitoring of the quality of victim assistance provision developed in the Netherlands, the project yielded information on the state of affairs in Scotland, Germany, France and Portugal.

The fact that for most of the Directive no data is available yet, necessitates including an exploration of state of the art in research into victims needs relevant to their accessing victim assistance. In keeping with the recent review of Pemberton and Vanfraechem (2015) – which has served as a starting point for the current report - we will divide these needs into three areas: the first applying to suffering victimization in general, the second to those peculiar to the experience of victimization by crime, and third those relating to the criminal justice process .

In last section of this chapter we subsequently review the evidence base for the Directive. We do so through an analysis of the empirical research of the following case studies:

- victim support;
- information;
- the right to be heard and participation more generally;
- restorative justice;
- compensation;
- cross-border victims;
- protection and individual needs assessment;
- the importance of training.

These case studies cover the largest part of the Directive and together combine to paint a full picture of the existing evidence base concerning victim assistance across the European Union. The initial base for the chapter are existing reviews conducted by authors involved in this report (Van Mierlo & Pemberton, 2009; Pemberton, 2010; Lens, Pemberton & Bogaerts, 2013; Laxminarayan & Pemberton, 2014; Pemberton & Vanfraechem, 2015; Pemberton & Van Dijk, forthcoming), which have updated and expanded to include issues in the Directive not fully covered by these reviews. In each case a snowball search of existing scholarly databases was conducted.



### **Victims' needs and victim assistance**

#### **Needs of victims of (severe) harm**

Coming to terms with the experience of victimization involves looking to the past and to the future. It involves attempting to restore the circumstances before victimization, but also striving to prevent repeats (Farrell, 2001). Of course these so-called forward and backward looking features are connected. Ensuring protection from harm in the future is an important requisite for coping with that already experienced, while the awareness of the harm suffered gives rise to a need to prevent such an event from recurring in the future ('the availability heuristic', see Tversky & Kahneman, 1973). The first avenue relates to a need for security and protection from further instances of victimization, while the latter to an impact of previous victimization (see also Orth, 2003).

#### **Protection, prevention and safety**

One of the main laws of victimology has been found in the literature on repeat and particularly chronic victimization (Farrell, 2001): it is that previous victimization is a reliable predictor of the risk of future victimization. Victimization by crime is quite unlike being struck by lightning, instead it is something that is targets and re-targets the same individuals and property repeatedly. In other cases instead of considering victimization to be a discrete event, with action concentrating on the aftermath of victimization, ensuring that a victimization process has in fact ended is often a more important prerogative.

Indeed, where the victim suffers chronic abuse the need for safety is a paramount concern (Frazier & Haney, 1996; Campbell, 2002; Jordan, 2004). In cases of stalking (Van der Aa, 2010), repeated domestic and sexual violence (Johnson, 2006) and trafficking in human beings (Kelly, 2005), prevention, is the most important reason for reporting crime and seeking other forms of intervention (e.g. Lewis, Dobash, Dobash & Cavanaugh, 2001).

This need may invite immediate action (Coupe and Griffiths, 1999), while the protection from the offender may be important throughout the trial, and also following conviction and release (Campbell, 2002). Similar protection procedures are also key for those who are in danger from retaliation by the offender, for instance victims of state or organized crime or those intimately involved with the offender.

#### **Financial and material consequences**

Often the most clear impact of victimization by crime lies in its financial and material consequences (Cohen, 2000; Dolan et al., 2005). Aertsen (1996) separates direct and indirect consequences. The former concerns the face value of objects removed or damaged by the crime and the immediate costs for medical treatment. These may be difficult for the victim to estimate, since the true value is not always clear and the objects might have additional emotional value.

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The indirect impact can appear after some time has passed. This include the costs of longer term medical care, reduction in salary, costs to prevent further harm and legal fees (e.g. Dolan et al., 2005). These might also result from the psychological impact of the crime, if this prevents the victim from his or her normal activities. A victim may also have to relocate, avoid certain areas or lose his/her employment (Spalek, 2006). Research shows that damages are rarely recouped (Christiaensen & Goethals, 1993). The likelihood of reparation tracks the value of the material damages and the type of crime (Wemmers, 1996).

### Emotional and psychological consequences

#### Posttraumatic stress disorder

The psychological consequences of victimization have received the most attention in victimology. Since the introduction of the symptoms of posttraumatic stress disorder (PTSD) in the DSM-III, an enormous literature has developed. Many victims experience at least some of the symptoms of posttraumatic stress in the immediate aftermath of their victimization: re-experiencing the event, repeated and unwanted intrusive thoughts, hyper-arousal, emotional numbing and avoidance of reminders of the traumatic experience (see Kilpatrick et al., 2009). For most people these symptoms pass. Within a period of weeks or months the symptoms subside (Bonanno, Mancini & Westphal, 2011). Resilience is the most common reaction for even the most serious events, with estimates varying from 35 per cent to 65 per cent in Bonanno, Mancini and Westphal's (2011) *Annual Review of Clinical Psychology* of the evidence. In addition, a considerable minority (about 15 per cent to 25 per cent) of those who develop post-traumatic symptoms recover. This means that severe and long-lasting psychological problems are by no means inevitable or even the most likely outcome of crime, however severe. In the extreme cases of the genocide of Rwanda (Longman, Pham and Weinstein, 2004), the 9/11 terrorist attack on the United States (Bongar et al., 2007) or in chronic instances of victimization (like that experienced by Natascha Kampusch (Van Dijk, 2009), resilience and recovery rather than chronic psychological ailments are likely to be most prevalent.

Nevertheless, a large minority of those exposed to a potentially traumatic event do develop PTSD. This risk is particularly pronounced for certain stressors, such as rape, and for chronic and/ or repeated exposure to victimization (Brewin et al, 2000). The definition of which is a disorder which may occur following exposure to an extremely traumatic stressor, when a person has directly witnessed situations that result in actual or threatened mortality or physical injury and the individual's response to this situation includes a strong affective component of intense fear, helplessness and/or horror (see the definition from DSM-IV-TR). Here the mentioned symptoms recur over a large swaths of time, sometimes years. Victims experiencing PTSD therefore have severe problems in social and occupational functioning (Ehlers & Clark, 2000). Counselling, psychological treatment and therapy for victims of crime, therefore, focus on the prevention or remediation of PTSD.

The prevalence estimates for PTSD in Anglo-Saxon populations, as is evident from Kessler and colleagues (1995) and Breslau and colleagues (2004) epidemiological studies revealed that the prevalence rate of PTSD after a potentially traumatic event is 15 per cent. Higher rates are found in victims of more severe forms of crime, like rape, assault resulting in grievous bodily harm and co-victims of homicide (those bereaved by homicide). Pre-traumatic factors (pre-existing social and psychological characteristics and experiences), peri-traumatic factors (relating to the experience of victimization itself), and post-traumatic factors (the experience after the event) all influence the

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chance of the development of disorder. Repeat victimization enlarges the chance for development of PTSD, as is evidenced by victims suffering repeated and multiple (Denkers, 1996) or chronic victimization (Campbell, 2002).

In addition to PTSD, conditions like acute stress-disorder, depression, burnout, sleep disorders, drug abuse and anxiety disorders may afflict victims (Beutler et al., 2007). These mostly co-occur with PTSD. In a recent evaluation of victims of severe violent crime in the Netherlands the correlation between with anxiety disorders was as high as  $r = 0.7$  (Lens, Pemberton & Groenhuijsen, 2010). PTSD is also related to anger, vengefulness and hostility (Orth, Montada & Maercker, 2006; Winkel, 2007). Frans Willem Winkel argued that the classification of PTSD as an anxiety related disorder might have too easily imposed a particular emotional outlook on the disorder: there is equal reason to find it to be an anger-related disorder or do without classification of the emotion in question. Since DSM-V PTSD is classified as a Trauma and Stressor related disorder. In line with this recent research reveals PTSD to impact punitiveness, criminal justice preferences and even political attitudes in general (Bonanno & Jost, 2006; Cannetti-Nisim et al., 2009; and see Pemberton, 2012 for an overview). Taken together this means that PTSD can serve as a general indicator of the experienced severity of victimization. Moreover insights derived from the research into PTSD can be helpful in understanding other victimological phenomena, including elements of restorative justice (e.g. Sherman & Strang, 2007; Pemberton, Winkel & Groenhuijsen, 2007). The clinical psychological attention has driven the development of therapeutic approaches that prevent the onset of PTSD or can help victims recover from this disorder. This includes techniques that have been proven to impact PTSD like Eye Movement Desensitization and Reprocessing and forms of Cognitive Behavioural Therapy (Bisson, 2009). Therefore the understanding that victim assistance only amounts to 'tea and sympathy' (Fattah, 1999) is at odds with the state-of-the-art in current practice.

### Beyond clinical psychology

However the evidence base for these therapeutic approaches as well as their availability is largely restricted to the jurisdictions that have an established tradition in this field (Bisson, 2009). As we will note below much of the support and assistance that is provided to victims of crime has not been subject to similar empirical scrutiny: indeed there is an almost complete lack of research that evaluates victim support and assistance programmes in the same fashion. Undoubtedly the grass-roots nature of the development of many victim support programmes contributes to this fact, while the standard approach within clinical psychology of randomized controlled trials, with waiting list conditions, is often at odds ethically with the necessity of providing immediate assistance to victims of crime. Moreover clinical psychology has a natural inclination towards psychological medicine and therapeutic practice. This separates it from other disciplinary lines of inquiry, while it entails the risk of narrowing the perspective on the aftermath of victimization to the prevention and cure of the disorder and the role of clinical professionals in doing so (see Van der Velden, 2013, for an overview). Psychosocial support in the aftermath of victimization is by no means of clinicians and the experience of victimization can have many additional psychological consequences that cannot be (fully or partly) interpreted within the trauma perspective.

A particular element that has been neglected is the social dimension of trauma, at least in the analysis of the experience of adults, rather than children (see, Rimé, 2009). Only recently have Maercker and Horn (2013) developed a model of posttraumatic stress disorder that, correctly, positions it as a psychological affliction with both intra-psychic and interpersonal components. This is in line with a relevant line of theory and research departs from the view that the psychological perspective on victimization by crime can be seen in terms of a process of meaning making (Park, 2010).

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The distress caused by victimization can be viewed as a function of the discrepancy between the appraised meaning of the victimization and victims' global understanding of him or herself and his/her social environment. The fundamental assumptions shattered by victimization include the victims sense of continuity; continuity with their life story before and during their victimization, the possibilities to maintain a sense of continuity moving forward and the coherence with the narratives constructed by their social surroundings (Pemberton, 2015). The symbolic damage of victimization concerns both dimensions of the so-called Big Two of social motivation: agency and communion (Bakan, 1966; Abele & Wojziske, 2007), and coping with victimization includes efforts to rebuild both agency-oriented aspects like respect, control and status, and to re-connect with both people in their immediate or more distant social surroundings, as well as with symbolic representations of these communal bonds (Pemberton, Aarten & Mulder, 2015; Cleven, Lens & Pemberton, 2015). Victims process these matters through a narrative mode of cognitive functioning (Crossley, 2000; McAdams, 2013; Pemberton, 2015), with sense and meaning making of victimization being largely narrative enterprise, while re-establishing a sense of communion with others will adopt these narratives as its vehicle.

Assessing victim support and assistance solely in its impact on posttraumatic stress disorder neglects that its value can lie in other areas than mental health functioning. Victim support and assistance also contributes to the victims' ability to navigate the criminal justice system, can help in practical and material matters, can connect victims with protection and prevention services, performs a social function and is a mean through which victims can attempt to ascertain what their most pressing needs are. To reduce this to an impact on therapeutic constructs would be an unnecessary and unfortunate narrowing of the domain upon which victim support and assistance can prove their contribution.

### Physical consequences

In the immediate aftermath of victimization, victims' injuries can be the most crucial concern. In this phase, the so-called primary needs are paramount (Maslow, 1943; see also Staub, 2004). Survivors seek security and safety, should receive emergency medical aid, sustenance if necessary as well as the necessary means to prevent further damage could (Alexander, 2005). Over 30 percent of victims of violent crime are injured to a degree that is sufficiently severe to warrant admission to an emergency hospital care facility (for instance Miller, Cohen & Rossman, 1993), although extensive hospitalization only occurs in the case of 1 per cent of victims of violent crime (Miller et al., 1993).

Emotional/ psychological effects of the crime might also cause physical deficits in the longer run (Christiaensen & Goethals, 1993), and here the link with the crime might not be self-evident. Physical effects can include chronic anxiety and sleeping problems. The physical impact in turn might lead to longstanding emotional problems, especially when there are visible scars (Aertsen, 1996). There is a large body of research that demonstrates the connection between victimization and self-destructiveness, including suicide (Spalek, 2006).

### Social consequences

The social consequences include family and friends' reactions, as well as that of the professional environment, the media and the judicial system. Where negative these reactions are what is commonly seen to be or lead to secondary victimization (Kirchhoff, 1994; Mawby & Walklate, 1994; Wemmers, 1996). Where positive they

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might be an important protective factor: the positive reaction of family and friends is an important contributing factor to coping with the consequences of the crime (Goethals & Peters, 1991), which may be supplemented by support by people outside the close family and by neighbours (Maguire & Corbett, 1987). Indeed, besides (pre-existing) psychological characteristics and the severity of crime the experience of social support in the aftermath of crime is probably the strongest predictor of recovery from victimization (see Brewin, Andrews & Valentine, 2000). This includes a variety of forms of practical support and emotional support as well as acknowledgement (Maercker and Muller, 2004). Moreover this support may be offered by the immediate informal network of the victim, and from more formalized networks of support and assistance.

Many victims experience a sympathetic reaction of their social surroundings, with a common component of the experience of post-traumatic growth (Tedeschi & Calhoun, 1996) being the strengthening or renewing of bonds with family, friends and other community. However a sympathetic reaction is not always forthcoming. Indeed, many victims experience negative, even blaming reactions from others (e.g. Lerner, 1980; Correia & Vala, 2003; Hafer & Begue, 2005), with the term secondary victimization (Montada, 1994; Frazier and Haney, 1996; Temkin, 2002) describing a negative, blaming, derogating reaction from the media (see specifically Maercker & Muller, 2006) and criminal justice actors. The reaction of the justice system has an important influence on the ability to cope with the effects of crime (see Wemmers, 2013), as well as on the further co-operation of the victim with the system.

### Needs of victims of wrongful acts

#### What separates the experience of victimization by crime from other forms of harm?

The current state of social psychological research suggests that the experience of wrongfulness of crime can be understood as bi-dimensional (Wenzel et al., 2008; Gromet & Darley, 2009). On the one hand power/status concerns and on the other concerns relating to value. Crime involves a symbolic removal of power from victims by their offenders and a crime's wrongfulness lies in this transgression of some else's basic human rights. Evidence is increasingly suggesting that an urge to payback the offender for this transgression is an intuitive reaction to this feature of wrongdoing (see also Miller, 2001; Darley & Pittman, 2003). This intuition is based on desert – the magnitude of the wrongfulness of the perpetrators actions determines the level of punishment –, not so much focused on deterrence, even though people will often mention the latter as a main goal of their actions (Carlsmith, Darley & Robinson, 2002). Moreover it is the wrongfulness, rather than the harmfulness of crime that determines the amount of payback that people desire (Alter, Kernochan & Darley, 2007). Research reveals a strong consistency in people's ranking of the wrongfulness of a variety of crimes and the punishment they find appropriate for these crimes (Robinson & Darley, 2007).

Crime poses an additional threat to the moral order. It is also a threat to community consensus about the correctness – that is the moral nature – of a rule and hence the values that bind social groups together' (Vidmar, 2000, p.42). Restoring these values is therefore an important element of criminal justice procedure (see already Feinberg, 1970; Duff, 2001). Wenzel and colleagues argue that these value concerns, like power/status concerns, relate to the symbolism of crime – its wrongfulness (see also Okimoto & Wenzel, 2008).

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The importance of value restoration is tied to membership of a social group. This means that a sense of shared identity with an offender is necessary to make it a salient concern in the groups' reaction to him or her (Wenzel et al., 2008). The importance of adherence to group values is contingent on group membership. In line with this value restoration is a more important concern for offending by children and other young members of the group. Their transgression is more likely to be viewed as an inability to grasp central group values. The importance of shared identity can also explain some of the complexity in cases where the offender is not only a fellow group member, but a member of the family and/or a current or former partner or spouse. Victims may find themselves torn between their moral outrage at the offender, which is an antecedent of retribution and revenge and their sense of identity, rapport and intimacy with the offender.

### The myth of the vengeful victim?

Those who view victims' rights with some concern often point to the importance of keeping vengeance at bay in criminal justice. Victims are seen to be vengeful, and their pleas are often interpreted or even used as cover for harsh, populist demands for tough sentences and even capital punishment (Elias, 1993). Victimologists have, in general, attempted to distance themselves from this position (see Pemberton, 2012). Firstly, crime victim surveys reveal victims of crime to be no more punitive than non-victims (Maruna & King, 2004; Van Dijk, 2007). Secondly, a case is made that instead of retribution and revenge, victims might prefer different outcomes such as compensation, support or a sincere apology from the offender (sections 1.2.1 and 1.2.3. mention a number of these outcomes and see Strang, 2002).

Finally, it is argued that even when victims might want and actively try to get retribution or even revenge, it will do them no good (e.g. Van Stokkom, 2011). There is, as yet, no evidence that increasing sentences for offenders has any positive mental health effects for victims (Orth, 2004). Attempting to achieve these ends is more likely to lead to disappointment, rather than to contribute to victims' well-being (for instance Sanders et al., 2001).

One of the authors of this report has noted that each of these findings comes with some caveats (Pemberton, 2012). Results of research dispelling the notion of the vengeful victim often survey albeit relatively severe, but routine type of crime, like burglary or common forms of assault. Participants have often experienced the crime in question a reasonably long time ago, at least long enough for any residual impact of the crime to have dissipated. It is not clear to what extent these findings translate to victims of more severe forms of crime, in a shorter period after the crime occurred. On basis of the available evidence it appears that experiencing large negative psychological consequences of victimization does invite a more punitive stance.

The view that retribution or revenge might be replaced by other goals is also not as straightforward as sometimes as posited. That victims may want other things is undoubtedly true. That this will replace their desire for payback is however not apparent from the available evidence. Instead, the more severe the impact of crime is, the less likely the desire for retribution might be circumvented by other means (e.g. Darley & Pittman, 2003; Gromet & Darley, 2006; Alter, Kernochan & Darley, 2007). Not only does this increase the power-status concerns involved in victimization, while it restricts the extent to which other outcomes may tap them, but it also contributes to a diminished sense of shared identity with the offender. The severity of crime itself conveys a sense of otherness on its perpetrators (Garland, 2001), which, taken together with the more pronounced power implications inherent

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to severe crime (Gromet & Darley, 2009) implies that retribution will play an important role in the reaction to these offences (Pemberton, 2010b; also Bilz, 2007). This is revealed by the available evidence into victims stated preferences, but also by their choice for participatory modes: victims of more severe crimes choose modes of participation that have more retributive features (Lens et al, 2013, Pemberton, 2015).

Finally while there is no evidence that tough punishment leads to increased well-being of victims, it is clear that insufficient punishment has negative effects. Acquittal of suspects, particularly when the victim witnessed the crime, can and does impede recovery. This has been clearly demonstrated in intimate partner violence and rape cases (for instance Frazier & Haney, 1996; Jordan, 2004). More generally, except for the direct power concerns inherent to punishment, a sentence that is perceived as being (far) too lenient can have a negative impact due to what it signals to and about the victim, as it is likely to be interpreted as a lack of social acknowledgement to what happened to the victim (Bilz, 2007).

### Cross-cultural differences

A final caveat applies to all findings discussed here. The evidence base of the research is mostly derived from convenience samples –often of students - in primarily Anglo-Saxon contexts. Although there is good reason to assume that a drive towards payback for wrongdoing is a cross-cultural universal (Brown, 1991, Ericksen & Horton, 1992, Gat, 2006, McCullough, 2008, Boehm, 2013). To a certain extent the findings should be expected to apply to other cultural contexts as well. However as a review by McCullough and Kurzban (2013) shows the extent of this drive differs considerably from one cultural context to the next, and also the form it takes shows significant variation between countries, cultures and ethnic groups. Across Europe there is variation in the extent to which personal revenge, is stigmatized or instead promoted (see also Elster, 1990). In addition a key issue is the extent to which those victimized trust the state and its actors to provide an effective response to wrongdoing and their general sense of legitimacy of the police force and criminal justice (see also Chapter II). Less trust and a more negative stance towards these institutions leads to heavier reliance on personal revenge as a means to payback as well as a greater emphasis on the power-status concerns of wrongdoing. Poignant examples of this are the work of Elijah Anderson (1999) concerning the so-called Code of the Street in Philadelphia and that of Nisbett and Cohen (1996) concerning the Code of Honour in the American South. The current situation post-Ferguson in the United States reveals the level of distrust in the American enforcement agencies experienced by African Americans, while the difficult relationship between state agencies in many inhabitants of the South of the United States is also a well-known phenomenon.

The main issue is that the relationship with state agencies, and particular law enforcement in a given country, culture or subculture influences the extent to which victims desire for vengeance (French, 2001) can be absorbed by other perhaps more constructive means to come to terms with their victimization. The twin effect of the narrowing of the possible courses of action, with the increased power-status implications of victimization under these circumstances is likely to serve to emphasize the importance of revenge.

### Victims' needs concerning the criminal procedure

Commonly victimological research distinguishes three procedural needs: respectful treatment/recognition, information and participation (Strang, 2002). Elsewhere this distinction is captured in the terms interactional justice, informational justice and procedural justice (for an overview, see Laxminarayan, 2012). They have in common that they consider the impact of the justice procedure itself as a factor that is at least to a degree independent from the outcome of the procedure (e.g. Tyler, 1990). Much of the worth of these procedural needs for victimology, has been derived from research that has offered grounds for the application of the more general experience of those participating in justice processes to victims of crime (see Wemmers, 1996; Laxminarayan, 2012).

### Interactional justice: recognition/respectful treatment

Respectful treatment and the recognition of the victims' situation are key to the efforts to improve the position of victims of crime in the criminal justice system. The observation that victims were routinely blamed for their own victimization (e.g. Frazier & Haney, 1996) and were subjected to insensitive and even insulting behaviour at the hands of the police and other criminal justice agencies (the phenomenon of secondary victimization, Montada, 1994) is a main theme in the 'emancipation' of victims of crime (e.g. Van Dijk, 2009).

A cornerstone of the recognition of crime victims is the presumption of victimhood (Groenhuijsen & Kwakman, 2002). It does so in similar vein to the manner in which the presumption of innocence does so for the protection of the rights of the suspect. Where it is in the interest of someone suspected of committing crime to be treated as not-guilty, it is in the interest of victims that criminal justice actors treat them as if the crime indeed took place. Upon reporting the crime criminal justice agencies should automatically treat the person in the capacity of 'victim', until the moment when either law enforcement officials or a court determines that there was no crime or that the person did not suffer as a result of the crime committed (see Brienen & Hoegen, 2000). In many cases no such judgement is made. Even when the suspect is acquitted, the verdict might not have any bearing on the question whether or not the victim suffered a crime. In addition, victims' rights largely protect victims' interests in the pre-trial and trial phases, before any determination of the guilt of the suspect is possible.

### Informational justice

Information – concerning the victims' position, avenues to receive support and justice and concerning the ongoing criminal justice process – is an obvious but nevertheless highly important need for victims of crime (Groenhuijsen & Pemberton, 2009). It is uncontroversial, and compared to most other victims rights, its importance is relatively well supported by empirical research (see below). Two additional points are worth noting. First of all, receiving information only serves a purpose when it can be understood. Most instruments therefore include provisions to support victims in comprehending this information. Availability in different languages and follow-up legal advice and support in making sense of the regularly complicated legal deliberations (Ezendam & Wheldon, 2014). Second, information about the course of the criminal justice process is often an important need, but not a universal one. A minority of victims of crime non-reception of information is important (see Reeves & Mulley, 2000). Victims may do not always value repeated reminders of their victimization, either because of the severity of their experience, or because they have subsequently moved on from the experience.

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### Procedural justice: participation and voice

Victim participation in criminal procedure is the most complicated process need (e.g. Pemberton & Reynaers, 2011). From the outset it has been widely and heavily debated, especially in the United States (see Henderson, 1985; Bandes, 1996; Sarat, 1997; Garland, 2001; Simon, 2007). Matravers (2010) adequately summarizes the issues when he first explains that many improvements for victims are *'at worse benign and at best to be welcomed'*: This applies to information, protection of vulnerable witnesses and the design of court rooms. However *'the question whether victims should have the right to make personal or impact statements, and if so what influence such statements should have; whether victims should play a role in decisions over whether to prosecute, over how much to punish and over parole and other decisions regarding release from prison.'* offer, as he puts it, grounds for suspicion. In particular the landmark and controversial Supreme Court decision in Payne versus Tennessee ((501 U.S. 808 (1991)) sparked much discussion and academic deliberation. The decision allowed victim impact evidence at the sentencing phase in capital cases, a mere four years after the Supreme Court had ruled the opposite in Booth versus Maryland (482 U.S. 496 (1987)): the peculiarity of the victim instrument in question has largely contributed to a polarized debate in much of the Anglo-Saxon world.

As Pemberton (2015) noted *"the reasoning in the Payne versus Tennessee decision can stifle debate by setting up a straw man that can and should be criticized, but has the unfortunate by-effect of skewing discussion towards issues that only arise in or are intimately connected with the particular context of the death penalty... Given the issues at stake in a capital case, the value of debating Payne versus Tennessee is difficult to overstate for legal practice in the United States; however the portability of this specific context is limited, which in turn restricts the contribution to victimological theory elsewhere."* The victim impact statements in Payne are provided after the suspect has been found guilty of crime for which the death penalty is possible and where the only remaining issue is the length of the sentence for the offender. Even though the available evidence suggests that victim input at the sentencing phase does not lead to more severe sentence (Roberts, 2009), this particular configuration of in this case lends credence to the view that the main purpose –and thereby the main concern- of victim impact statements is to influence the sentence of the offender, even to the extent that his life may depend on it.

Where the portability of victimological research and findings from one area to the next should be subject to more intense scrutiny in general, this is particularly true for the area of victim participation. Where the Anglo-Saxon slant in research means that the spectre of context-dependence always haunts victimological wisdom, this doubly so for this subject. The fact that much research and thinking concerns victim input in cases with an outcome that is no longer a possibility in the Member States of the European Union already stresses this fact.

In addition the particular instrument that is the topic of much research, the *victim impact statement*, is by and large an Anglo-Saxon phenomenon itself (Roberts, 2009). Most Member States of the European Union do not offer the possibility of the victim impact statement. This is largely due to the fact that in most inquisitorial systems in the continent the victim can already be heard in a different guise, as a *parti civile*, adhering their compensation claim to the criminal case (see already Brienen and Hoegen, 2000). The adversarial systems in the Anglo-Saxon world did and mostly still do not offer victims similar possibilities, which is one of the reasons why the victim impact statement was developed in the first place. In the EU mainland countries that now do offer the Victim Impact Statement, for instance the Netherlands, the structure of the criminal procedure means that the position and the role of the victim impact statement differs from that in say the United States. In the

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Netherlands both guilt and sentence are established in one stage, rather than in two separate stages (see Lens et al, 2013, Kool & Moerings, 2004). The Victim Impact Statement is therefore offered at a point in the procedure, when the guilt of the suspect has not yet been established.

### Participation as a witness

The most important distinction in victim participation is that between participation as a witness versus other, more voluntary forms of participation (Herman, 2003). Witnessing is rarely seen to be source of benefit for victims of crime. The main concern for victim-witnesses in both the pre-trial and trial phases is the prevention of secondary victimization by the criminal justice actors (Frazier & Haney, 1996; Campbell et al., 1999; Temkin, 2002). This is particularly so for forms of gender-based violence, but also for victims of severe crime more generally. The legal system can be a large burden to which victims would prefer to minimize their exposure. This is an important concern for those victims who have developed traumatic disorders as a consequence of the event (Herman, 2003; Cheon & Regehr, 2006). Minimizing the risk of secondary victimization has implications for the intrusiveness and intensity of questioning. See for instance measures designed to reduce unnecessary stress, for example hearings behind closed doors and testimony via video links.

### Cross-cultural differences?

Although the evidence base of procedural justice research is relatively large, it does suffer from a similar cultural slant/ bias as mentioned above. Laxminarayan and Pemberton (2012) argue that this is relevant because societies may be characterized by different cultural norms, while there is good reason to assume an impact of these cultural norms on justice preferences in general, and victim needs in particular. The most prominent difference relates to the individualism-collectivism dimension (Triandis et al, 1988), and most of the evidence base for procedural justice, particularly in victimology is derived from countries with high and increasing individualism, Culture influences perceptions of what constitutes satisfactory decisions and procedures in conflict resolution (Leung & Morris, 2000). As Laxminarayan (2012) argues: *“The collectivist-individualist dimension can be assumed to impact victims’ justice preferences. As to the procedure, inhabitants of collectivist societies are more likely to tolerate unequal situations and accept inequalities in power. There is a reduced emphasis on the value of offering one’s own individual perspective on the matters at hand (Brockner, et al., 2001). Subsequently, it may be hypothesized that victims in these societies will place less emphasis on voice towards legal authorities. With regard to the outcome, individuals in collectivist societies are likely to experience a stronger sense of shared identity with other members of their society, including people who transgress against them”*.

In addition in most models of procedural justice the relationship with authorities is important (Tyler, 2006). Interactional, informational and procedural justice all can contribute to increased legitimacy of authorities. However legitimacy and trust in the decision maker in question is also a necessary antecedent of the experience of procedural justice. The notion that voice in procedure is important is in part contingent on the understanding that the decision maker has a legitimate interest in making the decision: moreover that he or she represents a group to which the parties in the decision procedure belong. A minimum sense of shared identity with the decision maker is therefore also important. As we will see in chapter 2 it is not clear whether decision makers across Europe can assume this legitimacy and sense of shared identity with victims participating in criminal justice processes.

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## Summary

In the aftermath of crime victims may have different needs: they may need treatment for their injuries, for the psychological damage incurred, support from their surroundings, access to victim support, material compensation, advice on how to prevent further victimization, protection from the offender; as well as attention to the symbolic implications of crime. Its implication for victims' power and status and for the values of the group to which victims belong, can include punishment of the offender and an expression of remorse or an apology by the offender.

Luckily the effects of crime for most victims are small and/or in the longer run, dissipate. They do not have permanent injuries, nor experience much psychological stress, are met with sympathy by their friends and family, might be insured for any damages incurred and find victimization to be a one-off experience. If a suspect in their crime is apprehended, their views are the same as non-victims: depending on their own characteristics and those of the offender, they might prefer restorative or retributive solutions or both, but often will not be too concerned one way or another.

For a smaller sub-group of victims however, matters are qualitatively different. This is the case for victims of severe forms of crime, who suffer long-lasting rather than short-lived psychological consequences. The severity of the experienced crime, along with the increased punitiveness means that retribution in the form of punishment is a prime concern. Indeed, as noted above, the outcome of the trial can be experienced as a societal referendum on the victim's worth. This is further strengthened by the fact that other symbolic means are not likely to be seen as appropriate, nor effective: apologies or expressions of remorse are likely to be seen as insincere, while direct contact with the offender will be avoided.

We have seen that a sense of shared identity is an important mediator of victim experience. This applies to a sense of shared identity towards the offender, as well as towards the authorities. Where the offender is seen to belong to an out-group, the possibilities for alternatives to retribution become slim. However when the offender is a family member the outcome of the criminal procedure is a complex matter. The legitimacy, including the sense of identity, of criminal justice authorities is an antecedent of procedural justice. Indeed the independent importance of participation in procedures depends upon this sense of legitimacy. This should not be taken for granted, as is clear from the current American experience subcultures within societies might not find the criminal justice authorities to have sufficient legitimacy, while the relationship of societies across the European continent with their law enforcement agencies varies.

Other cross-cultural variations – for instance that between individualism and collectivism – might also influence the way victims understand justice processes. It is therefore not entirely clear whether the existing research evidence base, which is primarily derived from the experience in a particular cultural context, can be generalized to the situation of victims elsewhere.



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## Case studies of the empirical base of the Directive

In this section we review the available evidence for the main areas of the Victims' Directive. For the following case studies the empirical evidence is reviewed.

- victim support;
- information;
- the right to be heard and participation more generally;
- restorative justice;
- compensation;
- cross-border victims;
- protection and individual needs assessment;
- the importance of training.
- The overall findings of this section are summarized in the end.

## Victim support

### Victim support: A key issue in the Directive

The issue of victim support lies at the heart of the Directive. Alongside protection and rights it is the one that is mentioned in the title of the Directive. It is a growing phenomenon throughout Europe, with the European Umbrella organisation Victim Support Europe representing 40 organisation across 26 European countries. Victim support also has a long pedigree, at least in certain countries in the European Union, with Victim Support UK recently celebrating its fortieth birthday (e.g. Reeves, 2008).

Social support in the aftermath of victimization is also an important need: it is something research suggests many victims find important (see already Skogan et al, 1990, Van Mierlo & Pemberton, 2009), while receiving social support contributes to reduction of and protecting *against* the risk of developing mental health problems (Brewin et al, 2000). However there is not much in the way of research into the impact of victim support on victim experience. This is true even for the UK, where victim support not only has a long history, but also a relatively large number of annual clients. The Crime Survey for England and Wales reports that most victims who recall being in contact with Victim Support were satisfied (Freeman, 2013), but as noted satisfaction is poor measure of quality of services, let alone impact. In a UK Home office report in 1993 Tim Newburn stated that *"the inescapable conclusion of this review is that there is insufficient data on which the assessment of the impact of crime and the 'needs' of victims can properly be made"*, but that *"Nevertheless it seems clear from existing research that extended care and support work with a fairly wide variety would be likely to be both useful and used if it were available"*. Some progress has been made on the impact of crime and needs of victims, but the extent that the current state-of-the-art in research can offer a stronger empirical endorsement of his second conclusion is extremely limited. Much of his more than twenty year old review still applies today.

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In this light it is, for instance, telling that the recent report of the Fundamental Rights Agency (FRA) *Victims of Crime in the EU: a report on the extent and nature of support for victims* examines in the legal and organisational structure of victim support across the European Union, without any reference to basic data on availability of services, and indeed no reference to results of research into the impact and effectiveness of services rendered (see FRA, 2015). This is not to criticize the authors of this report in any way, given that the research that could provide such an evidence base is simply not available. It is also not to criticize the practice of victim support. As the following review will suggest, wherever victim support services are examined the results are positive. However given the large difference in set-up of victim services (see also FRA, 2015 and the results of workstream 1 in Chapter III) - with some services relying on volunteers and others on professional staff, and yet other on professionals who are not paid for their services; with some services offering wide-scale but low-level support, others focusing on particular groups of victims, and more in depth forms of counselling and advice; some victim services receiving reasonably extensive government funding, while others rely on private sector donations and/ or are run on a shoestring basis; and finally some services functioning within a large welfare state network of organisations with similar or overlapping functions, while others are often the sole agency to which victims might turn to for all kinds of support (see also the results of workstream 1 in chapter III) the lack of any sustained effort to examine the experience of victims of crime with the support received in different contexts throughout Europe is surprising both from an academic and a policy-making perspective.

Part of the reason for the lack of academic research into victim services might lie in the fact they are most often grass-roots initiatives, grown incrementally from private, NGO-initiatives (see also Reeves & Mulley, 2000). There might be some apprehension from practitioners, to see the service they have built up, often without much in the way of outside help and support, being queried by researchers. To this may be added that many researchers have had an ambivalent relationship with victim services, either because of the general suspicion of many legal academics against victims issues, and/ or because the research is funded by governmental agencies with their own agenda to which the results of the research may be put to use. This is something that the authors of this report have come across on an all too regular basis.

In addition the perspective of the victim service organisations do not easily fit with those of researchers interested in certain types of impact. Victim services function at a cross-road between criminal justice, support/counselling/mental health services and more practically oriented help (e.g. Pemberton, 2008). This means that a research perspective drawn from, for instance clinical psychology, runs the risk of solely evaluating victim services' effectiveness in terms of one of its functions only (e.g. Pemberton, 2015). As noted above victims can have a varied set of needs and victim services often play an important role in helping victims understand what these needs are and helping them respond to those needs.

An additional issue relates to a more general difference in roles of people accessing a given service, which can be captured in the alliteration 'customer- client- citizen' (Williams, 1994). Satisfaction research relies on an understanding of the position of those using a service as equivalent to private sector customers: this metaphor suggests that an individual has repeated contacts with a service provider, is free to choose whether or not contact is established and/or opt for a competitor, and can use his or her own direct experience in evaluating the outcome, which is solely relevant to him or her as a private person. This situation qualitatively differs from clients: evaluating the outcome is often the province of an expert (for instance in medicine or law) - mostly the service provider him or herself; repeated experience is the exception rather than the rule, so judgments are made on a one-off,

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ad hoc basis; and the freedom to choose an alternative is limited or non-existent. Finally within the citizen role the service is not only relevant to the person in a private capacity: it also has repercussions, for the community to which the person belongs and his or her own position in this community (e.g. Alford, 2002). The issue then is that victims present to victim services as a hybrid of customer-client-citizen, with each of these roles requiring different means to ascertain the extent to which they have been reached (Cleven, Lens & Pemberton, 2015).

To be sure these issues make evaluating victim experience with victims services to be a complex matter. As Dunn and Reeves (2007) note in their contribution to the *Handbook on Victims and Victimology* 'Establishing victims needs and how effective support organisations are in meeting them is in no way straightforward'. This is however by no means a reason to shirk from attempting to do so. In the following we will also report the findings of a pilot-study undertaken by different authors of this report into the experience of victims with victim support in a selected group of countries in the European Union.

### A mile wide, and an inch deep: research on victim support in Europe

The International Crime Victim Survey (ICVS) contains a question on victims need for support 'by a specialised agency' and the extent to which this support was received. Table I-1 presents the results of the take up percentage i.e. the percentage of victims who wanted support by a specialised service and actually received it. From the results it becomes clear that only a few Member States achieve a take up rate of more than 25%.

**Table I-1:** Victim support pick-up rates: reception of victim support as a percentage of expressed need [1996-2005 ICVS] [Source Van Dijk, 2015].

	<u>1996 surveys</u>	<u>2000 surveys</u>	<u>2004/05 surveys</u>
<b>Scotland</b>	24	28	40
<b>Austria</b>	18		38
<b>Northern Ireland</b>	23	38	37
<b>Netherlands</b>	33	44	35
<b>England and Wales</b>	38	40	31
<b>United Kingdom</b>	25	29	30
<b>Belgium</b>		15	28
<b>Denmark</b>		22	27
<b>Sweden</b>	27	33	21
<b>Ireland</b>			13
<b>France</b>	13	9	11
<b>Luxembourg</b>			11
<b>Bulgaria</b>			10
<b>Poland</b>	6	8	8
<b>Germany</b>			8
<b>Italy</b>			7
<b>Finland</b>	16	6	6
<b>Portugal</b>			5
<b>Spain</b>			4
<b>Greece</b>			4
<b>Hungary</b>			1

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These results should also be interpreted with the fact in mind that the countries surveyed in the ICVS are also the ones with larger victim support organisations and a longer tradition of victim assistance. The average over the countries not included in the ICVS is therefore similar to those at the bottom of the table, rather than a random spread throughout the EU.

Of course the question might be posed whether the fact that the last wave of the ICVS was conducted ten years ago might paint a distorted picture of the current situation in EU Member States. Although this is possible and can only be confirmed or disconfirmed by empirical verification, we deem it unlikely that the situation has changed much. The figures Victim Support Europe reports about the number of victims serviced by its members reveals large stability from one year to the next (see [www.victimsupport.eu](http://www.victimsupport.eu)).

Similarly research from Member States that conduct their own annual crime victim surveys and query victim support take up in a comparable fashion, also signal that these rates are constant from one year to the next. The Crime Survey for England and Wales (CSEW), for example, mentioned for 2008/ 2009 that for those incidents that were reported to the police where the victims wanted someone to talk to, this was received in 41 per cent of incidents, and in 18 per cent of reported incidents where the victims wanted protection from further victimization, they then said they received it (Freeman, 2013). This was largely similar to the figures for previous years. Indeed if anything this percentage decreased, Freeman (2013) reports that *the percentages of incidents where the victim wanted and received support both decreased over the period from the 2001/02 CSEW to the 2008/09 CSEW. In terms of those incidents where the victim wanted support, there was a decrease from 23 per cent of incidents in the 2007/08 CSEW to 19 per cent in the 2008/09 CSEW.*

What is also apparent here is that the way the question is posed in a survey will lead to different answers. The CSEW and ICVS data query similar subjects in a similar populations, but estimates of take-up rates differ to a high degree and this can be due to the way the survey question is posed. The ICVS data concerns help from a specialised agency, but it is not clarified what kind of agency is meant here, nor what the term specialised means. As is apparent from much victimological research (see APAV/ Intervict, 2014) the relative unfamiliarity of victims with victim support, victim assistance and victims' rights means that interpretations of seemingly straightforward terms can vary widely, while crime victim surveys are well-known for the extent of survey-methodological problems that plague them (see already Skogan, 1986, Averdijk, 2011). These issue can be addressed but necessitate more in-depth questioning in the survey, accompanied by supplementary research that ascertains the construct validity of the questions posed in the survey (again APAV/ Intervict, 2014).

### Assessing the quality of Victim Support: the results of Project VICS

The aforementioned problems with satisfaction research were a large part of the rationale for the EU-funded Project VICS. This sought to examine the experience of victims with victim assistance in a number of EU Member States (APAV/ Intervict, 2014). The project - co-financed by the Criminal Justice Programme of the European Union - was carried out by the Portuguese Association for Victim Support (APAV) and the International Victimology Institute Tilburg, in cooperation with INAVEM in France, the Weisser Ring in Germany and Victim Support Scotland, with the support of Victim Support Europe. The central notion of the research project is that experience of quality in victim assistance relates to the extent to which the services match victims' needs. Measuring this match entails querying victims' experiences with services and their relative importance. This approach is also used in health care services, and the model of the CQ-index (Consumer Quality index), which was developed for this sector, served as an example for this (see Sixma et al, 1998). It focuses on the following issues:

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- Which aspects do people find important in the services these facilities offer?
- How important are these aspects per health care facility?
- What are the experiences of services users with the different health care facilities?
- Can differences between different groups of service users be discerned?

In the sphere of victim assistance it offers insight into the questions of whether victims of (different forms of) crime receive the services they find important, which in turn offers insight into the question of whether these services thereby meet the needs of these (perhaps varied groups of) victims. Instead of satisfaction the current process measures needs translated into experiences, and the importance of these different experiences.

The results of the project suggest that some indicators of Victim Support are rated as important by large majorities of the respondents in each country. The proportion of respondents reporting poor experience was small. In many cases there is a strong link between the importance and experience of Victim Support services. Most indicators that were seen to be important by the large majority of all victims, were also offered to large majorities of these victims and hardly any evidence of quality gaps (high importance, low experience) was found.

Regarding respectful treatment, respondents are almost unanimous about its importance: 90% of the respondents reported this is an important aspect of Victim Support services. The remaining indicators for the quality of Victim Support services were rated as important by large majorities of approximately 80% of the respondents. Receiving assistance and support with participation in the criminal justice process and receiving compensation were viewed as important by most respondents as well, and the slightly smaller proportion of respondents should be viewed in light of the fact that not all victims have further interaction with the criminal process and/or are in the position to make a compensation claim.

### Information

#### Information: a key need for victims of crime

Three of the articles are directly concerned with informational justice, with article 3 addressing the 'right to understand and to be understood', article 4 'Right to receive information from the first contact with a competent authority' and article 6 'Right to receive information about their case'. The importance of the reception of information is probably one of the most empirically supported elements of the Directive.

Sims and Myhill (2001) found the lack of sufficient information to be a main source of distress and dissatisfaction with criminal justice agencies (see also Van Dijk & Groenhuijsen, 2007). This was confirmed by Allen and colleagues (2006): 93 per cent of victims who said the police had sufficiently informed them, was satisfied with the treatment by the police while this was only 40 per cent for victims who did not receive sufficient information.

The police is most often the first organisation with which victims of crime are confronted. In the first contact with emergency responders, receiving sufficient information and attention is key, next to other support provision (Brandl &

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Horvath 1991; Wemmers 1996; Coupe & Griffiths 1999; Fleury 2002; Braithwaite & Yeboah 2004; Frank et al., 2005; Wemmers & Cousineau 2005; Ten Boom & Kuijpers 2008). It is important to be taken seriously, and be given sufficient time to tell their story and be set at ease (Braithwaite & Yeboah, 2004). The initial impression may have lasting effects: insufficient attention and information might thwart any further activities by criminal justice actors (Fleury, 2002).

Many victims mention the importance of receiving sufficient information concerning the criminal justice process as a key need (Brandl & Horvath 1991; Ten Boom & Kuijpers, 2008). Most victims have no idea about the course of the criminal procedure, nor what to expect from it. An important source of dissatisfaction is that victims lack knowledge of what they will be confronted with during the process (Brewster, 2001). According to Wemmers (1996) victims also want to be informed about what is expected from them during the process, while police information can allow expectations to be better aligned with the possibilities of the criminal justice system. Increased information might also serve to help victims distinguish different actors in the criminal justice process. Most research suggests that victims generally view police, prosecution and judiciary as one homogenous whole, in particular the latter two. This has the upshot of making judgements of one actor depend on other actors (Hotaling & Buzawa, 2003).

### Satisfaction with criminal justice across Europe

Information appears to be a main driver in the judgement of police and criminal justice authorities, although this finding is derived from research in particular countries: Anglo-Saxon countries, the Netherlands and certain Scandinavian countries. From the results of the ICVS it appears that most police forces in North and West Europe achieve similar satisfaction levels, as is apparent from table I-2.

Table I-2: Satisfaction rates with criminal justice [ICVS, 2004-2005]

	Satisfaction rates
Denmark	75
Finland	72
Luxembourg	70
Scotland	70
Austria	68
Sweden	67
Germany	67
Spain	65
Belgium	65
Netherlands	62
England and Wales	61
Ireland	61
Northern Ireland	61
Portugal	58
France	53
Italy	43
Bulgaria	41
Hungary	41
Poland	36
Greece	28
Estonia	17

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Given the issues with cross-national comparison of single-item questions, including questions surrounding construct-equivalence and cross-national differences in response styles (e.g. Singh, 1995; Van de Vijver & Leung, 2000; Harzfeld, 2006) it is unclear whether we should place much emphasis on the relatively small differences between most of the European countries. Moreover it is unclear what the satisfaction scores mean. What aspects of police services were victims satisfied or unsatisfied with? What role did their expectations and needs play?

### More results from Project VICS

In section 1.3.1 we noted the results from Project VICS. It also queried the experience with the police. In general, respondents overwhelmingly agreed on the importance of police services. Most aspects of the quality indicators were considered to be important by more than 80% of the respondents in each country.

Unlike the results for Victim Support, however, results from France, Portugal, and Scotland indicated evidence of clear quality gaps in police service delivery. Despite their great need for information, many respondents indicated this need was not met: more than 40% of all respondents said they did not receive information about their rights as a victim and were not kept informed about new developments in their case. A third of the respondents who indicated it is important to receive information about further assistance and support said they did not receive this information.

### The right to be heard and participation more generally

#### Victim voice: the independent importance of participation in criminal justice

Victims whose crime is reported to the criminal justice authorities, have three procedural needs: respectful treatment, sufficient and understandable information, and a level and form of participation that is suited to their personal situation. Key components of a reaction to these needs are the presumption of victimhood, measures to reduce secondary victimization and the possibility of voice in the criminal justice procedure. In the research into victims' participation in the process it is often a more important determinant than outcome related concerns in victims' estimation of the legitimacy of the process (Laxminarayan, 2012).

In her review Laxminarayan (2012) traces the concept of procedural justice in victimology to the initial work of Thibaut and Walker (1975). The value of participation in a justice process was interpreted in terms of the opportunity it provides to control a favourable outcome, often at the expense of others. The advances in the research domain of procedural justice since then, including the introduction of the separate term interactional justice to denote the experience of the treatment provided by the decision maker, like the prosecutor or judge (Bies & Moag, 1986), and the theoretical work by scholars such as Tom Tyler (1990), Allen Lind (Lind & Tyler, 1988) and Kees van den Bos (2001), have steadily moved away from this solely instrumental view of procedural justice. In Tyler's influential views, the so-called group value or group engagement model (for instance Tyler & Blader, 2003), the process itself represents key values of the group to which the participants belong. Fairness in the decision-making, and the quality of treatment in the criminal justice process not only

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serve as a means to reach an outcome, but also send an independent message about the values constitutive of group membership. Being a part of a group that conducts itself in a fair manner is valuable in and of itself, while participating in procedures that perform key social functions of the group communicates that one is a valued and respected member of this group, and strengthens and reaffirms the affiliation with the group and its representative authorities.

As Laxminarayan notes that *while these models were not specifically developed with victims of crime in mind, Wemmers et. al. (1995) conducted research on procedural justice for victims in the criminal justice system.* Their research revealed the extent to which the general findings were applicable to the situation of victims of crime. Laxminarayan summarizes this as follows: *As the group-value model states, perceptions of belonging as a result of procedural justice lead to feelings of acceptance. Furthermore, procedural justice may impact one's perceptions of legitimacy and confidence in the legal system (Tyler, 1990) and secondary victimization may also be prevented through respectful treatment and perceptions of procedural justice (Campbell & Raja, 1999; Orth, 2002).*

Laxminarayans own studies, as well as recent work by Wemmers (2013), de Mesmaeker (2012), Van Camp (2013), Lens (2014) and Kunst and colleagues (2014), all demonstrate the value of the more general findings of procedural justice for participants for victims of crime. Van Camp en de Mesmaekers' (2014) overview of the procedural justice literature provides a clear summary of the main findings, by and large confirming Wemmers and colleagues initial findings.

Laxminarayan and colleagues (2014) conducted a systematic review of victims' satisfaction with criminal justice processes, which included reviewing their views on the procedural justice. In their words: *With regard to the quality of the procedure, mixed findings resulted for voice, accuracy and information. Interpersonal treatment and fairness, however, were less ambiguous, indicating higher levels of both were likely to lead to satisfaction.* The extent to which voice contributes to satisfaction is therefore still up for debate, even in the areas where research has been conducted, while an experience of fairness does appear to contribute to satisfaction with the proceedings.

However the review also serves to showcase the relative lack of research into victims experiences. Laxminarayan and colleagues (2014) found 25 studies that warranted inclusion in their review. Of these 25 studies, 13 included procedural justice elements. These studies were invariably conducted in the United States, other Anglo-Saxon countries or the Netherlands. Within these studies however the conceptualization of satisfaction and of procedural justice varied to such a degree that the authors were at pains to ascertain the extent to which the results over different studies were comparable to each other. For most of Europe and for modes of participation available to victims on the mainland of Europe there is very little in the way of research upon which it would be possible to base a judgement of the sense of procedural justice.

### Recurring misunderstandings: emotional expression and closure in participation

The main overall conclusion, i.e. that voice in criminal justice processes has an independent value for victims of crime, has generally been supported in the contexts where it has been examined. Nevertheless there are a large number of caveats.

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The first is probably the most straightforward to correct. There is a tendency in much of the literature to misunderstand the mechanism underlying voice and the possible impact of participation. The fact that victims express their emotions in many of their modes of participation is for instance mistakenly understood as a direct analogy to modes of expression in therapy (Pemberton & Reynaers, 2011). Erez (2004) for example cites the well known book ‘Opening Up: the healing power of confiding in others’ by James Pennebaker (1990) in this respect. In the debate surrounding the Dutch oral victim impact statement, similar arguments were used against the new instrument (e.g., De Keijser & Malsch, 2002). The gist of these arguments is that the court room is not suitable for allowing the sort of therapeutic catharsis intended by Pennebaker. A therapeutic environment is one of confidence and safety, qualities that are notoriously absent in most court-rooms (see also Herman, 2003). Moreover the idea that 10 minutes of emoting is likely to have any real impact on victims well-being flies in the face of most of our current clinical psychological knowledge (Rime, 2009): it does not work that way in therapy either.

However the expression of emotions in various modes of victim participation does not have to achieve in particular end for it to be worthwhile for victims nevertheless. The issue at stake for victims – particularly of severe crime – is a highly emotionally charged one. The notion that this can be resolved in a fully non-emotional manner is at odds with victims experience (Pemberton, 2015), while emotions play a much larger role in justice processes than many legal scholars like to admit in any case (Bandes, 1996, 1999; Nussbaum, 2004, Maroney, 2006). Offering victims the opportunity to voice their emotions as well as their thoughts about their experience is helpful, not because it offers them catharsis, but rather because it offers them the opportunity to connect their own felt experience with the justice process. It is better understood in its contribution to victims sense-making process and the connection of their experience to the justice procedure than by direct analogy to therapy, which would have been erroneous in any case.

Similarly the outcome of voice in justice processes is regularly sought in concepts of closure (Weinstein, 2010; Pemberton & Reynaers, 2011), often accompanied by some expectation that the justice process will allow victims to move on with their lives. This not only grossly overestimates the possible impact of justice processes on victims well-being, which is slight at best (Lens, 2014), but also incorrectly assumes that the end-point of the justice process coincides with the end-point of most victims processes of coping, sense- and meaning-making (Pemberton, 2015). The notion of closure is the will-o-the-wisp of victims in the criminal justice system, and the quicker it is put to bed, the better.

### Some issues with procedural justice research

Although a considerable amount of research has been amassed to support procedural justice’s central thesis, research into the phenomenon is not without its critics. For one thing much of the research uses satisfaction with the process as an outcome, which has the problems outlined above. It has also proven difficult to distinguish cause and effect in procedural justice (Lerner, 2003). It is for instance difficult to ascertain what the direction is of the aforementioned connection between the experience of fairness and satisfaction with the process. Does fairness lead to satisfaction, or does a sense of satisfaction lead to an experience of fairness? Or are a sense of fairness and satisfaction both elements of one construct?

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An issue that warrants further examination in victimological studies concerns the extent to which mechanisms underlying procedural justice are derived from concepts of voice, standing or respect that they bring participants (for an overview Skitka & Wisneski, 2012), or that they are better understood as a means to connect the experience of participants to social actors wider in society (Pemberton, Aarten & Mulder, forthcoming). To illustrate where procedural justice is interpreted as the interest participants have in “telling their side of the story” (see McCoun, Lind, Hensler, Bryant, & Ebener, 1988), the emphasis is squarely on “their side”. However, given the fact that many legal processes involve participants recounting emotionally loaded episodes in their life, one can wonder whether the actual act of narrating this episode, i.e. “telling...the story”, has been given short shrift in this interpretation. The repeated finding from the literature on social sharing of emotions offers the insight that narrating such episodes is also a means of establishing connection with others, and is thereby communion-related (Rime, 2009; Rime et al., 2011). Recounting an emotionally loaded experience in a courtroom can, therefore, also be seen as a means to establish a connection with others in that courtroom, besides or maybe even instead of wanting to offer one’s own perspective on a legal situation in which one has a stake.

### Unexplored terrain in victimological research into procedural justice

In similar vein to most other areas of the Directive, the evidence base for procedural justice in victims experience in justice processes is limited to certain jurisdictions and certain procedures. While victim impact statements in Anglo-Saxon countries have received a good deal of research attention (see Roberts, 2009), other prominent modes of participation, for instance private or auxiliary prosecution, the role of *partie civile* and other adhesion procedures, all have in common that the evidence base for victim experience is all but non-existent. This means that we do not currently know whether or not certain modes of participation afford victims the sense of procedural justice that they might outwardly and superficially appear to have. In addition the assumptions underlying procedural justice, presuppose a certain relationship between a justice participant and the procedure. Trust and legitimacy are consequences of participation in a process, but also antecedents (Tyler, 2006). People have to view a process and the actors involved in it as legitimate in the first place, to be able to experience the process as such. Given the differences in the manner in which authorities and criminal agencies are viewed in Europe, it should not be taken for granted that the criminal justice system of each Member State is viewed in such a fashion (see Chapter II).

Even where research has been undertaken, it often suffers from methodological deficits. Two different research groups in the United Kingdom (Sanders et al, 2001; Chalmers et al, 2007) reviewed similar evidence concerning the use of victim personal statements there and came to opposite conclusions. In both cases they based their negative (Sanders et al, 2001) and their positive (Chalmers et al, 2007) assessments on a rather simplistic measure of satisfaction, which indeed offers the opportunity to do so. More generally research using widely varying methods is often lumped together, even though close scrutiny of the research designs would warrant caution in the interpretation of each of the individual studies (e.g. Laxminarayan et al, 2014).

Research into victims’ experience with procedural justice also has features in common with victimization surveys in general in the sense that most respondents suffer mildly severe, but routine forms of victimization, with samples containing all victims who reported an offence (Tyler, 1990) and/or in whose case prosecution followed (Wemmers, 1996). (Individual) differences within these populations are not surveyed, not in terms of their most

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prominent needs nor in the experienced impact of crime (Laxminarayan, 2012). This is relevant, as victims who run a high risk of repeat victimization or who have suffered more severe crimes may find the outcome of the trial to be of greater importance and this is confirmed by the, as yet, scant evidence (Hickman & Simpson, 2003; Bilz, 2007). The evidence base is relatively low stakes environments, which might not be generalizable to cases where the outcome of the criminal justice process has a greater weight (see also Lens, 2014). A good example is the recent qualitative research by Patterson (2012) who showed rape victims' assessment of secondary victimization by police officers to be largely a function of the eventual prosecution of the offender: victims found disrespectful treatment when the case was not prosecuted, and reported supportive, respectful treatment when this was the case.

Another difficulty is due to the impact of voice on the meaning of the outcome in criminal justice procedures (Pemberton, 2012). Recent research shows that the most important component of revenge is its 'messaging effect', rather than the suffering of the offender *per se* (Gollwitzer & Denzler, 2009), with the message being that the punishment of the offender is payback for what the offender did to the victim, rather than a breach of an abstract law or even random misfortune. Giving victims voice in criminal proceedings allows victims to perceive the outcome of the trial in their name (e.g. Bilz, 2007). Voice therefore not only contributes to a sense of procedural justice, but also effects a qualitative change in the message the outcome conveys. Finally, the importance of participation in general does not mean that each avenue for participation is equally desirable in different cases. The importance of participation has been interpreted in conflicting ways: as an element in calls for a radical strengthening of the victims' position within criminal justice processes (Van Dijk, 2006, 2009), but also for the development of alternatives to criminal justice processes, of which restorative justice is the most prominent example (Strang, 2002; Sherman & Strang, 2007). Recent research (Lens, Pemberton & Groenhuijsen, 2010; Pemberton, 2012) reveals that both these interpretations may be correct, but for different groups of victims. Where the results of research into restorative justice processes (Angel, 2005; Zebel, 2012, Cleven et al, 2015) show that participation is a function of low impact, the results of Lens, Pemberton and Groenhuijsen's (2010) evaluation of the Dutch Victim Impact Statements-scheme show that involvement in criminal justice is related to high impact (see also Lens, Pemberton & Bogaerts, 2013). Where victims who participate in restorative justice processes display relatively few symptoms of traumatic stress and anxiety, victims who participate in victim impact statements, for instance, often display clinical levels of traumatic stress symptoms and full-blown post-traumatic stress disorder (see Pemberton, 2015).

The experienced severity of crime is an important consideration in each of these components. The presumption of victimhood applies to all victims, but with additional force to victims who may be considered vulnerable, a trait that is connected to characteristics of the crime and its impact. Secondary victimization may be experienced by all victims; however the extent to which it may reach the level of re-traumatization ('the second rape', Madigan and Gamble, 1991) depends on the initial impact of victimization. Finally the impact of crime raises the stakes involved in the criminal justice process, which in turn may make the outcome more important relative to the process. Evidence is emerging that the impact is an important determinant of the preferred mode of participation. The larger the impact the more likely the victim will prefer a role in the criminal justice process, while lower impact is associated with a willingness to participate in alternatives, like mediation and alternative dispute resolution. Like elsewhere though the evidence base is small and lop-sided, concentrating on certain groups of victims in particular countries and contexts.

## Restorative justice

### Restorative justice and the victims' movement

Some parallels can be found between the victims' and restorative justice's movements (Vanfraechem & Bolívar Fernández, 2015). Both movements were born out of a concern for the lack of support and lack of participation of victims in their criminal process. In this regard, restorative justice may contribute to the recognition of the victim (by all participating parties in the process, including the mediator), his/her social reintegration (through the involvement of community members in the process), his/her active participation in the criminal justice process (through the possibility to influence the outcomes) and finally his/her empowerment.

Recital 46 of the Victims' Directive recognises that 'Restorative justice services [...] can be of great benefit to the victim', but it does not further elaborate on this. According to restorative justice scholars, restorative justice can be beneficial for victims of crime because of its principles and values which are reflected in practices, such as voluntariness, active participation, inclusion and equality of the parties, non-domination, flexibility, restoration, empowerment (see details in Vanfraechem & Bolívar Fernández, 2015, p.52-53).

### Some key findings from restorative justice research

Some researchers have demonstrated with empirical evidence the possible beneficial effects of restorative justice on victims of crimes:

- The recognition of the victim's status, thanks to the responsibility taken by the offender and the fact he/she is not to be blamed (Koss, Bachar and Hopkins, 2003);
- The emotional restoration of the victim, thanks to the attention given to the harm suffered and the needs raising from the offense (Johnstone and Van Ness, 2007);
- The reparation of the harm, for example through the active involvement of the offender in repairing such harm (Van Ness and Strong, 2006);
- The reparation of relationships, if wanted, between victims and offenders (Daly, 2006) and their social networks (Braithwaite, 1997);
- Fear reduction about meeting the offender again and consequent feeling of safety and control (De Mesmaecker, 2011);
- Support, protection and reintegration, thanks to the involvement of the victim's community of care in restorative justice processes where this is possible, e.g. conferencing and circles (Zehr & Mika, 2003; McCold, 1996; McCold, 2000);
- Positive changes concerning how the victim sees him/herself and the rest of the world (Zehr, 1990): this is linked to the feelings of respect and dignity, and a sense of safety and control restored after a restorative justice process (Morris, 2002);
- Empowerment, thanks to the active involvement in the resolution of the criminal justice matters (Barton, 2000; Zehr, 1990; Larson & Zehr, 2007; Van Ness & Strong, 2006) and thanks to the possibility to tell one's own story, to be better informed about one's own case, to be heard and express one's own needs

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(Vanfraechem & Bolívar Fernández, 2015);

- Satisfaction and perception of fairness of the restorative justice process, as far as ‘satisfaction’ can be measured, also shown in the willingness to recommend restorative justice to others (Vanfraechem & Bolívar Fernández, 2015).

### Some complexities in the relationship between restorative justice and victims’ issues

Despite this long list of benefits in favour of victims of crimes participating in restorative justice and despite the fact that restorative justice was developed to give attention to victims’ needs, issues remain concerning its practical implementation. Indeed, restorative justice is often initiated under the criminal justice system (see also the section on restorative justice in chapter III), risking to create services aiming at the offender’s rehabilitation and at avoiding recidivist behaviour (Wright, 1996; Johnstone, 2002; Charbonneau, 1998; Gatti & Ceretti, 1998) and risking to undermine the voluntariness of parties to participate (Wright, 1996), for example when victims feel the responsibility to moderate severe consequences on offenders. As explained by Bolívar Fernández, Pelikan and Lemonne (2015, p. 194), the institutional context from which restorative justice is initiated may influence victims’ expectations and experiences: *“a restorative programme that focuses more on the communication process will orient victims’ experiences towards that direction. On the contrary, a restorative justice programme with a strong connection with the criminal justice system will tend to orient victims towards the outcome (e.g. during the encounter, parties tend to talk more about financial compensation in the latter case)”*.

Still, a victim-oriented restorative justice may also be problematic, especially keeping in mind the principle of the equality of the parties preached in restorative justice theories. Daems (2009) for example fears that the ‘therapeutic and healing effects’ experienced by some victims participating in restorative justice processes may lead to the ‘use’ of offenders for this aim and raise expectations about the practice as such. Aertsen (2015) stresses the public dimension of crimes, which are not to be reduced to mere private issues: even within restorative justice practices, a criminal offense should be condemned and social sanctioning should be present (see also Vanfraechem, 2007; Walgrave, 2008).

The Victims’ Directive gives a victim-oriented perspective to restorative justice in different articles referring to specific victims’ rights: the ‘right to receive information from the first contact with a competent authority [...] on the available restorative justice services’ (Art. 4, 1j) and the ‘right to safeguards in the context of restorative justice services’ (Art. 12). In addition to these safeguards ensuring competent and safe restorative justice services to victims of crime, restorative justice officers are expected ‘to 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’ (Art. 25). How are these minimum standards concerning restorative justice linked to victims’ needs and victims’ experiences?

First, concerning the right to be information, research shows that one of the recurrent motivations for victims to participate in restorative justice is receiving information and answers to their questions about the crime, their rights and the criminal process (De Mesmaecker, 2011; Bolivar, 2012; Umbreit et al., 2008; Pelikan & Trenczek, 2008). If this right to be informed about restorative justice services would also lead to access these services, it could lead to more ways for granting that the right to information (in general) is enforced. This is particularly important since every right originates from a concrete need of victims, in this case to know more about the crime and be informed about their case.

Some research also looked at how this right (Art. 4, 1j) is enforced in daily practice: when, how and by whom is

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the victim informed about restorative justice? As concluded by Laxminarayan (2014), since it is difficult to identify the precise moment to inform victims (and offenders) about restorative justice, it becomes important to repeat this information at different moments and information should come from different sources (e.g. police, prosecutor, victim support, judge, social workers). Repeating information would reduce the problem of 'who gets informed first', the victim or the offender. Information received by criminal justice authorities may create some pressure to participate (De Mesmaecker, 2011; Laxminarayan, 2014), but it is useful to raise awareness about the existence of these services and give them legitimacy and credibility. Restorative justice organisations are also invited to contact directly both parties to make the offer of restorative justice, but in order to do so they must have access to the victim's contact details and information.

Clearly, information is given only if services are available and easily accessible to them, and the Victims' Directive does not provide any obligation for Member States to ensure the availability of these services across Europe. Most probably, some elements referring to restorative justice as a right to have access to did not survive the tough negotiations in 2012. As Lauwaert (2013, 2015) points out, the Directive gives victims the '*right to quality service*', but '*no right to equal access*' to restorative justice, showing a lack of legislative interest in ensuring that in practice victims can benefit from these services. Indeed, some important elements are missing in the Directive, such as details about the referral procedures, ways to monitor training and the guarantee of free services, leaving Member States with the freedom to provide restorative justice services, or not.

Still, as far as restorative justice services are provided, safeguards must be provided. It is interesting to notice then that the main article about restorative justice (Art. 12), which could aim at empowering victims of crime, is mentioned as part of the list of rights to participate in criminal proceedings, but finally presented as a list of safeguards to 'protect victims from' unsafe processes. As Aertsen wonders (2015), in the context of using restorative justice in cases of domestic violence: which type of victims are we creating when we perpetuate protection and safety without stimulating victims' empowerment too?

Concerning the safeguards, it is valuable to see that the Victims' Directive does not exclude any victim from participating in restorative justice. While some national legislation excludes some vulnerable groups or some categories of victims of certain crimes (Miers & Aertsen, 2012), the Directive pertains no such exclusion criteria. Indeed, research shows the possible applicability of restorative justice in different cases (e.g. terrorism, domestic violence, sexual violence). Instead, the Directive protects victims by making sure that the basic principles of restorative justice are taken into consideration (preliminary preparation with adequate information; voluntariness of the parties; confidentiality of the process) and it mentions the only criteria excluding certain cases to have access to restorative justice: the offender must have acknowledged the basic facts of the case (Art. 12, 1c). The presumption of innocence and right to silence of the offender are still granted and there is no risk for the victim to engage in a dialogue with an offender not recognizing what happened.

The possibility for victims to participate in restorative justice programmes, despite their vulnerability (as described in some national legislation), is important to give them the possibility to benefit from the process, if wanted, and give them the possibility to make a choice to engage in dialogue, or not, with the offender. Especially victims that decide not to participate in restorative justice believe that the offer should be made to all victims (Vanfraechem, 2015). In general, what Bolívar Fernández, Pelikan and Lemonne (2015) conclude is that victims are mostly satisfied with restorative justice and differences exist only in the way they actually experience the process. Such processes differ according to the societal ecology of each country, in particular according to the relationship between criminal and restorative justice, but they tend not to differ according to the crime or vulnerability of the victim.

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## Compensation

### Victim compensation: an old but understudied victim right

Compensation to crime victims is one of the first areas of victimological interest. The work of New Zealand criminal justice reformer Marjory Fry in the areas of state compensation in the 1960s predates much of the developments in victims' rights in victim assistance and participation in the criminal justice procedure (Miers, 2014). However, even though the pros and cons of victim compensation have provoked lively debates from that day on, recent reviews suggest that *"soon thereafter, scholarly attention for the compensation programmes declined. As a consequence, the effects of granting public funds to victims of crime have hardly been studied."* (Mulder, 2013) which means that *"there is much less certainty about the impact on victims"* (Miers, 2014). *"Indeed it is unknown which victims receive state compensation, how the money affects those victims and whether they are satisfied with the amounts received."* (Mulder, 2013). There is a dearth of research into victims experiences with compensation from offenders, and similarly - with the exception of Jose Mulder (2013) and Maarten Kunst (2011)'s work in the Netherlands - a near blind spot where it comes to state compensation schemes. The ease with which commentators and researchers assert the importance of compensation *per se*, and indeed the relative importance of various sources of compensation is therefore somewhat surprising (see the discussion of this issue in Miers, 2013). There is as yet no way of knowing what victims prefer and what method of providing compensation is the most effective in meeting victims' needs. Indeed in various countries new developments, or in cases older instruments rebranded anew for use by victims in part to receive compensation, are championed even without any empirical support. See for example the *Nebenklage* in Germany (Kilchling & Kury, 2012). Given that one of the repeated findings concerning victims instruments is that they are something between a minor boon and necessary evil (Pemberton, 2014), research in this areas is long overdue.

### Findings on compensation: a janus-faced affair?

In any case the importance of compensation should not be exaggerated or minimized. The available research to date suggests that most victims do not place the highest priority on compensation (see Strang, 2002; Beven et al., 2005, Van Dijk & van Mierlo, 2009; Van Mierlo & Pemberton, 2009). This depends on the magnitude of the damage, the extent to which it is covered by insurance policies and the means of the victim to absorb the damages. Crimes may differ in the degree of insurance coverage, with larger property crimes (burglary and car-related offences) being covered most frequently (Wemmers, 1996), although throughout Europe national insurance coverage rates vary widely (see also Chapter II).

Nevertheless for some victims compensation is important (see Mulder, 2013). Moreover available research has been conducted in areas where many people are relatively well-insured and/or have access to provision of free health care. Reception of compensation might be of greater importance where this is not equally the case. This can be surmised by the research into reparations after large scale political conflict, even though this often suffers from even more methodological deficits (de Greif, 2006; Parmentier, 2013). Where data is available on victims of property crimes they tend to state compensation as the most important reason for contacting the police after victimization (e.g. Wittebrood, 2006).

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For victims of violent crime compensation can be an important issue as well. This not only relates to the physical harm incurred, but also to the symbolic value compensation may have (Strang, 2002; Okimoto & Wenzel, 2008; Mulder, 2013). This symbolic value is also taken to be an argument to assert that victims prefer receiving compensation from the offender than the state (see Shapland, Wilmore & Duff, 1985). This is linked to a sense of justice the victim might feel through the offender's effort to repay the damages (see also Darley & Pittman, 2003). Braithwaite (1999) and Strang (2002) view this more symbolic function as central. Braithwaite (1999) notes that *foregoing full compensation may serve a particular function as victims participating 'will prefer mercy to insisting on getting their money back; indeed it may be that act of grace which gives them a spiritual restoration that is critical for them.'* However it might also be true that reception of full compensation will add to the symbolic perception of victims (Pemberton, Winkel & Groenhuijsen, 2007). This chimes with Mulder's (2013) finding that it is the reception of a fair amount, rather than a large amount that adds to victims' sense of fairness, in the case of state compensation schemes. The advantages of state compensation can lie in their affirmation of state acknowledgement of the harm done (Okimoto & Wenzel, 2008). Each of these assertions are equally plausible and might apply to different types of crimes, to victims depending on the relationship with the offender and/or personal characteristics. As of yet there is no research available that can settle this matter.

Full compensation is in any case unlikely. As Miers (2014) illustrates attempts to increase the number of cases in which compensation is ordered in the UK have not been successful. For all the talk about an overtly victim-oriented criminal justice system, improvements are either piece-meal or non-existent. Strang's review from over ten years ago still holds: most victims who attempt to obtain compensation through the criminal justice process are not likely to receive it and restorative justice procedures even though they explicitly target these issues do not fare much better (Strang, 2002). The issue here is that non-reception of compensation, either by being deemed ineligible for compensation in state schemes, or by failing to meet the required burden of proof in criminal cases leads to an overtly negative experience of the process (Van Wingerden et al, 2007). Applying for compensation is not a shot to nothing: denial of access to compensation will often be interpreted as (official denial) of the impact of victimization.

In addition, the symbolic perks of receiving money for immaterial harm should not be taken for granted. Material compensation for the damages incurred due to severe violent crime runs into the specific problem of a so-called taboo-trade of assigning a monetary value to the victims' experience and loss (see Fiske & Tetlock, 1997). This may be problematic in cases of accidents, as Darley and Pittman note: *'The translation of damages into monetary amounts becomes particularly psychologically puzzling when the goal is to assign a dollar value to, for instance, the pain inflicted on the victim by the accident the perpetrator caused, or the related concept of the suffering caused during the time it takes the victim to heal physically or psychologically from the accident.'*

What can be ascertained from the available evidence is that aspects of procedural justice and fairness also matter for the way the victims perceive compensation (Mulder, 2013). Rather than the extent of the award per se, it is at least also important whether the victim views the process and the judgement as fair, given the circumstances, and is treated in respectful manner. Two of the main upshots of Mulder's evaluation of the experiences of victims with the Dutch compensation schemes have been efforts to increase the decision making speed, as well as attention to personalized feedback. Victims receive a telephone call from the Dutch compensation agency which addresses their application in full.

Where compensation is ordered, the extent to which this is received is important (again Mulder, 2013). Here it is unclear whether schemes such as the payment-up-front method employed by the Dutch government or increased

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effort to force the offender to fulfill his or her obligations might be the most palatable to victims. The former has nevertheless the obvious advantage of being an effective means to achieve the reception of the compensation order/ measure, while this is doubtful in the second case. The latter however might appeal to the victim's sense of justice, that is the offender who should pay up, rather than fellow countrymen.

Compensation for material harm seems self-evidently important for victims of crime. And if one has suffered material damage from a property offence, compensation for this damage is undoubtedly a highly important matter. For violent offences this also seems likely, but comes with a number of caveats, including those relating to the symbolic functions and meaning of compensation, the chances of success once an attempt to receive compensation is made and the procedural setting of compensation schemes. However any statement concerning the impact and effectiveness of compensation needs to be made in full awareness of the almost complete lack of research into victims' experiences across Europe. At this moment the empirical base is almost fully reliant on some relatively superficial findings from crime victims surveys in the Anglo-Saxon world in the 80s and 90s, and some more recent and extensive work in the Netherlands. There is an urgent need to expand this evidence base both in depth and in geographical scope.

### Cross-border victims

#### The heart of the EU's initial involvement in victims' issues

The position of cross-border victims, those victimized in another state than their country of residence, lies at the heart of the EU Framework Decision on the standing of victims in criminal proceedings of 15 March 2001 (Groenhuijsen & Pemberton, 2009). The additional difficulties that these victims are likely to experience – they do not always speak the language, do not understand the host country's legal system and have often returned to their country of origin long before the trial – were linked to the central European notion of freedom of movement: the freedom of persons to travel without restrictions within the European common space. This consideration was the initial driver for European competence in the protection of victims of crime. With the Lisbon treaty there is no longer any need for a specific focus on cross-border victims, given that it specifically mentions the rights of victims of crime under the title of the “Area of Freedom, Security and Justice” in its Article 82(2).

The Directive does however retain a specific focus on the issue. Article 17 section 1 reads: *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 criminal offence was committed, particularly with regard to the organisation of the proceedings.* And also the other cross-border victim-related provisions from the Framework Decision are retained.

#### A high risk group: even without an abundance of evidence

There is definitely support for the notion that international tourists form a risk group. As Hodgkinson and Tilley (2007) emphasize “*Tourist areas are clearly hotspots for certain forms of crime, with personal theft/robbery being most prevalent*” (see also Harper, 2001; Sherman et al, 1989). And subsequently they conclude “*Studies comparing the*

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*victimization rates of tourists with those of residents in a specific tourist location have, however, repeatedly shown that tourists are disproportionately represented as victims of crime.* But much of this evidence (Harper, 2001, Chesney-Lind & Lind, 1986, De Albuquerque & McElroy, 1999) is based on experience on North and Central America, with the only dedicated European evidence concerning the experience of British holiday-makers (Mawby et al, 1999, Brunt et al, 2000).

That does not mean that there is no reason to suspect tourists to make attractive targets for criminal victimization. As Van Dijk (2003, 2007) has repeatedly demonstrated on the basis of his findings from the International Crime Victim Survey, the time spent abroad is a relatively high risk period for experiencing criminal victimization. This also makes sense from the perspective of routine activities or lifestyle exposure theory (Felson, 2002). However it does already emphasize the necessity of further research into this phenomenon, of which the main assertion does not have the large evidence base that often is assumed.

### The experience of tourist victims

Even less attention has been paid to the experience of tourist victims once they have been victimized. The connection of cross-border victimization to fundamental freedom of travel throughout the Area of Security Freedom and Justice of the European Union was due to the suspicion that poor treatment of crime victims in one jurisdiction might lead to a practical restrictions in travel. Poorer treatment then would restrict people's movement.

However this line of reasoning depends on at least two things: first that people would know about the treatment of victims before they went abroad, and that second this would influence their travel decisions. Both of these assertions might have some superficial plausibility but are in fact extremely unlikely. There is evidence that like terrorism, war, natural hazard and high levels of violent crime play a role in people's travel decisions (Lepp & Gibson, 2003). However the extent to which the latter is true is restricted. Indeed Mawby and colleagues (2000) conclude: *"Few saw crime or disorder as a problem when they subsequently went on holiday."* And *"While the criminological literature suggests that fear normally exceeds risk, in the case of tourism and crime it appears that risk exceeds fear."* Mawby (2000) extends this to what he calls the risk-fear paradox. People therefore might avoid areas on holiday that are known to be very high crime areas, but are less concerned with it once they are actually travelling. To this we should add, that these are the sole studies examining this phenomenon.

The extent to which people know what the level of treatment victims may expect in the country they are visiting is probably negligible. This is also true for most of their countries of residence: a staple feature of victim instruments is the necessity of providing information about even the most basic aspects of victim assistance (e.g. Laxminarayan, 2012). But if it is true at home, it is undoubtedly all the more so abroad. In addition it is also clear that providing information about victim assistance to the general public is often a waste of time: people generally assume that they have no need for this information until they become victims themselves. This is all the more true for tourists: people who go abroad on holiday do not expect to become victims of crime, rate the chances of becoming victim of crime lower than in their home countries. The level of victim assistance plays no role in their decision to go abroad, given that they are not likely to be aware of this in the first place, while they also do not reckon to need victim assistance in any case, as they underestimate the chances of crime occurring.

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Where the issue of fear of crime on holiday has had some attention in research, the experience of tourist victims with criminal justice has yet to receive attention. Given the suspicion that tourists' experience with criminal justice will be even more negative than residents there is good cause to further examine this issue. This research team however is not aware of any available research into this phenomenon, although currently the Dutch government has commissioned research into the extent of cross-border victimization, both to and from the Netherlands.<sup>4</sup>

To be true, it makes sense that tourists will meet additional barriers in their attempts to navigate the criminal justice system, given the language and possible cultural barriers. However this should not be overstated: given that most people do not have much working knowledge of the criminal justice systems in their countries of residence, it is unclear to what extent this constitutes a sufficiently large additional problem that in itself warrants additional effort. Moreover it is not clear to what extent the fact that many tourists travel home after an event ameliorates, exaggerates or in any way changes their needs for support, beyond the fact that the referral to support services is more difficult. However the latter point should be viewed in light of the aforementioned fact that the referral systems to support and assistance are most often not in good working order in any case.

### Protection and individual needs assessment

#### Vulnerable victims, repeat and secondary victimization

The Directive emphasizes the need for protection of victims of crime against secondary (Williams, 1984) and repeat victimization (Farrell & Pease, 2001), in particular for vulnerable victims (Walklate, 2011). The first two are staple elements of the victimological canon, while much of the clinical psychological work in trauma focuses on developing an understanding of identifying risk factors for the development of traumatic complaints (see for instance Brewin, Andrews & Valentine, 2000, Ozer, Best, Lipsey & Weiss, 2003).

Much of the work concerning victims in criminal justice has focused upon the prevention of secondary victimization, and previous sections have already touched upon this subject. The meaning of secondary victimization can vary, but is most often taken to be the negative impact of the reaction to crime and victimization on the victim's well-being, and in particular that of legal intervention, including the reaction of the police (Herman, 2003).

Repeat victimization is sometimes referred to as the most prominent victimological 'law': i.e. that previous victimization increases the chances of renewed victimization. Graham Farrell and Ken Pease's choice for *Once Bitten, Twice Bitten* as the title of their seminal UK Home Office research report on the subject sums this up nicely (Farrell & Pease, 1995). This applies not only to forms of victimization that either by definition or in practice tend to occur more than once, like stalking, domestic violence and the like, but also to forms of victimization, including property offences which were previously viewed as being akin to lightning striking: as elements of bad luck. This has been repeatedly refuted by victimological findings, that instead reveal that victims either by virtue of so-called risk heterogeneity or event dependency run a larger risk of being revictimized, than non-victims do of being victimized.

The preambles to the Directive note that *persons who are particularly vulnerable or who find themselves in situations*

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<sup>4</sup> See <http://www.beke.nl/projecten/grensoverschrijdend-slachtofferschap>

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*that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection.* This is in line with an observed tendency to create special policies for particular groups of victims with the intent to meet their specific needs, in addition to the rights that apply to all victims. As article 22 of the Directive furthermore emphasizes *“In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.”* And article 24 implicitly considers child victims to be vulnerable. One of the academic issues with vulnerability as described in the Directive, but also in similar other legal documents, that it is not immediately clear in what manner victims are supposed to be vulnerable (see similarly Finneman, 2003; Green, 2007; Walklate, 2011; Van der Vorm, Van der Aa & Pemberton, 2010). The Directive does attempt to connect these issues to the risk of secondary, repeat victimization or intimidation, but as will become apparent later, due to no fault of its own cannot fully spell out in what way this is the case, nor which special measures should be taken to further protect the victims that are identified as vulnerable.

It is important to emphasize that the manner in which vulnerability is defined here is not synonymous with the clinical psychological research into risk and protective factors. If vulnerability is used here it is intended to describe the risk of developing mental health problems as a consequence of primary victimization (e.g. Brewin et al, 2000, Ozer et al, 2003), not secondary or repeat victimization. The two paths might not be completely at odds though, for as van Dijk (2007) emphasizes, the development of mental health problems as a consequence of primary victimization can be linked to renewed victimization in the future. In addition, although secondary victimization is not always defined in a coherent manner, it appears from the available evidence that victims who have experienced larger impact from primary victimization experience the criminal justice process as a larger burden (see in general Lens et al, 2013, 2015). The development of psychological complaints as a consequence of the primary victimization might then serve to be a risk factor for repeat and secondary victimization.

### The evidence base of the phenomena

Repeat victimization is without a doubt one of the victimological phenomena with the strongest and largest evidence base (Farrell & Pease, 2001). There is no doubt that victimization is a good and probably the best predictor of victimization in the future. We should however remain aware of what these risk factors in cases may mean. For instance the risk of burglary in many European countries is perhaps 2 or 3 per cent per year. A household therefore runs a 1 in 35 to 50 chance of suffering a burglary in a given year. The small risk of suffering a burglary however also means that even a 100% increase in the risk of burglary for victimized households, means that 2 to 3 per cent, becomes 4 to 6 per cent. Even households who have recently suffered a burglary therefore have a very good chance of *not* falling victim to burglaries in the future: this would still be the case for about 95% of them. For other crimes it is unclear whether confirming repeat victimization has much added value, given that they are repeated, systematic or chronic by nature. The fact that stalking is also repeat victimization does not add any new information given that stalking is in part defined by its repetitive nature (Tjaden & Thoennes, 1998; Pathe et al, 2000). Ascertaining repeat victimization is probably most important for those cases/ crimes and forms of victimization where previous victimization has a larger impact on people's chances of revictimization. This is particularly true for sexual victimization. A review of 90 studies of sexual revictimization by Classen and colleagues (2005) found that two of

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three individuals who are sexually victimized will be revictimized. Similarly commercial burglary (40%; Tilley 1993) and schoolyard bullying (60–70%; Pitts and Smith, 1995) have greatly elevated risks of revictimization. This is also true for forms of domestic violence (Kuijpers, van der Knaap & Winkel, 2012).

Secondary victimization has an equally canonical status in victimological literature (Williams, 1984). It has been a main driver of victimological reform of the criminal justice process. However much of its evidence base has been confined to the experience of certain groups of victims (primarily victims of sexual and domestic violence) in a very limited number of mostly Anglo-Saxon countries (Williams, 1984; Campbell & Raja, 1999). This is not a moot point, given that one of the best examples of similar victimological research in non-Anglosaxon countries by Ulrich Orth in Switzerland and Germany (Orth, 2002; Orth & Maercker, 2004) a negative impact of the process on victims' well-being was not observed. Given that criminal justice processes differ widely between countries (i.e. Cavadino & Dignan, 2006) there is good cause to wonder whether the negative impact of the criminal justice process on victims' well-being that is observed in some studies in the Anglo-Saxon world is portable to other areas of the world. More attention needs to be paid to the question whether the extent and form of secondary victimization could be specific for the adversarial system and/ or whether other criminal justice systems could be seen to be more victim-friendly or indeed more victim-hostile than in those in the UK, Australia and the United States.

The evidence base for victim vulnerability depends on what meaning is given to vulnerability. The risk of developing (severe) mental health problems as a consequence of victimization by crime has been repeatedly linked to factors surrounding the event, pre-existing (psycho-social) characteristics of the victim and subsequent post-traumatic factors (Brewin et al, 2000; Ozer et al, 2003). Preventive screening instruments like the Trauma Screening Questionnaire – TSQ (Brewin, 2002) have been developed to this end. There are reasonably clear indicators of risk for the development of psychological complaints, that given the availability of effective preventive interventions can be used to prevent chronic mental disorder (NICE, 2005).

However the mechanisms underlying the manner in which the Directive understands vulnerability have a considerably poorer empirical base. There is a reasonably large literature on risk factors for revictimization in intimate partner violence (Baldry & Winkel, 2011; Kuijpers, 2012). Interpretation of this literature is made more complicated given the fact that much of the available evidence is understood in different ways depending on the perspective of the researchers in question. The interpretation and research of so-called gender-based violence researchers is at odds and even at loggerheads with those working under the banner of family violence (compare Dobash & Dobash, 2004, with Felson, 2002; Dutton, 2006; Straus, 2014). Nevertheless there are assessment tools available, like the Spousal Assault Risk Assessment (Kropp et al, 1995; Kropp et al, 1998) and the Ontario Domestic Assault Risk Assessment (Hilton et al, 2004), which can be used to predict the chance of revictimization by domestic violence. Overviews of findings concerning risk and protective factors have yielded some insight into the factors contributing to the reoccurrence of violence between spouses and other intimate partners (Tolan et al, 2006).

Nevertheless portability of findings is a real issue here. A recent meta-review of forensic assessment emphasizes *“that the closer the demographic characteristics of the tested sample are to the original validation sample of the tool, the higher the rate of predictive validity”* (Singh, 2010): the issue is that the validation of a tool in one situation does not automatically carry over to other situations. Even more so, there is relative dearth of research that queries victim characteristics in risk assessment, with most emphasis placed upon the offender (Kuijpers, 2012; Baldry & Winkel, 2011). There are indications that there is much to be gained from using interviews with victims as a

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means to establish risk, rather than to solely rely on actuarial or professional judgement, but the extent to which this is still largely an emerging subject.

Tolan and colleagues (2006) state that due to the emphasis on men as perpetrators and women as victims, and related sensitivity about “blaming the victim” there has been limited attention to relationships factors in explaining domestic violence. The same could be (with even more emphasis) be said about the role victims themselves play. Victims’ individual characteristics and actions can be correlated with victimization but the findings should be deployed with extreme caution, not in the least because such a correlation could lead to a totally unwarranted attribution of blame to the victim (Kuijpers, 2012). In addition in a meta-analysis Stith and colleagues (2005) found a number of victim factors associated with victimization. For most factors effect-sizes were very small, except for the use of violence against the partner on the one hand and depression, fear of violence and to a far lesser extent victim’s alcohol use.

This is even more true for other forms of victimization. In a survey of research into sexual revictimization Macy (2008) concludes: *Although there is substantial and mounting research about sexual revictimization, significant knowledge gaps remain. The factors and processes that drive revictimization are still largely unknown, and thus, little evidence exists to inform revictimization prevention interventions.* As a general rule it can be said that we know that victimization increases the risk of revictimization, but that the exact risk factors and the mechanisms underlying them are not clear, nor is there much in the way of effective interventions to prevent revictimization from reoccurring.

This is also the case for the connection to secondary victimization. On the basis of the available evidence (see for instance Herman, 2003) it appears likely that the larger the impact of the primary victimization, the more deleterious poor treatment in the criminal justice process might be. As one of the authors of this report has noted elsewhere, victims who were not traumatized by their primary victimization are unlikely to be so by their experience with the police and the prosecution service (Pemberton, 2015). The etiology of PTSD (e.g. Ehlers & Clark, 2000) on the other hand makes it likely that any confrontation with the offender or other reminders of the victimization can lead to considerable distress on the part of the victim (see also Cheon & Regehr, 2006). In use of participatory modes as well as needs for additional attention to the prevention of secondary victimization, the initial impact of the victimization event in terms of (posttraumatic) stress appears to be an important factor (Lens et al, 2013; Pemberton, 2015). Again though the extent to which this evidence can be generalized beyond the groups that have actually been surveyed in this manner is not a straightforward matter. This applies with even stronger force to the effectiveness of any measure that attempts to target this issue.

A final issue relates to the fact that vulnerability of particular victim groups and indeed a so-called ‘victim hierarchy’ (Finneman, 2003) is not necessarily based upon any actual comparative assessment. The process through which particular victim groups are granted (additional) rights is instead more often a politically charged affair (Best, 1999), in which the transposal of claims of particular victim group into political support and subsequent services and rights is rather a function of political expediency than of objective merit. Indeed the form that these services and rights take often wear their political purpose on their sleeve. It has been staple element of the victimological experience in the United States that much what has been proposed under the banner of victims policy is VINO: victimological in name only (see already Elias 1986, 1993). The real problems faced by victims of severe crime have been transformed into calls for harsh sentences and poorer prison conditions that primarily serve to pay political dividends. While they harm the lived reality of suspects and

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offenders, there is no evidence that they contribute to the experience of victims of crime (see also Pemberton, 2012). In sum: victims have been put to use in the service of severity (Ashworth, 2000) and calls for better treatment of victims have in the American case often resulted in poorer treatment of suspects and offenders, under the apparent but wrongheaded assumption that these are two sides of the same coin.

Victims of terrorism are an example of this (Letschert et al, 2010). In certain areas it makes a good deal of sense to consider victims of terrorism and other political violence vulnerable: this is the case when (the legitimacy of) their experience is politically contested (see also Alonso, 2005) and in particular when large segments of society see cause to justify their ordeal. In other situations it is more difficult to understand why the experience of victims of terrorism should make them particularly vulnerable, compared to victims of similar events without the political nature. It appears instead more likely that the societal treatment of victims of the 9/11 attacks in the United States, the London Underground Bombing of the 7<sup>th</sup> of July 2005 and the recent IS-attack on Paris on the 13<sup>th</sup> of November 2015 would be better than of victims who have a similar experience, to the extent that this of course possible. Although it smacks of a somewhat unsavoury comparing of evils, the question could be posed whether the survivors and co-victims of the San Bernardino shootings are worse off than say those of Virginia Tech. That there is nevertheless good political cause to make an additional effort for victims of terrorism is not the issue here (Pemberton, 2014); however casting in terms of additional need or vulnerability unnecessarily muddies the waters.

### But do we know what works?

The previous outline of the current state-of-the art concerning secondary and repeat victimization and the discussion of vulnerability already suggests that it is unlikely that the expectation of the Directive that once these risks have been adequately ascertained, effective means to prevent them will be available.

A review commissioned by the Dutch government into effective means to prevent repeat victimization indeed confirmed that there is not much in the way of empirically supported interventions to do so (Kunst et al, 2008). Where there is some evidence, for instance in means to reduce the opportunity for burglary, the prevention programmes have only been evaluated in limited regional areas in certain countries. The authors note that the programmes are hamstrung by a lack of elaboration of the psychological mechanisms that might lead to behavioural change in victims and thereby supposedly reduce their risk of revictimization. All under the understanding that such behavioural change would be effective in any case. Each of these propositions is open to question and would need more empirical support than currently available. Developing this evidence base is not helped by the fact that attempts to ascertain the impact of programmes often fall short of methodological requirements to actually do so. It is in effect unclear whether the programmes targeting repeat victimization would have additional benefit above blanket prevention programmes designed to achieve target hardening (Vollaard, 2011), while the latter does not entail the risk of laying the blame of victimization were it does not belong. In sum: even though there is no doubt about the reality of repeat victimization, there is currently only a very limited evidence base that would allow optimism about attempts to use this knowledge to prevent victimization from happening in the future.

For secondary victimization there is even less evidence available that would offer a means to establish which victims are particularly vulnerable for secondary victimization and to subsequently to take action to reduce that

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secondary victimization. As noted secondary victimization may be defined in different ways, while there is until now only tentative evidence available that links any features of the victims in question with the risk of secondary victimization. Of course this does not speak against specialised treatment of child victims, or victims with mental disability, nor to the same for victims of sexual and domestic violence. The former are rightly treated with special care in many situations, and similar logic applies to their interaction with criminal justice agencies following victimization. Both sexual and domestic violence have characteristics that set them apart from other forms of victimization and on the basis of the difference warrant treatment that acknowledges these differences. These rationales can be fully maintained without any evidence of an additional risk of secondary victimization.

The notion of an ‘objective’ risk of secondary victimization that can be ascertained by criminal justice agencies is complicated in any case, given that secondary victimization is something that is caused by actions of criminal justice agencies themselves. It is therefore not something that occurs externally or autonomously to them and makes ascertaining links between victims’ characteristics and the risk of secondary victimization difficult to do (e.g. Laxminarayan, 2012). If criminal justice professionals are effectively tackling the risk of secondary victimization for individual victims, links between any characteristics that these ‘high risk’ victims may have in common and the occurrence of secondary victimization will be difficult to ascertain, precisely because of the actions of the criminal justice agencies themselves.

Taken together therefore the view from the Directive that certain victims might need additional measures to reduce their additional risk for secondary or repeat victimization is in line with what the victimological evidence suggests, and particularly so for repeat victimization. It is less clear how this additional risk can be ascertained, and even more so what actions have proved effective in reducing this risk.

### The importance of training

#### The impact of training on police work: do not raise hopes

As mentioned above a lot of emphasis is placed on the value of training criminal justice professionals, and in particular the police, in improving the experience of victims. The effectiveness of police training to improve the treatment of victims is regularly asserted but has not received much actual empirical attention (Lonsway et al, 2001; Sleath & Bull, 2012). This is already true for the Anglo-Saxon countries in which training activities are often central elements of policy relating to police practice, but all the more so elsewhere. The largest obstacle therefore to understanding the impact of police training on intended outcomes is that there is hardly any evaluation research available. As Skogan and colleagues (2014) succinctly summarize: *We know virtually nothing about the short- or long-term effects associated with police training of any type. A committee established by the National Research Council to evaluate the state of policing in the United States found that there were “scarcely more than a handful of studies” on the effects of training, and that police training and education were being offered without scientific evidence of their likely effects. The panel concluded “[T]he committee cannot overstate the importance of developing a comprehensive and scientifically rigorous program to learn what is and is not effective in the education and training of police officers”* (Skogan & Frydl, 2004, p.154). This is not only true for specific training relating to victims issues, but to training per se.

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In the DG Justice Guidance document of the Directive training is presented as a means to raise awareness of victims' issues, which in turn is seen as the main barrier to effective victim assistance. The more aware criminal justice officials, including police officers and the judiciary, are of victims' needs, the more likely they are to assist them in a manner appropriate to the aims of the Directive. However it is important to emphasize that the main cognitive vehicle to behavioural change of the street-level professionals interacting with victims is attitude change, rather than raised awareness (Mastrofski & Ritti, 1996; Darwinkel et al, 2013; see example about attitude change Bohner & Dickel, 2011). As Craig (2013) summarizes it is the attitudes of professionals toward their clients that undoubtedly affect their work with them. Lonsway and colleagues (2001) and Darwinkel and colleagues (2013) review evidence which reveals the importance of these attitudes to the treatment of victims. Lonsway and colleagues (2001) emphasize a variety of – irrelevant – characteristics of cases that may negatively suggest police response. In particular police are more likely to be sceptical of cases in which the victim and offender know each other, physical threats and resistance are absent, the victim lacks credibility, and the charge is delayed. In addition much of the additional burden for victims of sexual violence, for instance, lies in the prevalence of rape myths (Burt, 1980) within professionals in criminal justice agencies. They find that criminal justice officials views share *an uncanny resemblance to the public stereotype and myths of how rapes occur*, which in turn *“means that cases that do not fit the stereotype are dismissed as “false reports”.*” If training is indeed successful in achieving this attitudinal change Darwinkel and colleagues (2013) find it to be of *“paramount importance for reducing the high attrition rates of sexual offences.”.*

However even side-stepping the issue of the means through which these stereotypes can effectively be changed – whether victim empathy, focusing on male responsibility and/ or confrontation with counter-stereotypical cases (Smith & Welchans, 1993; Schewe & O'Donahue, 1993) – in general the structure of education needed, the extent to which it should be embedded in larger organisational structures and indeed its chance of achieving intended goals are different if the focus is to change deep-seated attitudes rather than mere awareness raising. In a review Mastrofski and Ritti (1996) emphasize that an organisation that wishes to benefit from the institutional function of training needs to tightly couple the training with other organisational structures and day-to-day work activities. The issue then is that as Haarr (2001) explains, *“even the impact of intense and high-quality training may quickly dissipate once officers are exposed to the powerful effects of everyday work, the organisation, and the occupational culture of more experienced and veteran co-workers.”* In his own research into the impact of training programmes for community policing he argues that where even police officers are exposed to community policing and problem-solving policing training in the academy, they will rapidly lose sight of the lessons learned as police practice offers few opportunities or little incentive to apply it.

The impact of training then will dissipate if police culture runs counter to the attitude change intended by the training programme and/ or when actively applying the attitudes within police work requires efforts but reaps no benefit in terms of performance reviews or career advancement. Haarr's (2001) research demonstrates that even when the training programme is intense and relatively long-lasting (an over 600 hour programme in community policing); is in line than rather runs counter to any deep-seated societal, cultural values; and is offered to a group of (young) police officers who lack entrenched contrary attitudinal positions; positive attitudinal changes immediately following the programme, *“dissipate as police recruits proceed to their respective police agencies where they are assigned a field training.”* The results of empirical research have yet to show the effectiveness of training, with the available research showing mixed effects, while even the modest effects shown have not been demonstrated in situations where the police force in question is more hostile to the attitude change the training intends to achieve. As Gatto and colleagues (2010) review both individual and institutional selection effects in the police have a tendency to heavily reinforce certain attitudes, like for instance out-group hostility or ethnocentrism, which subsequently prove highly resistant to change.

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Recent work in the Dutch police (Mutsaers, 2015; Van der Velden et al, 2014) reveals that even high profile training programmes within the police force do often not achieve what they set out to do, and can equally have counter-productive effects if the assumptions underlying them are not sufficiently grounded in effective mechanisms of attitude change. This is all the more so where these training efforts are set against wider societal developments – for instance hardening of anti-Muslim or anti-foreigner sentiments – that run counter to what the training intends to achieve. In addition the main effects of training programmes do not necessarily benefit the target group. The programme itself can lead to hardening of the exact attitudes it was intended to change. That this is so is not in itself surprising: previous research by Wortley and Homel (1995) revealed that training and field experience intended to counteract ethnocentrism and authoritarianism towards particular minorities could have some positive effects, but also might serve to strengthen ethnocentric opinion: the latter was particularly true for police recruits who had more rather than less contact with the minority in question.

Changing attitudes can also involve changing perceptions of responsibility (Watson et al, 2004). In their evaluation of a targeted training programme attempting to achieve greater understanding within a group of police officers of the plight of people suffering from schizophrenia the immediate results were that *“they viewed persons with schizophrenia as being less responsible for their situation, more worthy of help, and more dangerous than persons for whom no mental illness information was provided.”* Similar effects are a likely consequence of training programmes focused on victims, for instance due to the co-occurrence of viewing victims as vulnerable with a reduction in the sense to which victims are seen as agentic individuals (Poletta et al, 2009). A similar dialectic was observed by Corrigan (2013) in her evaluation of the Sexual Assault Nurse Examiner (SANE-programme). She writes: *“One of the most highly touted improvements in the criminal justice response to rape has been the wide-scale adoption of sexual assault nurse examiner (SANE) programs that provide specialised medical care and forensic evidence collection to victims. Though previous studies have emphasized the benefits of SANE programs in improving criminal case outcomes, this study illustrates how the post-rape forensic examination can also discourage reporting, investigation, and prosecution.”* The difficulties are well summarized by the title of her article in *Law and Social Inquiry* ‘The New Trial by Ordeal: Rape Kits, Police Practices, and the Unintended Effects of Policy Innovation.’ These findings suggest view that what is beneficial on one ground, will automatically have a beneficial halo-effect to other important dimensions, is suspect: instead weariness about the possible counterproductive effects is a more prudent course of action.

### Training and victims’ issues

A recent research project by Renzetti and colleagues (2015) offered some more hopeful results. They examined a US-programme intended to contribute to the way police officers deal with human trafficking cases. In particular they examined the *effectiveness of the program in terms of: (1) raising awareness of human trafficking in the officers’ jurisdictions, (2) increasing officers’ self-reported likelihood of identifying and investigating suspected human trafficking cases, and (3) the dissemination of knowledge gained through training from executive-level and mid-level officers to patrol-level officers.* Overall the findings reveal limited benefits of the programme on all these features, while we should acknowledge that each of them might be linked but are not synonymous or even clearly antecedent to improving victims’ assistance.

In Skogan and colleagues (2014) own research evaluated the impact of a training in the principles of procedural justice on police officers endorsement of them in their interaction with the public. Although this programme was not specifically focused on interactions with victims, the results do suggest that there is value in undertaking projects of

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this kind, given that even in the immediate effects on police understanding of the value of procedural, interactional and informational justice appear to endure in the longer term. The extent to which this leads to behavioural change, of a degree that it might change victims understanding of their treatment however, remains to be seen.

The available research suggests that training in itself may not be sufficient to change attitudes. The research of Lonsway and colleagues (2001) showed that training police officers within the United States about rape myths did not affect the extent to which they accepted rape myths. However the results of research into the experiences with police officers, specially trained and specialised in sexual offences (Sleath & Bull, 2012), coupled with research into similar research with more experienced police officers (Page, 2007) do suggest that more experience with and understanding of rape cases could be helpful. Farris and Holman's (2015) recent research into the relationship between the views of sheriffs on domestic violence and the treatment of domestic violence victims points in the same direction. The evaluation of the specially trained police officers (STOs) in the UK also demonstrated that extent to which such functions are supported by, rather than counteracted by other elements of police organisation and culture may be a highly important moderator of the impact of any training. As McMillan (2014) explains *"This paper outlines the experience and importance of STOs in one English county, and highlights that despite the importance of their role, officers are often poorly supported in the management structure. Individual officers recognise the importance of their role both in terms of victim support and investigation, but report that immediate supervisors do not always share this view, leading to tensions in the process."* The extent to which training, but also guidelines, and other aspects of policy is effective in changing attitudes and behaviour towards victims in the police force has in the past been asserted to be contingent on the extent to which the treatment of victims is included in performance reviews and rewards, both individually and collectively (Brienen & Hoegen, 2000).

### Conclusions

Victimological research in much of Europe is an inch deep and a mile wide if its available at all. Even basic understanding of the empirical state of affairs in many EU Member States is largely non-existent. The desire to use victim support, an overall understanding of the experience with criminal justice agencies in the aftermath of victimization, the impact of interaction with the criminal justice process on victims' emotional well-being, the importance of different aspect of victim assistance, there is no good grounds for comparison across EU Member States, given that for most of the European Union there is no empirical research available that would offer an answer.

Even for the instances where this is so in principle, for example the possibility of ascertaining the need for victim support through the International Crime Victim Survey, close scrutiny of the available data begs the question whether or not any conclusions can be drawn. Research using single-item questions concerning satisfaction is not a viable base for drawing conclusions on many victims' issues. The chapter notes that there needs to be a move from research into satisfaction to research into quality and impact of services. But even satisfaction research would be an advance on the evidence base in most countries, for most victims' issues.

It is of the utmost importance that the frail empirical base of victims' policy is strengthened. At this moment there is no real way of gauging improvements in victims' experience as a consequence of the investment in victims' issues, but more pressing is the understanding that it is as yet not clear to what extent instruments, services and rights contribute to victims' well-being in any case.



## **Chapter II**

# **Viewing victim-oriented reform against the backdrop of the societal ecology**



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### The importance of a societal ecological framework for victim assistance within the EU

#### The necessity of understanding the context of social phenomena

Viewing social developments, transformation and policy within an ecological framework is increasingly applied across the social sciences, from organisation science (Astley & Fornbrum, 1983), to health research (Maton, 2000) and to criminology (for instance Pratt & Cullen, 2005). Although these fields of inquiry diverge they share a common understanding that social development can be best understood in conjecture with its environment. In this they confirm the initial views of Bronfenbrenner (1979) of the importance of viewing societal phenomena as embedded in and interacting with a societal 'ecology'. This social, cultural, institutional, historical and political background of a society can advance or inhibit the development of social practices, while it also influences the form that a given practice might take.

The complexity of understanding the manifold manners in which the societal ecology interacts with the implementation of policy and practice has led to a call for a revision of the manner in which social science attempts to contribute to these issues. Oxford professor Bent Flyvbjerg has led this charge (Flyvbjerg, 2001, 2006; Flyvbjerg, Landman & Schram, 2012). His view is that for many large scale policy areas abstracting from the particular contexts in which the policy is to bear fruit is an impediment to the development of knowledge rather than a contribution. His call for a social science founded on the Aristotelian notion of *phronesis*, of which the central notion relates to practical wisdom, is increasingly gaining ground in various areas of social science (Flyvbjerg et al, 2012).

Indeed the answer to the question "What works" (Pawson & Tilley, 1997) needs to consider relevant variations in this environment. More often than not the most successful approach to coping with or even solving social problems is context-dependent (Flyvbjerg, 2001). Transplanting successful initiatives from one area to another, for instance by directly copying 'best practices', often fails due to insufficient insight and understanding of the way the policy or practice in question interacts with the environment and/ or the environmental requirements upon which its success depends. The issue of portability or non-portability of findings is of crucial importance (Flyvbjerg, 2006). Abstraction cannot replace in-depth understanding (Flyvbjerg, 2001) of both the lived experience of those directly involved as well as the societies of which they are part, and the diversity in historical, cultural and social contexts of societies, means that more context-dependent approaches to the application and translation of findings from elsewhere are appropriate. Rather than statistical generalization, or attempts to seek out the 'laws' of how a social practice is best undertaken, it is increasingly understood that other forms of translating knowledge from one situation to another can bear considerably more fruit (Flyvbjerg, 2006). The use of 'thick' descriptions of the situation in question, the societal context of the countries in question and the complexities involved in the examination of the lived experience of those directly affected imply the importance of theory-guided generalization and case-to-case transfers (Yin, 2008; Firestone, 1993).

The social science inspired upon *phronesis* takes the role of practitioners, policy players and end users more seriously (Flyvbjerg, 2012). Rather than seeing them as intermediaries whose own perspectives, views and interests are distractions from achieving the goals of a given policy, *phronetic* social science sees them as an

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endemic element of policy and legislation. The way that they understand their own social situation, the way that they perceive the ends of policy to be connected or opposed to their own purposes and the manner in which power and influence comes to bear upon the implementation of policy are not matters to be overcome or to be controlled, but matters to be understood and worked with in achieving policy aims. The same is true for research itself, which rather than attempting to stand aloof from the arenas of politics, policy and practice needs to far more directly engage with the interests, the stakeholders and the objects of study.

### **The (increasing) importance of context within the EU**

Given the limited scope of this research, it can only take baby steps in the direction of a full-fledged phonetic approach to the study of policy implementation. Within the Victimology Working Group of the European Society of Criminology a longstanding research programme into the cultural context of victimology across Europe is being developed, which will provide much of the necessary insights upon which a phonetic approach can build.

These small and somewhat incremental steps are important nevertheless. Not only for the study of victimology across the European Union, but also for European Union policy making in general. One of the issues that is central to the current research project, and a key finding necessary to the understanding of victim assistance, is that the experience of victim policy in practice is often far removed from the intention of victim policy in law (Reeves & Mulley, 2000; Groenhuisen & Pemberton, 2009). The victim's experience of law in practice often bears only slight resemblance to the law on the books, so to speak. Any evaluation of the effects of victim policy therefore needs to go well beyond ascertaining what is on offer in Codes of Criminal Procedure or Victims Charters.

The fact that the current research project aims to contribute to understanding of the impact of EU policy - namely the Victims' Directive - on this lived experience adds a new level of complexity to this issue. This link is already indirect at the conceptual level (Hooghe & Marks, 2003). Countries are held to transposing EU directives into law, not to achieving particular ends in practice. This does of course happen under the understanding that once legislation is in place, practice and, in a next step, citizen experience will follow. Nevertheless the increase in distance, which follows from the inclusion of a supra-national level of policy, already begs the question whether the link between legislation and implementation is weaker in practice. For instance, there is a sizable literature considering whether the kind of feedback-loops that obtain at the national levels - with dissatisfaction with policy being expressed in the voting booth, and even translating into regime change - apply to European policy making (Scharpf, 2009; Mair, 2014). The gist of this is that the European public is mostly unaware of the source of European legislation and base their voting decisions in European elections upon their opinion of the achievements of political parties at the national level, rather than their counterparts in the European parliament, whose connection to European legislation is of a different order in any case.

This is compounded by a lack of scholarly understanding of the way EU policy impacts practice. Studies of EU public administration mostly consider timely transposal as the outcome variable of impact studies of EU Directives (Hill & Hupe, 2002; Mastenbroek, 2005; Versluis, 2007; Treib, 2014). But the link between timely transposal and effective practice is unclear, and has not been the subject of much, if any, interest (Versluis, 2007). To be sure, it might stand to reason that EU Member States who have timely transposed a Directive in

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question stand a better chance of actually achieving a policy goal in practice, but that is still far removed from any more substantial understanding of the extent to which policy ends have been reached. As Versluis (2007) notes *“Different notions of implementation generate different results; a directive can be perfectly transposed into national legislation, but this does not necessarily lead to practical implementation as well.”*

This means that outside of the – in terms of EU policy - relatively small and specific area of victim policy there is also little in the way of research and evidence upon which an understanding of the impact of EU Directives on the lived experience can be based. The importance of reviewing the context in a given EU Member State is all the more important given two – reasonably - recent developments. The first is the enlargement of the EU (Falkner & Treib, 2008). Where there was considerable variation in the manner in which EU policy impacted national legislation in the fifteen countries that made up the EU before 2004 (Falkner et al, 2005), the inclusion of the subsequent thirteen additional Member States has only added to this variation. In particular it appears that so-called *‘dead letter’* transposal in which a given policy is only transposed into law, but enforcement of its provisions is spurious, is shown to be more common in these States than in the EU-15. As we will note below there are also many other simultaneous differences between the new Member States and the original EU States.

The second is that the policy areas in which the EU is active have increased sharply as well. Since the Treaty of Lisbon, the EU has considerably more wide-ranging competence within the area of criminal justice (and indeed within the Justice and Home Affairs (JHA) fields). Various commentators have already noted that underlying foundational principle of the EU – integration through law - is a good deal more difficult in the area of JHA (Lavenex, 2007; Brown, 2010). The most conspicuous difficulty of this single-market analogy (Lavenex, 2007; Borzel et al, 2010) is the fact that in the economic sphere from which this notion is derived, harmonization and integration mostly is supposed to be achieved through a roll-back of government intervention, with integration proceeding through removal of legal barriers. Within justice and home affairs however, meeting European policy goals often requires an extension of national governmental powers beyond its borders, and in addition requires governments to take on additional responsibilities. This distinction is relevant to the social ecological understanding developed in this project. Where removal of legal barriers – in fact the reduction of law - might be reasonably successfully achieved without a full understanding of the social environment in which it occurs, additional legal and administrative duties for governments necessitates a clear and precise understanding of this social environment and the manner in which the new governmental tasks will interact with it.

### **The additional importance of context in victim assistance**

These considerations have considerable bearing on the issue of victim assistance in the European Union. We have already noted that the effects of subjects of the Directive, victim’s rights, victim support and protection have to be gauged in practice, as a considerable chasm separates law on the books from the impact of law in practice. Studies at the national level reveal the extent to which rights and provisions aimed at improving the position of victims suffer from an enforcement and implementation deficit (Belooft, 2005). Adzovic (2013) stresses the degree to which it is difficult to adequately ‘arm’ victim’s rights so that they can be enforced through criminal justice means. Even conceptually victimologists are grappling with the manner through which victim’s rights can meet the standard set by the Fundamental Rights Charter of the EU in article 47: *Everyone whose rights and freedoms*

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*guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.* This right to a remedy is lacking for many victims' rights (Beloof, 2005; Adzovic, 2013). This diminishes the extent to which they can be seen as rights, rather than aspirations, (see also Pemberton & Vanfraechem, 2015), while it hampers self-enforcing mechanisms within the criminal justice process. The fact that effective remedies are available contributes to the degree to which various actors within the criminal process adhere to provisions. The fact that upon non-compliance the actor in question might be taken to task also has a preventive working on transgression of rights.

In addition victims' rights, rather than a roll back of government, require governments to take legal, policy and organisational action (Groenhuijsen & Pemberton, 2009). This is due to the fact that victim assistance in many jurisdictions is an emergent government responsibility. Legislation, enforcement and organisation are rudimentary at best. Even in the areas where considerable advances have been made, government action remains crucial. In other words, victims' rights are an attempt to increase positive, rather than negative liberty (Berlin, 1969, see in different terms Groenhuijsen, 1996). This means first that – for the reasons mentioned earlier – harmonization is more difficult to achieve than when harmonization entails Member States removing rules, rather than creating services. In addition, judicial oversight at the national and supranational level, for instance through Supreme and Constitutional courts, and the European Court of Human Rights or the European Court of Justice, has to tread considerably more carefully in the case of positive liberties than of negative liberties (Hirschl, 2004, 2008). The issue is that a decision on a case concerning a positive liberty might force the government in question to a considerable allocation or diversion of resources. But this quickly then becomes a matter that the court in question will refer to the political bodies. Most often there is a species of what Hirschl (2004) calls a 'political doctrine': allocation decisions of this type are the remit of the legislative and executive branches (Hirschl, 2004).

Beyond this, in comparison to other directives in the area of criminal justice victim's rights have considerably larger and wider implications (Groenhuijsen & Pemberton, 2009). The scope of victims' rights potentially implicates the whole criminal justice process. They are clearly not the type of well-described, technical matters which in European-wide integration might be a more straightforward affair. Indeed the scope of victim assistance goes well beyond criminal justice. Most victims of crime do not contact the criminal justice system, while good deals of victims' needs are more likely to be met by, for instance, (mental) health services or insurance providers (Pemberton & Vanfraechem, 2015). Victim support and assistance providers have to consider their position in these networks, while the extent to which victims need specific victim assistance providers to offer certain services is contingent on the extent to which they are not sufficiently provided elsewhere.

Inspiration can also be drawn from lines of thinking in post-conflict justice. Fletcher and Weinstein (and their colleagues) for instance have argued for the development of a social ecological approach to the criminal and reparative justice reaction to mass victimization (see Fletcher & Weinstein, 2002). Where the legal reaction has maintained the necessity of its independence from other social policy geared toward overlapping or similar goals (see also Drumbl, 2007; Pemberton et al, 2011) Fletcher and Weinstein consider it instead vital to (international) criminal justice stated aims that it positions itself within this wider effort of social repair. In these cases the justice reaction has to grapple with the difficulty of performing both backward and forward looking functions (Teitel, 2002): it has to deliver justice for the atrocities past while, at the same time, rebuilding justice systems, including their underlying values of trust, legitimacy and connection to key societal morals. In particular the latter cannot be done –to the extent it is possible in any case – without a full understanding of and interaction with the political,

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cultural and economic context of the societies in question. Fletcher and Weinstein's approach to social repair in post-conflict societies emphasizes the importance of the connection between efforts within and outside of the criminal justice system to contribute to a sense of reparative justice. Thinking through the way the response of victim assistance can be aligned with other institutions with similar or overlapping aims is a first requirement in this line of thinking. In addition their approach shows the importance of grasping the manner in which members of the victimized groups view institutions of justice, as both an antecedent and as a consequence of reparative efforts. In Chapter I we have shown the relevance this has to the understanding of procedural justice. What the example of post-conflict justice societies makes clear is that a minimum level of trust and legitimacy cannot always be assumed.

Across Europe the situation is less dire than is the case in societies having to come to terms with the recent legacy of war, civil strife and protracted political conflict. Nevertheless European Union Member States also present with marked variation in the relationship between citizens and the criminal justice actors involved in victim assistance. In line with this a variety of phenomena related to victim assistance can have superficially the same features, which can nevertheless –due to context– refer to rather different things. This has been cogently argued concerning restorative justice for instance (Vanfraechem et al, 2015). Pratt (2006) and Karstedt (2011) both argue the extent to which restorative justice can be in line with a more punitive approach to crime in many Anglo-Saxon countries, while it is associated with more welfarist approach in Nordic countries, the best example of which might be Finland.

A final issue concerns evidence that victim policy can be politicized and moralized to the extent it becomes a so-called *morality policy*. According to Knill (2013) these types of policies *generally refer to issues in which political conflicts are shaped by debates over first principle; i.e., value conflicts are more important than instrumental considerations of policy design*. As Mooney (1999) shows this makes these policies simpler than most nonmorality policies, salient to the general public, as clear and simple statements about a polity's values, which gives them a higher-than-normal level of citizen participation, but also implies that effectiveness of policy is a less important concern than political posturing. Particularly in the United States certain issues are always seen as morality policies, for instance euthanasia, abortion and same-sex marriage. However in principle more issues can be considered to be so. As Wagenaar and Altink (2012) note any issue which has first-principle (right-versus-wrong) conflict generation as their defining feature, can fall in this category.

A good deal of attention has been given to the differences in the development and tone of victim policy in the United States and the UK (e.g. Strang, 2001; Goodey, 2005; Pemberton, 2009). The patterns Joel Best describes in his *Random Violence: the way we speak about new crimes and new victims* (1999) concerning the 'victim industry' in the United States reveal the extent to which victim policy and crime policy more generally can be viewed as morality policies (see also Elias, 1986). This is also visible from the manner in which David Garland (2001) connects 'the return of the victim' to his view of the changed nature of criminal justice as being a culture of control. The moral load of victim policy is deployed to mask the perceived failure of criminal justice to deliver on what was initially viewed to be its core tasks. Generally European criminal justice systems have been less likely to follow suit (Tonry, 2004), although certain areas of victim policy, for instance that targeting gender-based violence (see the debate between family violence and feminist researchers (e.g. Felson, 2002; Dobash & Dobash, 2004)) or terrorism (e.g. Mueller, 2007) might display many of the traits that are associated with morality policies. Where in the US victim policy is often viewed – with concern – as being at odds with the course of action promoted by victimological and criminological experts, in the UK the latter have had a more substantial say in the development of victim policy. This is similarly true of the Dutch scene, of which one of the authors of this report has noted that *the large role of academics is evidenced by the host of victimologists (Jan van Dijk, Marc Groenhuijsen and Frans*

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*Willem Winkel) or trauma-experts (Wim Wolters and Rolf Kleber) who have either occupied board positions or played an integral part in policy development at Victim Support in the Netherlands (Pemberton, 2008). The more general issue here is that variations in the extent to which victim policy has the features of a morality policy in a given country will influence its development (see for a different policy area, Majic, 2015). Moreover different European countries have diverging ways in which they deal with morality policies in general (Adam, Hurka & Knill, 2015).*

### Outline and overview of chapter

The previous sections set the scene for the analysis of variation in the societal ecological context of European Union Member States of relevance to victim assistance. In the following we analyse the context of European Union Member States with an eye to understanding relevant differences across the continent that can impact the implementation of the EU Victims' Directive. The chapter is divided into three sections.

The first section considers victim assistance within the context of criminal justice across the EU. This concerns different interrelated aspects. First we consider some general notions that differentiate criminal justice within Member States in the EU area. This includes different systems of criminal justice and differences in penal climate. In addition we examine the extent to which worry about crime is a public concern. Second we review what relevant differences within aspects directly related to the functioning of actors within criminal justice, including the magistrates and the police, exist between EU Member States. Here we examine trust in justice, the experience of corruption and the relevant indicators of the rule of law. Each of these aspects can influence the functioning of victim assistance in Member States. Systematic differences between criminal law systems alter possible modes of participation and can strengthen or weaken the importance of protection within trial processes. Penal climate and worry about crime have been connected to victim policy in different ways. Increasing salience of crime as public and political concern has been linked to the development of victim policy in a number of Anglo-Saxon countries. Finally much victim policy relies on the involvement of criminal justice agencies in providing victim assistance. The more general perception of criminal justice actors in terms of their legitimacy, legality and experienced trust can moderate the extent to which they are likely to be able to fulfill these roles.

The second section considers aspects of the immediate context of victim assistance outside of criminal justice. As argued victims' needs that might fall under the remit of victim assistance within criminal justice might be met by structures and institutions outside of criminal justice. This applies to insurance coverage, social security and the availability of mental health care. In addition various elements of the functioning of victim assistance might be moderated by other more general features of social life. The general tendency to volunteer for non-profit organisations is a case in point, given the role that volunteers play in a number of the larger victim support organisations in Europe.

The last section considers the manner in which EU policy can influence change within Member States. Both the transposal from the EU-level to national legislation and the ability of both state and civil society structures to effectively implement and enforce this legislation. This requires incorporation of the manner in which EU policy is generally taken to influence the national practices in EU Member States, as well as a consideration of the differences in administrative and civil society effectiveness, which is all the more relevant given that victim policy requires action by or on the behest of the state authorities. The final result of this chapter is to develop a categorization of the societal ecology of victim assistance across Member States of the European Union.

### **Victim assistance within the context of EU criminal justice**

#### **Criminal justice in Europe: system variation, penal climate and worry about crime**

##### **Civil and common law, inquisitorial and adversarial systems**

There are different ways of considering differences between criminal justice systems across the world and within Europe (e.g. Reichel, 2005; Nelken, 2010; Pakes, 2014), each with relevance to the position of victims within criminal justice, as well to the manner in which victim assistance is organized.

At the most general level there is the distinction between common law countries – the Anglo-Saxon world –, Islamic law countries and civil law countries – essentially the rest of the world. Within the civil law tradition it has been common to separate socialist countries from others, although the former is now only in evidence in China and Cuba (Reichel, 2005). The former of the USSR and to a lesser extent the post-communist countries in Eastern Europe do retain some features of these systems. In addition there is the distinction between the Nordic (Scandinavian), Napoleonic (in the French tradition) and Germanic traditions.

A main difference between the common and civil law traditions relevant for victims' issues is that which also captured by the distinction between adversarial and inquisitorial systems (Pakes, 2014). First the greater emphasis on oral presentation of evidence in court in the former influences the manner in which victims may be required to participate as witnesses. As Pakes (2014) notes concerning the Dutch inquisitorial system "*certain investigative actions take place at the pre-trial stage so that they do not need to be repeated at trial. Victims are often interviewed in the pre-trial stage by an investigative judge, usually in the presence of a defense lawyer. These interviews tend to be less confrontational and traumatic than a cross-examination in a courtroom might be... The appearance of vulnerable witnesses in particular is considered inappropriate at the trial stage*". Although the Dutch system is well-known for its very short trial stage, other inquisitorial systems share this reliance on the case-file, the dossier. In adversarial systems, the necessity of presentation of oral evidence at the trial hearing, means that more victims are subject to cross-examination. Cross-examination in open court, particularly by the defense, can be a considerable burden to victims, and it is discussed above it is therefore no small wonder that evidence for the phenomenon of secondary victimization has been largely amassed in the context of Anglo-Saxon courts. It also stresses the importance of separate and specialised witness support in Anglo-Saxon systems, as is visible in the Victim Support organisations in the United Kingdom.

Secondly the difference in structure of the process also influences the manner in which victims might participate in the process. The inquisitorial systems on the European mainland offer the possibility for adhering civil claims to the criminal process, and the victim, in his or her guise as 'injured party' and/ or auxiliary prosecutor has a longstanding history (Brienen & Hoegen, 2000).

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By contrast the adversarial nature of common law criminal justice portrays the criminal process as a two-sided battle between the state and the defense, before a neutral judge. Victims were not party to this process in any way. Incorporation of the victim within criminal trial therefore has a considerably shorter history than on the continent, and the extent to which the victim is seen as an alien element to the criminal justice process is of a greater magnitude. The introduction of the victim impact statement is a particular case in point (Bandes, 1996; Sarat, 1997; Pemberton, 2015). However the relative novelty and controversy of the position of victims within criminal justice has also led to a greater degree of empirical scrutiny and political support for victimological instruments in the criminal justice system (see also Chapter I). Moreover where continental systems might still ascribe victim's rights to the victim as injured party, or another pre-existing participatory figure, and thereby exclude other victims from these rights, adversarial systems offer these rights to victims as such (see also Chapter II). It begs the question whether the civil law, inquisitorial systems might suffer from a victimological 'law of the handicap of a head start'.

The systematic differences between systems also influence the role of different actors within these systems. We already mentioned the well-known difference between the judge in adversarial systems and inquisitorial systems. However as Michael Tonry recently showed differences in the role of the prosecutor across systems might carry equal or perhaps even more weight (Tonry, 2012). The peculiar position of the prosecutor in the American criminal justice system is a particular case in point: the discretion of the district attorney in US criminal justice to threaten defendants with extreme punishments if they do not plead guilty, as a means to avoid trial processes, means that 95% of criminal cases are resolved through plea bargaining. That this is been described as *Ordinary Injustice* in Amy Bach's book of the same name is one thing, but that it also circumscribes the extent to which victims could have a say in this matter is another. With the exception of Canada, other adversarial systems offer a more direct link between political decision making and the position of the prosecutor, while in most adversarial systems, particularly in Western Europe he or she is a career civil servant (Tonry, 2012). With the exception of the United States the exact consequences of the different roles of the prosecutor for the way victims are treated has yet to receive much empirical attention. It is nevertheless useful to bear in mind that like Tonry notes '*Prosecutors are different. They are not everywhere the same.*' and that similar observations could be mind about other elements of the criminal justice system as well.

### Penal climate

Besides the systematic differences Member States of the European Union also differ to a high degree in the impact in reality of the criminal justice system in terms of the per capita incarceration rates. Cavadino and Dignan's survey of twelve countries (USA, South Africa, New Zealand, England and Wales and Australia; Italy, Germany, the Netherlands and France; Sweden and Finland; Japan) suggested that these could be usefully divided by their political economy: the first five neo-liberal nations had the highest incarceration rates, the four conservative corporatist countries lower; Sweden and Finland, the social democracies, even lower, and Japan, the only example of oriental corporatism had an incarceration rate, that at one fourteenth of that the USA was the lowest of them all.

A recent examination of the development of penal climate across the developed world, in 30 countries, by Lappi-Seppala (2011) further expanded on this. For one thing Lappi-Seppala included 30 countries, amongst which most of the Eastern European, post-communist, Member States of the European Union. See for the current incarceration rates across Europe, table II-1.

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**Table II-1: Penal climate in Europe: 2010 incarceration rates per 100.000 population [Lappi-Seppala, 2011]**

	Eastern	Western	Nordic
Latvia	319		
Estonia	285		
Lithuania	260		
Poland	212		
Czech Republic	206		
Slovakia	185		
Spain		163	
Hungary	153		
England and Wales		148	
Malta		140	
Romania	131		
Bulgaria	120		
Italy		112	
Portugal		106	
Austria		103	
Greece		102	
Ireland		101	
Belgium		97	
France		96	
Netherlands		94	
Germany		88	
Cyprus		83	
Sweden			78
Denmark			71
Slovenia		67	
Finland			63

From the table it becomes clear that the division between the ‘social democracies’ and the ‘conservative corporatist countries, can also be viewed as a difference between the Nordic rim of the European Union and the Western Member States. The Nordic countries have the most moderate penal climate, while across Western Europe a larger proportion of the population resides behind bars. This is even more so in Eastern Europe, and in particularly so in the EU Member States that used to be a part of the USSR.

Lappi-Seppala also compared the change in incarceration rate for the different areas. If the figures for 2010 are compared to 1994/ 1995, the figures reveal that the Anglo-Saxon countries, as well as Russia had high levels of incarceration but have seen big increases in the prison population as well. Eastern Europe by contrast had high levels of incarceration but only moderate levels of increase. Western Europe, had moderate rates but appears to be converging with Eastern Europe, given the big increase in incarceration rates. The Nordic countries had low levels of incarceration and have had only moderate rates of increase.

These findings are of importance to victim policy in and of themselves. That victim policy can co-occur with harsher penal policies is a recurrent theme in the Anglo-Saxon literature (Garland, 2001, Simon, 2007), although one of the authors of this report has noted that the extent to which it is readily assumed that it could be seen as a causal, contributing factor is much overstated (Pemberton, 2010). Indeed it appears more likely that changes to

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victim policy occur as a consequence of these changes in penal climate, while it is unclear in any case whether the observed changes amount to much more than paying lip service to the plight of victims. Notwithstanding this observation however, it is clear that increased attention in the political and public arena's to the plight of victims has co-occurred with changes in penal climate in Anglo-Saxon countries and the Netherlands alike.

Beyond the possible co-occurrence of changes in penal policy and victim policy, Lappi-Seppala's (2011) analysis of the factors driving the differences in penal policy and its development through time are also worth noting. He summarizes the thrust of his views as follows: *The main conclusions are that moderate penal policies have their roots in a consensual and corporatist political culture, in high levels of social trust and political legitimacy, and in a strong welfare state; and that more punitive policies that make more use of imprisonment are to be found in countries where these characteristics are less in evidence.*

According to Lappi-Seppala the influence of the welfare state can be understood through the alternatives it offers to imprisonment. In addition an extensive social service network can act as a crime prevention measure, which reduces the political priority of crime. Where the welfare state system is a system of universalistic social policy, it follows a moral logic that *social policy concerns us all and debates on social policy are efforts to solve our common problems.* In other words these systems of social policy are open to everyone, rather than made available to certain groups in society, often following rather stringent criteria. Translated to victim policy, the type of universalist welfare state that Lappi-Seppala describes could be more likely to address victims' needs through more general institutions of social policy, rather than developing particular organisations, creating specific instruments and/ or rights to meet the needs of specific groups of victims.

Lappi-Seppala points to the difference between majoritarian and consensual democracies. He notes that the latter are less likely to institute harsh penal policies. In his view this is due to the fact that consensual democracies are less susceptible to political populism. They are more likely to maintain an adherence to expert opinion and long term merit. We can link this to the aforementioned notion of *morality policy*. Lappi-Seppala's analysis suggests that the majoritarian countries in the Anglo-Saxon world are more likely to adopt harsher penal policies, given that they are less likely to resist populist pressure to this end. In the terms noted before, crime policy and victim policy is more likely to have features resembling morality policies.

### Worry about crime

Taken together the analysis of criminal justice systems and penal climate suggests we can divide the European Union Member States into four groups:

- Anglo-Saxon: Common law/ adversarial systems, with a relatively high and rapidly increasing incarceration rate.
- Eastern Europe: Civil law systems, with an even higher, but moderately increasing incarceration rate.
- Western Europe: Civil law systems, with a moderate, but increasing incarceration rate.
- Nordic Europe: Civil law systems, with a low and only moderately increasing incarceration rate.

The results of research into the extent to which populations of Member States find crime to be a problem in their day to day lives also reveals a similar distinction between the latter three categories. On the basis of previous research and their own analysis of data from the European Social Survey, Jackson and Kuha (2014) show that the proportion of people who feel unsafe in their own neighbourhoods due to their worry about crime follows

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the following pattern. People in Southern and Eastern European countries are most likely to feel unsafe in their neighbourhoods, while people in small Northern European countries are most likely to feel safe. See table II-2.

**Table II-2: Worry about crime in 19 EU Member States: % worried about crime**  
[adapted from Jackson and Kuha, 2014]

	Eastern	Western	Nordic
<b>Slovakia</b>	54		
<b>Bulgaria</b>	54		
<b>France</b>		48	
<b>Portugal</b>		48	
<b>Estonia</b>	45		
<b>Spain</b>		45	
<b>Belgium</b>		39	
<b>England and Wales</b>		38	
<b>Poland</b>	36		
<b>Hungary</b>	34		
<b>Sweden</b>			32
<b>Ireland</b>		31	
<b>Germany</b>		28	
<b>Austria</b>		27	
<b>Netherlands</b>		27	
<b>Cyprus</b>		23	
<b>Slovenia</b>		23	
<b>Finland</b>			23
<b>Denmark</b>			18

The similarities between tables II-1 and II-2 suggest that in countries with a higher incarceration rate, there is also a larger worry about crime. As Jackson and Kuha (2014) show this is not caused by differences in crime rates. Instead *“this pattern seems to track the heterogeneity of welfare state regimes in jurisdictions across Europe. National differences in subjective safety may have less to do with levels of crime in a person’s country and more to do with the level of social security provided by the nation’s welfare state.”*

Including worry about crime, the initial grouping of different countries can be expanded to differentiate between North-Western and Southern countries.

- Anglo-Saxon: Common law/ adversarial systems, with a relatively high and rapidly increasing incarceration rate.
- Eastern Europe: Civil law systems, with an even higher, but moderately increasing incarceration rate. Relatively high worry about crime.
- Southern Europe: Civil law systems, with a moderate, but increasing incarceration rate. Relatively high worry about crime.
- North Western Europe: Civil law systems, with a moderate, but increasing incarceration rate. Low worry about crime.
- Nordic Europe: Civil law systems, with a low and only moderately increasing incarceration rate. Low worry about crime.

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### Victim assistance in the context of citizens relationship with criminal justice agencies

#### Trust in government and corruption

Morris and Klesner (2010) have discovered “a powerful mutual causality between perceptions of corruption and trust in political institutions that suggests that rooting out perceptions of corruption or shoring up trust in public institutions will be an extremely difficult project for anyone who takes on the task.” These findings suggest that there is a relationship between trust in the government and the level of (political) corruption. According to the World Justice Project the absence of corruption, which is in their opinion conventionally defined as the use of public power for private gain, is one of the hallmarks of a society governed by the rule of law, as corruption is a manifestation of the extent to which government officials abuse their power or fulfill their obligations under the law. Forms of corruption vary, but include bribery, extortion, improper influence by public or private interests, and misappropriation of public funds or other resources.

However, it is debatable if the presence of corruption is solely an indicator of rule of law. In our view the absence or presence of corruption can also be used as an indicator of the social representation of fear. From Jackson et al (2011) it is clear that where trust is high, crime and corruption are low. This leads to the expectation that in countries with a high ‘trust-rate’ there are less people victimized than in countries with a low ‘trust-rate’. It is our expectation that countries with a high ‘trust-rate’ have better (legal) provisions for victims than countries with a low ‘trust-rate’. To determine the extent of trust in the EU Member States we firstly use the corruption indicator. According to the Worldwide Governance Indicators “control of corruption captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests.”

The Worldwide Governance Indicators make use of a Percentile Rank. A 0 corresponds with the lowest rank and 100 corresponds to highest rank. What is the situation with the EU Members States? According to the Worldwide Governance Indicators, three categories can be distinguished, namely the category 50-75, 75-90 and 90-100.

Table II-3: The scores of control of corruption for the category 50-75 [year 2013]

	2003	2008	2013
Romania	47	55	53
Italy	73	65	57
Hungary	74	68	65
Greece	69	61	56
Croatia	60	57	61
Bulgaria	55	47	50
Slovakia	65	66	60
Poland	68	67	71
Lithuania	62	60	67
Latvia	60	62	64
Czech Republic	71	65	63
Slovenia	80	80	74

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The above table shows that the following EU countries score the lowest on the control of corruption indicator: Romania, Italy, Hungary, Greece, Croatia, Bulgaria, Slovakia, Poland, Lithuania, Latvia, Czech Republic and Slovenia. The characteristic of these countries is that they are almost all located in Eastern Europe.

**Table II-4:** The scores of control of corruption for the category 75-90 [year 2013]

	<b>2003</b>	<b>2008</b>	<b>2013</b>
<b>Spain</b>	90	83	75
<b>Portugal</b>	84	81	79
<b>Malta</b>	82	82	81
<b>France</b>	90	91	88
<b>Estonia</b>	77	79	81
<b>Cyprus</b>	85	85	84
<b>Czech Republic</b>	76	77	83

The middle category of the EU countries is represented by the following countries: Spain, Portugal, Malta, France, Estonia and Cyprus. The characteristic of these countries is that they are located mainly in Southern Europe and Western Europe.

**Table II-5:** The scores of control of corruption for the category 90-100 [year 2013]

	<b>2003</b>	<b>2008</b>	<b>2013</b>
<b>Finland</b>	100	99	98
<b>United Kingdom</b>	95	92	93
<b>Sweden</b>	98	98	99
<b>Netherlands</b>	96	97	96
<b>Luxembourg</b>	92	96	97
<b>Ireland</b>	92	93	91
<b>Germany</b>	94	93	94
<b>Denmark</b>	100	100	100
<b>Austria</b>	97	95	90
<b>Belgium</b>	91	87	92

When an eye is cast on the EU countries with the highest percentile, it shows that these countries are mostly located in Western Europe and Northern Europe. In 2013 Denmark has the highest rank possible. The results of the corruption index give further credence to the division of the justice context within EU-Member States into the Nordic, North-Western, Southern and Eastern states.

### The Rule of Law

The rule of law is the legal principle that law should govern a nation, as opposed to being governed by arbitrary decisions of individual government officials. It primarily refers to the influence and authority of

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law within society, particularly as a constraint upon behaviour, including behaviour of government officials. According to the World Justice Project the rule of law is a system in which the following four universal principles are upheld:

1. The government and its officials and agents as well as individuals and private entities are accountable under the law;
2. The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property;
3. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient;
4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

The World Justice Project states also that under the rule of law, fundamental rights must be effectively guaranteed. A system of positive law that fails to respect core human rights established under international law is at best “rule by law”. Rule of law abiding societies should guarantee the rights embodied in the Universal Declaration of Human Rights, including the right to equal treatment and the absence of discrimination; the right to life and security of the person; the right to the due process of the law; the freedom of opinion and expression; the freedom of belief and religion; the absence of any arbitrary interference of privacy; the freedom of assembly and association; and the protection of fundamental labour rights. However, victim’s rights are not considered as human rights. Still, there is a strong relationship between victim’s rights and the rule of law. In 2012 Ambassador Janez Lenarčič – Office for Democratic Institutions and Human Rights (ODIHR)’s Director - stated that the rule of law is vital to protecting rights of victims of human trafficking. However, the rule of law is not only important to victims of human trafficking, but to other victims as well.

To determine the degree of rule of law in the Member States, the indicator ‘rule of law’ of the ‘Worldwide Governance Indicators’ is used. According to the Worldwide Governance Indicators the following definition of the rule of law is used: “Rule of law captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.” In this definition there is no reference to victim’s rights. However, as stated earlier there is a relationship between victim’s rights and the rule of law. It is our assumption that a higher degree of rule of law corresponds with more and better legislation on victims’ rights.

The Worldwide Governance Indicators make use of a Percentile Rank. A 0 corresponds with the lowest rank and 100 corresponds to highest rank. For example Central African Republic scores a 0 on the rule of law. In the context of this research this means there is no attention for victims’ rights at all. What is the situation with the EU Members States?

According to the Worldwide Governance Indicators, three categories can be distinguished, namely the category 50-75, 75-90 and 90-100.

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Table II-6: The scores of rule of law for the category 50-75 [year 2013]

	2003	2008	2013
Romania	45	54	56
Italy	71	63	62
Hungary	78	80	67
Greece	74	75	64
Croatia	51	55	60
Bulgaria	46	50	51
Slovakia	62	68	64
Poland	64	66	73
Lithuania	63	71	74
Latvia	66	74	73

The above table shows that the following EU countries score the lowest on the rule of law indicator: Romania, Italy, Hungary, Greece, Croatia, Bulgaria, Slovakia, Poland, Lithuania and Latvia. The characteristic of these countries is that they are almost all located in Eastern Europe.

Table II-7: The scores of rule of law for the category 75-90 [year 2013]

	2003	2008	2013
Spain	89	86	81
Portugal	89	83	83
Malta	93	91	87
France	90	91	88
Belgium	89	89	89
Estonia	73	86	86
Cyprus	78	87	82
Czech Republic	76	77	83
Slovenia	81	82	81

The middle category of the EU countries is represented by the following countries: Spain, Portugal, Malta, France, Belgium, Estonia, Cyprus, the Czech Republic and Slovenia. The characteristic of these countries is that they are located mainly in Southern Europe and Western Europe.

Table II-8: The scores of rule of law for the category 90-100 [year 2013]

	2003	2008	2013
Finland	100	98	99
United Kingdom	94	93	93
Sweden	98	99	100
Netherlands	95	95	97
Luxemburg	96	96	96
Ireland	91	93	94
Germany	94	94	92
Denmark	99	100	99
Austria	97	99	98

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When an eye is cast on the EU countries with the highest percentile, it shows that these countries are mostly located in Western Europe and Northern Europe. In 2013 Sweden has the highest rank possible. The results are highly similar to those concerning corruption.

### Trust in justice

Both of the aforementioned factors are likely to feed in to the perceptions of the actors within criminal justice. Are they trusted to make fair and impartial decisions? To what extent are they deemed legitimate? Recent research using the European Social Survey (ESS) reveals that this is indeed the case. Jackson and colleagues (2011) included a module on the trust in the police and the courts in the ESS. Invariably they found that measures for trust and legitimacy of the police and the courts were correlated. To illustrate their findings we have included the results of the trust in the fairness of the police in this chapter, see table II-9.

**Table II-9:** Trust in police in 16 EU Member States: % do not believe in fairness of police [adapted from Jackson and colleagues, 2011]

	<u>Eastern</u>	<u>Southern</u>	<u>North-Western</u>	<u>Nordic</u>
<b>Bulgaria</b>	44			
<b>Czech Republic</b>	42			
<b>Hungary</b>	36			
<b>France</b>		35		
<b>Poland</b>	34			
<b>Portugal</b>		30		
<b>Slovenia</b>		30		
<b>Estonia</b>	26			
<b>Netherlands</b>			18	
<b>Belgium</b>			15	
<b>England and Wales</b>			15	
<b>Germany</b>			14	
<b>Sweden</b>				12
<b>Spain</b>		10		
<b>Finland</b>				10
<b>Denmark</b>				8

Perhaps with the exception of Spain, the results of the European Social Survey concerning trust in justice confirm the division between Nordic, North-Western, Southern and Eastern Europe in terms of the criminal justice context of victim assistance.

### Summary

This section has sought to offer insight into the criminal justice context of victim assistance across Member States of the European Union. A first main difference concerns that between the common law systems with their

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adversarial trials, and the civil law systems with the inquisitorial model. The former is only fully evidence in the United Kingdom and Ireland, with the other Member States of the European Union having fully or largely civil law systems. The analysis of penal climate and the development of penal climate suggest a different trajectory for common law countries, than for most civil law countries. Penal climate does offer a means to distinguish between different civil law jurisdictions. The 'post-communist' countries of Eastern Europe have relatively high incarceration rates, although these rates have not shown the increase in evidence in those in Western Europe. The Nordic countries have the most moderate penal climates, with low incarceration rates, which are also declining. The extent to which the public is concerned about crime tracks this division: while studies reveal the inhabitants of Nordic countries to feel overwhelmingly safe, this is less so in Eastern Europe. The results of the research into worry about crime suggest that the experience of crime differs between North-Western Europe and the Southern, Mediterranean countries. Indicators of the relationship between the public and criminal justice agencies, including perceived corruption, the experience of the rule of law and trust in justice, also confirm this distinction. Overall therefore the criminal justice context of victim assistance EU Member States can be viewed as follows:

- *Anglo-Saxon*: Common law/ adversarial systems, with a relatively high and rapidly increasing incarceration rate. Concerning worry about crime, the rule of law, corruption and trust in justice the Anglo-Saxon countries are similar to those in North-Western Europe.
- *Eastern*: Civil law systems, with an even higher, but moderately increasing incarceration rate. Relatively high worry about crime, relatively high levels of perceived corruption, and lower levels of experience of rule of law.
- *Southern*: Civil law systems, with a moderate, but increasing incarceration rate. Relatively high worry about crime. Level of perceived corruption and experience of rule of law higher than in Eastern Europe, but lower than North-Western and Nordic Europe.
- *North Western*: Civil law systems, with a moderate, but increasing incarceration rate. Low worry about crime. High trust in justice and experience of rule of law. Low levels of perceived corruption.
- *Nordic*: Civil law systems, with a low, and only moderately increasing incarceration rate. Lowest worry about crime. High trust in justice and experience of rule of law. Low levels of perceived corruption.



### **The non-criminal justice context of victim assistance**

#### **Avenues for victim assistance outside the criminal justice system: social security, mental health availability and insurance coverage**

##### **Social security**

In 2005 Cousins published his book “European Welfare States: Comparative Perspectives”. He provides a historical development of the welfare states in Europe from 1450 to 2000. What precisely is the welfare state? As Barr (2012) points out the concept of welfare state defies precise definition. Three areas of complication stand out: “welfare derives from many sources in addition to state activity”, “models of delivery are also diverse” and “the boundaries of the welfare state are not well defined” (Barr, 2012: 7). In broad terms the modern welfare state comprises cash benefits and benefits in kind. This kind of state exists to enhance the welfare of people who are weak and vulnerable, largely by providing social care (a), people who are poor, largely through redistributive income transfers (b) and people who are neither vulnerable nor poor, by organizing cash benefits to provide insurance and consumption smoothing, and by providing medical insurance and school education (Barr, 2012: 7). The measurement of (social) welfare is possible by using GDP. GDP is an estimate of the costs instead of the benefits of all market-related economic activities. In addition, it does not capture various social (including external) costs (Van den Bergh & Antal, 2011: 2). However, some criticize the use of GDP for the measurement of (social) welfare. It is also possible to use statistics of social protection. According to Eurostat “social security encompasses interventions from public or private bodies intended to relieve households and individuals of the burden of a defined set of risks or needs, provided that there is neither a simultaneous reciprocal nor an individual arrangement involved.” A good measure of the extent of social welfare provision across countries is the expenditure on social security as a percentage of GDP.

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**Table II-10: Expenditure on social security, 2010-12 [% of GDP]**

	2010	2011	2012
Latvia	17,8	15,1	14,0
Estonia	18,0	16,1	15,4
Romania	17,6	16,4	15,6
Lithuania	19,1	17,0	16,5
Bulgaria	18,1	17,7	17,4
Poland	20,0	19,1	18,1
Slovakia	18,7	18,3	18,4
Malta	19,1	18,7	19,4
Czech Republic	20,2	20,4	20,8
Hungary	23,1	22,1	21,8
Cyprus	22,1	22,8	23,1
Luxembourg	23,1	22,5	23,3
Slovenia	25,0	25,0	25,4
Spain	25,5	26,0	25,9
Portugal	26,8	26,5	26,9
United Kingdom	27,9	28,0	28,8
Germany	30,6	29,4	29,5
Austria	30,6	29,8	30,2
Italy	29,9	29,7	30,3
Sweden	30,4	29,7	30,5
Belgium	30,1	30,4	30,8
Greece	29,1	30,2	31,2
Finland	30,6	30,0	31,2
Ireland	29,0	30,2	32,5
Netherlands	32,1	32,3	33,3
France	33,7	33,4	34,2
Denmark	34,3	34,3	34,6

Based on these findings three categories can be distinguished. The first category is the ‘high level category’ (30 or more in the year 2012). This category represents the following countries: Belgium, Denmark, Finland, Ireland, Greece, France, Italy, the Netherlands, Austria and Sweden. The second category is the ‘medium level category’ (20 to 30 in the year 2012): Czech Republic, Germany, Spain, Cyprus, Luxembourg, Hungary, Portugal, Slovenia and the United Kingdom. The third category is the ‘low level category’ (0 to 20 in the year 2012): Bulgaria, Estonia, Latvia, Lithuania, Malta, Poland, Romania and Slovakia. When viewed in conjunction with the results of section 2.2 it is clear that all the Nordic EU Members are included under the high category, the North-Western and Anglo-Saxon countries under the high or medium categories, and the Southern spread over all categories, while the Eastern countries fall mainly under the low category.

### Health care and access to mental health availability

Many victims’ needs, particular acute needs involve (mental) health care. An albeit rudimentary figure for the extent of health care provision is the annual health care expenditure per inhabitant. Based on data of the World Health Organization, table II-11 reveals that health expenditure varies from 700 euro per capita per year in Bulgaria and Romania to 3900 euro in the Netherlands.

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**Table II-11:** Annual health expenditure per capita [in 1000 euro] [World Health Organization]

	<u>Eastern</u>	<u>Southern</u>	<u>North-Western</u>	<u>Nordic</u>	<u>Anglo-Saxon</u>
<b>Bulgaria</b>	0,7				
<b>Romania</b>	0,7				
<b>Latvia</b>	0,8				
<b>Estonia</b>	1,0				
<b>Lithuania</b>	1,0				
<b>Poland</b>	1,1				
<b>Hungary</b>	1,2				
<b>Czech Republic</b>	1,5				
<b>Slovakia</b>	1,6				
<b>Cyprus</b>		1,8			
<b>Malta</b>		1,8			
<b>Slovenia</b>		1,9			
<b>Portugal</b>		2,1			
<b>Greece</b>		2,2			
<b>Spain</b>		2,3			
<b>Italy</b>		2,3			
<b>United Kingdom</b>					2,6
<b>Ireland</b>					2,9
<b>Sweden</b>				2,9	
<b>Belgium</b>			3,1		
<b>France</b>			3,1		
<b>Finland</b>				3,1	
<b>Germany</b>			3,2		
<b>Austria</b>			3,4		
<b>Denmark</b>				3,4	
<b>Luxembourg</b>			3,6		
<b>Netherlands</b>			3,9		

The figures in the table again suggest that the societal ecology of victim assistance, also outside of the criminal justice system can be distinguished along the lines of the clustering developed in section above. Health care expenditure per capita is lowest in Eastern Europe, followed by Southern Europe. The highest per capita expenditure is found in the North-Western and Nordic countries.

Longer term victim assistance is often the remit of mental health professionals. An illustrative metric for the level of availability of mental health care across countries is the number of psychiatrists working in mental health facilities per 100.000 population. This varies from less than 3 in Cyprus, to over 20 in the Benelux countries (Belgium, Luxembourg and the Netherlands), see table II-12.

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**Table II-12: Access to mental health care: number of psychiatrists in mental health per 100.000 population [World Health Organization]**

	<u>Eastern</u>	<u>Southern</u>	<u>North-Western</u>	<u>Nordic</u>	<u>Anglo-Saxon</u>
Cyprus		3			
Malta		3			
Portugal		4			
Poland	5				
Romania	6				
Ireland					6
Hungary	7				
Bulgaria	7				
Spain		8			
Denmark				10	
Slovenia		10			
Croatia		10			
Italy		11			
Slovakia	11				
Czech Republic	12				
Latvia	12				
Estonia	14				
Greece		14			
France			14		
United Kingdom					15
Germany			15		
Lithuania	18				
Sweden				18	
Finland				18	
Austria			20		
Netherlands			20		
Belgium			20		
Luxembourg			21		

Again the results are largely in line with the overall clustering, although the Southern European countries tend to have the lowest availability of mental health care, particularly compared to the Baltic States. The highest number of psychiatrists per 100.000 population can be found in the Benelux and Austria.

### Insurance coverage

The extent to which victimization negatively impacts the victims longer-term health and financial prospects (the phenomenon of scarring, see MacMillan, 2000) is also related to the extent to which victim is likely to be insured. It can also change the importance and nature of compensation processes (e.g. Pemberton et al, 2015, and chapter 1). Most of the research into compensation reviews the processes in countries with relatively high levels of insurance coverage. Damage to property, but also to physical health is likely to be largely covered by insurance, which also means that symbolic aspects of compensation procedures in and around criminal justice can gain prominence. The question has been posed whether these symbolic features of compensation would be equally important in jurisdiction where people cannot rely on insurance providers to pick up the immediate health bills and costs of stolen or damaged property.

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Within Europe the level gross insurance payment per capita varies considerably. In Romania it is just over 100 euro per capita per year, while in Luxembourg it approaches 6000 euro a year. See table II-13 for the results.

**Table II-13:** Gross written annual insurance premiums per capita [in 1000 euro's] in 2013 [adapted from Insurance Europe]

	<u>Eastern</u>	<u>Southern</u>	<u>North-Western</u>	<u>Nordic</u>	<u>Anglo-Saxon</u>
Romania	0.1				
Bulgaria	0.1				
Estonia	0.2				
Latvia	0.2				
Croatia	0.3				
Hungary	0.3				
Poland	0.3				
Greece		0.4			
Slovakia	0.4				
Czech Republic	0.5				
Lithuania	0.8				
Cyprus		0.9			
Slovenia		1.0			
Malta		1.0			
Spain		1.2			
Portugal		1.4			
Austria			2.0		
Italy		2.4			
Germany			2.4		
Belgium			2.4		
Ireland					2.7
France			3.0		
Sweden				3.2	
United Kingdom					3.7
Finland				4.2	
Netherlands			4.4		
Denmark				4.7	
Luxembourg			5.8		

The pattern for insurance coverage is similar again to those described in the previous sections. Insurance coverage is lowest in the Eastern European Union, followed by the Southern European Union. The Nordic, Northern-Western and Anglo-Saxon Member States have the highest gross insurance premium rates per capita.

## Volunteering

According to Musick and Wilson (2008) the term volunteering is (firstly) used to refer to mutual aid as when a group of people work together to achieve a common goal. Secondly volunteering can also be used as organisational participation and self-governance. In these cases people contribute their time to maintain an organisation, such as a religious congregation. Also, this term is used to refer to campaigning and advocacy:

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people contribute their time out of desire for social change and social justice (Musick & Wilson 2008, p. 11).

To determine the degree of volunteering in the Member States, the final report submitted by GHK is used. The report is called: “Volunteering in the European Union (2010)”. According to this report “the history and contextual background of volunteering in Europe varies greatly between European countries. Whilst certain EU Member States have longstanding traditions in volunteering and well developed voluntary sectors (such as Ireland, the Netherlands, and the UK), in other countries the voluntary sector is still emerging or poorly developed (for instance in Bulgaria, Greece, Latvia, Lithuania, and Romania). Volunteering is strongly influenced by the history, politics and culture of a community and a country” (Volunteering in the European Union 2010, p. 45). Volunteering has been defined at EU and international level in a number of documents. International and European reports and studies reinforce the concept that volunteering is a matter of individual choice, is done without thought of remuneration or reward and benefits others. A commonly used definition at EU level is that the term ‘volunteering’ refers to all forms of voluntary activity, whether formal or informal (Volunteering in the European Union 2010, p. 49). In this definition there is no reference to victim’s rights. However, there is a relationship between victim’s rights and the degree of volunteering. It is our assumption that a higher degree of volunteering corresponds with more and better legislation on victims’ rights.

In this final report many statistics on the degree of volunteering in the European Union can be found. The most important statistic is the overall statistic. In this report national surveys are compared with two European studies.

**Table II-14: Level of volunteering across EU Member States**

<b>Trend</b>	<b>National studies</b>	<b>Eurobarometer (2006)</b>	<b>European Values Study (1999/2000)</b>
<b>Very high (&gt;40%)</b>	Austria, Netherlands, Sweden, United Kingdom	Austria, Denmark, Finland, Germany, Ireland, Luxembourg, Netherlands, Sweden	Netherlands, Slovakia, Sweden, United Kingdom
<b>High (30%-39%)</b>	Denmark, Finland, Germany, Luxembourg	Belgium, Czech Republic, France, Italy, Slovakia, Slovenia	Belgium, Czech Republic, Denmark, Finland, Greece, Luxembourg
<b>Medium (20%-29%)</b>	Estonia, France, Latvia	Cyprus, Estonia, Malta, Latvia, United Kingdom	Austria, France, Germany, Ireland, Italy, Latvia, Malta, Slovenia
<b>Relatively low (10%-19%)</b>	Belgium, Cyprus, Czech Republic, Ireland, Malta, Poland, Portugal, Slovakia, Romania, Slovenia, Spain	Bulgaria, Greece, Hungary, Lithuania, Poland, Romania, Spain	Estonia, Hungary, Lithuania, Poland, Portugal, Romania, Spain
<b>Low (&lt;10%)</b>	Bulgaria, Greece, Italy, Lithuania		

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Based on these findings the report states that “Sweden and the Netherlands are the only countries, which feature very high level of volunteering in national studies, as well as in the Eurobarometer and European Values Study. Other countries, which have consistently been identified as having either high or very high levels of participation in volunteering, are Denmark, Finland and Luxembourg. Other countries with relatively high levels of volunteering are Austria, the UK and Slovakia. In contrast, countries, which have consistently been identified by national reports and the Eurobarometer and European Value surveys as having low or relatively low levels of participation in volunteering, are Bulgaria, Lithuania, Poland, Portugal, Romania and Spain” (Volunteering in the European Union 2010, p. 65).

The year 2011 was called “the European year of volunteering”. Therefore a special Eurobarometer, titled “Volunteering and Intergenerational Solidarity” was published in 2011. For the results see table II-15. Although small variations are visible the results correlate to a large degree with the earlier findings.

**Table II-15: Level of volunteering across EU Member States [Eurobarometer 2011 only]**

<b>Trend</b>	<b>Eurobarometer (2011)</b>
<b>Very high (&gt;40%)</b>	Netherlands, Denmark
<b>High (30%-39%)</b>	Finland, Austria, Luxembourg, Germany, Slovenia, Ireland, Estonia
<b>Medium (20%-29%)</b>	Slovakia, Belgium, Italy, France, Czech Republic, Cyprus, United Kingdom, Latvia, Sweden
<b>Relatively low (10%-19%)</b>	Malta, Spain, Romania, Greece, Portugal, Bulgaria
<b>Low (&lt;10%)</b>	Poland

Not all Member States of the European Union are included in these statistics. However again it is clear that the countries with the lowest levels of volunteering are to be found in the Eastern and Southern areas of the European Union, while considerably higher levels of volunteering are in evidence in other parts of the European Union.

### Summary

This section surveyed some of the indicators of the societal ecology of victim assistance outside of the criminal justice system. We considered social security, health care expenditure, availability of (mental) health care, extent of insurance coverage and the degree of volunteering activities across the Member States of the European Union.

The results reveal that the division into the five criminal justice worlds of the European Union also provide an adequate clustering of the Member States concerning the societal ecology of victim assistance outside of

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## Chapter II: Viewing victim-oriented reform against the backdrop of the societal ecology

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criminal justice. This is particularly true for the Eastern and Southern parts of the European Union. The former is consistently ranked the lowest on the indicators, followed by the latter. The results for the North-Western, Nordic and Anglo-Saxon Members of the European Union are more mixed. Although the smaller countries of Northern and Western Europe seem to be the ones performing the best on each of the indicators, the differences between the Anglo-Saxon, Nordic and North-Western countries as clusters of Member States appear to be small. In sum the results from this section suggest the following clustering of Member States:

- *Eastern*: Relatively low levels of expenditure on social security, health care and insurance coverage. Lower levels of volunteering;
- *Southern*: Expenditure on social security, health care and insurance coverage higher than in Eastern Europe, but lower than in the rest of Europe. Relatively poor access to mental health care. Lower levels of volunteering;
- *Anglo-Saxon, North Western, Nordic*: Higher levels of expenditure on social security, health care and insurance coverage. Higher levels of volunteering.

### **The impact of EU legislation on practice**

#### **The impact of EU legislation on national legislation**

Most research into the impact of EU legislation has focused on the extent to which Member States comply with EU legislation. That is the extent to which EU Directives are transposed and what evidence there is of their subsequent enforcement. From the outset we should note that the results of the research mentioned here are not derived from analysis of the Directives in the field of criminal justice or Justice and Home Affairs more widely. It is an open question whether the results would also apply to these specific areas of EU policy. Also, as has been mentioned before, public administration research into these issues often fails to fully examine the impact on practice, settling for evaluation of the impact on transposal into law.

A recent examination of EU-Directives shows that Member States differ in the extent to which they comply with the transposition and the enforcement of EU-legislation. Several authors (Falkner & Treib, 2008; Falkner et al, 2005; see also Borzel et al, 2010) find that there are different ‘worlds of compliance’ in the European Union. This classification is useful to understand some of the difficulties in implementation of EU Directives, although we should reiterate the caveat that much of the evidence base for these assertions is based upon an analysis of legal implementation, rather than a full-scale evaluation of the impact of policy on the ground. Moreover the evidence is not derived from fields of transposition.

In the first world, ‘the world of law observance’, the goal of compliance overrides domestic concerns. Transposition of Directives is on time and correct. Application and enforcement is also successful, while non-compliance is only evident when there are fundamental discrepancies with domestic legislation. This first world is visible in Denmark, Sweden and Finland.

In the second world, ‘the world of domestic politics’, obeying EU-rules is one goal amongst many. Timely and correct transposition is contingent on the absence of domestic concerns. When there are conflicting domestic interests at stake, the public supports Member State disobedience with European Union regulation. Finally, where EU-legislation is transposed, application and enforcement is often effective, which means that the main obstacle to compliance is political resistance at the transposal stage. Austria, Belgium, Germany, the Netherlands, Spain and the United Kingdom belong to this category.

In the third world, ‘the world of transposition neglect’, transposition of EU law is not a goal in itself. There is evidence of a posture of national defiance towards EU-legislation, aggravated by administrative difficulties. Without strong incentives and monitoring from the European Commission the result is often inactivity. Transposition shortcomings in enforcement are more prevalent than in the first two worlds, but definitely not as a rule. The world of transposition neglect includes Greece, France, Portugal and Luxembourg.

Finally, there is the ‘world of dead letters’. Here transposal is often swift and literal, without clear consideration of possibly conflicting features of the Member States’ own legislation (also referred to as literal transposition, see Schimmelfennig & Sedelmeier, 2007). This is possible because the fourth world displays non-compliance in

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enforcement of EU-legislation: what is written in the statute simply may not become effective in practice. The causes may be sought in deficiencies in the working of the court system and other mechanisms of the rule of law, the lack of broad consultation of affected groups during the preparation of the laws (Treib, 2008) and/ or the relative weakness of civil society (Sissenich, 2010, see also below), which will hamper the detection of non-compliance and advocacy to ensure compliance. This applies to Ireland, Italy and the Central-Eastern European countries that joined the EU in 2004 and 2007 (in similar vein Sissenich, 2010).

This categorization again is similar to the findings of previous sections. In particular the fact that the Nordic countries cluster as the group most likely to fully implement EU policy, while Eastern Europe is least likely to do so. The countries in the world of domestic politics are largely those in North-Western Europe, while the Southern European countries are more often included in the world of transposition neglect. As we will argue this had the unfortunate implication that where both current practice and societal ecology of Eastern and Southern European countries concerning victim assistance is poorest (see Chapter III) the impact of EU policy is vehicle for change is weakest.

### State and civil society effectiveness

One of the lessons of the experience with the EU Framework Decision for victims of crime was that rather than as hard law it had functioned as a soft law instrument (e.g. Groenhuijsen & Pemberton, 2009; Pemberton & Rasquete, 2010; Pemberton & Groenhuijsen, 2012). In countries with well-organized victim support ‘champions’, they were able to capitalize on availability of the Framework Decision to pressure their governments into taken the action required in the Framework Decision. Where no such a well-organized champion existed it was more likely that the provisions of the Framework Decision were ignored. But the existence of well-organized victim support champion already signals a higher level of development of victim assistance. Therefore it was noted that rather than harmonize the position of victims across Europe, the Framework Decision could be suspected to have had a gap-widening effect, with improvements concentrated in the areas where service delivery was already strong. In addition the role of governmental funding for the NGOs involved in victim support, means that a higher profile of victims issues within governmental organisations co-occurs with similar standing in civil society.

This occurrence of strong state interest and strong civil society organisation is a more general phenomenon across Europe. A recent overview by Beate Sissenich (2010) confirms that instead of civil society filling in the gaps left by the state, strong states and strong civil society co-occurs across Europe. As she summarizes her findings herself: *Among the 27 EU Member States, countries that score high on good governance also have citizens engaged in interest organisations, volunteering for a broad variety of causes and ready to participate in acts of protest. By the same token, in countries where governments struggle to deliver results, organized interests are insufficiently established and rarely in a position to perform governance functions.*

A number of the factors Sissenich mentions have been discussed elsewhere in this report. The following results are derived from the World Bank Indicators of government effectiveness. See table II-16.

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**Table II-16:** Governmental effectiveness [World Bank Indicators, adapted from Sissenich, 2010]

	<u>Eastern</u>	<u>Southern</u>	<u>North-Western</u>	<u>Nordic</u>	<u>Anglo-Saxon</u>
<b>Romania</b>	-0.26				
<b>Bulgaria</b>	-0.03				
<b>Latvia</b>	0.51				
<b>Poland</b>	0.59				
<b>Slovakia</b>	0.59				
<b>Lithuania</b>	0.6				
<b>Italy</b>		0.77			
<b>Greece</b>		0.78			
<b>Hungary</b>	0.83				
<b>Czech Republic</b>	0.84				
<b>Slovenia</b>		0.9			
<b>Estonia</b>	0.96				
<b>Portugal</b>		1.13			
<b>France</b>			1.5		
<b>Spain</b>		1.56			
<b>Ireland</b>					1.68
<b>Germany</b>			1.69		
<b>Belgium</b>			1.79		
<b>Austria</b>			1.83		
<b>United Kingdom</b>					1.93
<b>Sweden</b>				2.05	
<b>Luxembourg</b>			2.06		
<b>Netherlands</b>			2.07		
<b>Finland</b>				2.09	
<b>Denmark</b>				2.14	

It is a pattern that we have observed throughout this chapter and as Sissenich remarks: *The data show systematic and statistically significant differences between old and new Member States, with Eastern Europe lagging behind most of the older democracies on both dimensions, that is, state capacity and civil society.* She cites volunteering (see also section above on Volunteering) as an example of the latter, as well as average organisational membership per person as indicators of the strength of civil society. For the latter see table II-17.

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**Table II-17:** Average number of organisational memberships per person and country [European/ World Values Survey, 2004, adapted from Sissenich, 2010]

	<u>Eastern</u>	<u>Southern</u>	<u>North-Western</u>	<u>Nordic</u>	<u>Anglo-Saxon</u>
<b>Lithuania</b>	0.26				
<b>Romania</b>	0.31				
<b>Bulgaria</b>	0.36				
<b>Poland</b>	0.4				
<b>Portugal</b>		0.4			
<b>Latvia</b>	0.41				
<b>Hungary</b>	0.45				
<b>Estonia</b>	0.51				
<b>Spain</b>		0.53			
<b>Slovakia</b>	0.59				
<b>France</b>			0.68		
<b>Germany</b>			0.74		
<b>United Kingdom</b>					0.75
<b>Italy</b>		0.77			
<b>Slovenia</b>		0.98			
<b>Czech Republic</b>	1.04				
<b>Ireland</b>					1.2
<b>Greece</b>		1.25			
<b>Luxembourg</b>			1.39		
<b>Austria</b>			1.49		
<b>Belgium</b>			1.57		
<b>Finland</b>				1.86	
<b>Denmark</b>				1.91	
<b>Netherlands</b>			3.09		
<b>Sweden</b>				3.22	

Again the pattern is clear. In addition to Sissenich's finding of the Eastern European Union members lagging behind, organisational membership is strongest in the Nordic countries, followed by the North-Western EU Member States, and the Anglo-Saxon States, while the Southern States straddle the divide between the North and West of Europe and the East.

### Summary

EU policy does not have the same impact on policy and practice across the European Union. Falkner and Treib (2008) considered four 'worlds' of compliance. The 'world of law observance' is synonymous with the Nordic countries, while the Eastern European countries make up the lion's share of the 'world of dead letters', where EU policy is more likely to be literally transposed but ineffective in enforcement and practice. The world of domestic politics, where transposal may be impeded by domestic concerns, but once transposed EU policy has a marked influence on the practice in the given nation state is primarily found in the North-West of Europe, while the world of transposal neglect is more in evidence in Southern Europe.

The effectiveness of state and civil society institutions is correlated. Effective state institutions co-occur with

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strong civil society institutions. Both our poorest in Eastern EU Member States, followed by Southern EU Member States. The Nordic Member States generally outperform the others, although the North Western and Anglo-Saxon Member States also have relatively high state and civil society effectiveness:

- *Eastern*: Transposal of EU policy: world of dead letters. Lagging state and civil society effectiveness.
- *Southern*: Transposal of EU policy: world of transposal neglect. State and civil society effectiveness better than in the Eastern European Union, but poorer than to the North West of the EU.
- *Anglo-Saxon. North Western*. Transposal of EU policy: world of domestic concerns. Highly effective state and civil society institutions.
- *Nordic*. Transposal of EU policy: world of law observance. Highest level of state and civil society effectiveness.



## **Chapter III**

# **Victim-oriented reform in the legislation and practice of the EU Member States**



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# Chapter III: Victim-oriented reform in the legislation and practice of the EU Member States

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## Introduction

The workstream 1 of Project IVOR had been dedicated to an in-depth understanding of victim assistance practices currently in place across Europe. The aim was to identify practices surrounding the criminal justice system which aimed at supporting and protecting victims of crime in all Member States. After a first review of the existing literature on victim assistance in each Member State, researchers identified some gaps in the knowledge which repeated in many countries. These gaps were in line with some of the articles of the Victims' Directive, namely:

1. Art.2 on the definition of victim
2. Art. 8 & 9 on victim support
3. Art. 12 on restorative justice
4. Art. 17 on victims resident in another Member State
5. Art. 22 on the individual needs assessment
6. Art. 23 & 24 on vulnerable groups
7. Art. 25 on training of professional groups
8. Art. 26 on cooperation and coordination of services

This chapter follows this outline to present the findings of the interviews conducted with a total of 54 experts who contributed to deepen the knowledge on how victim assistance takes place in each of the 28 Member States.

Some limitations of the research must be kept in mind when reading this chapter: experts belonged to different professional groups and shared information from their own perspective and experience. In addition, interviews were mostly conducted in English, possibly creating some obstacles in understanding concrete (legal) terms and concepts. While this chapter includes the data in a comparative form, additional information can be found at [www.apav.pt/ivor](http://www.apav.pt/ivor) (country factsheets and thematic practice sheets).



### Definition of victim (Art. 2)

#### Introduction

In the Victims' Directive it is written that for the term 'victim' the following definition shall apply:

- (a) 'victim' means: (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was 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 of that person's death;

However, in several jurisdictions of Member States the term victim itself is not used to describe the person affected by the crime<sup>5</sup>. If the word victim is used, a clear definition is not always present. If the word victim is not used in national legislation, this may either suggest that a group of victims in a country will have difficulty accessing all the rights appointed to them in the Victims' Directive, but it may also mean that a different term is used with the same implications. Frequently, relevant victims' rights are available to, for instance, the 'injured' or 'aggrieved' party.

In The following chapter, will present an overview of the definitions for the term victim (and/or a similar term) available in the Member States and whether the word victim had the same meaning as foreseen by the Victims' Directive. In addition, an attempt was made to get more insight into the consequences the use of a certain term and definition had in legislation and practice for the group of victims.

#### Labels and Rights in the Netherlands

In the Netherlands, besides as a "victim", there are also other ways to participate in criminal justice proceedings, as witness (*getuige*), as plaintiff (*klachtgerechtigde*), as reporter of a crime (*aangever*) or as injured party (*benadeelde partij*). There are differences between these roles. For example, a reporter of a crime can also be someone who was not a victim and in that case, he or she will not be given as many rights as someone who participates in criminal proceedings as a victim. Someone may also need to be a plaintiff in specific types of offenses for the crime to be prosecuted. This becomes relevant when examining certain privacy sensitive crimes such as stalking: even if the police knows about the case, a victim may say that (s)he does not want the crime to be prosecuted. In other words, the public prosecutor can only prosecute if the victim/plaintiff desires this. Furthermore, a person/victim is labelled the injured party when claims for compensation are in order. Finally, a person may perform the role of witness. As a witness one may have more duties, besides certain rights.

It is very possible to have more, or all, of these roles at the same time. For the most part, unlike in some other countries, the acquiring of certain labels (i.e. plaintiff, victim, injured party, et cetera) is not an official or formal procedure in the Netherlands. Rather, it depends on the activities a person performs. To clarify, if a victim decides to combine a claim for compensation with criminal procedures (*voeging*), then (s)he automatically becomes an 'injured party' as well. As injured party, one is indeed required to fill out several official documents to formally request compensation, but not to receive the label 'injured party'.

<sup>5</sup> i.e. Denmark, Finland, France, Germany, Italy, Slovakia and Sweden.

### Use and definition of the term ‘victim’

As shown in table III-1, most countries include the word victim in their legislation, and provide a definition of the term as well.<sup>6</sup> In Spain, a new Statute was approved on 27 April 2015 that includes a definition of victim as ‘any natural person who has suffered loss or damage on his person or property, physical or mental injury, emotional suffering or economic loss directly caused by an offense’. Before this statute, there was no general definition for victim in Spain and the Spanish Criminal Code spoke about the ‘accusing party’ (*prejudicado* or *parte acusadora*). Implications were that unless the person wanted to accuse the offender and be a party in the process or a witness, no rights were foreseen for such a person. Similarly, after very recent amendments to the Criminal Procedural Code, Portugal has now included the term victim in national legislation. Through the Law 130/2015, of 4 September 2015, it is considered a victim i) the natural person who has suffered harm, including an attack on their physical or mental integrity, moral or emotional damage, or damage to property, directly caused by act or omission, under the commission of a crime; ii) the family members of a person whose death has been directly caused by a criminal offense and that have suffered harm as a result of that death. For this matter, within the concept of victim it is included ‘the surviving spouse not legally separated from persons and property, or the person who coexisted with the victim in conditions similar to those of spouses, descendants and ascendants, in the strict extent that they have suffered damage by the death, except the offender who caused the death’.

According to the Croatian Criminal Procedure Code, the victim of a criminal offence is ‘a person that suffered physical and mental effects for the criminal offence, material damage or substantial violation of fundamental rights and freedoms.’ In Austria, victims are persons who have suffered material and/or non-material damages as a direct or indirect consequence of a crime. In Bulgaria, the Criminal Procedure Code defines the direct victim of crime as a physical person who has sustained material or moral damage from the relevant act. In most countries, the definitions of victim are somewhat similar (see table I-1). Although the word ‘victim’ is also used in British legislation and is indeed accompanied with many rights, in England a victim is not a party to criminal proceedings and hence cannot exercise any rights related to legal representation during court proceedings. A victim’s case will be presented by a State prosecutor and the victim’s role is as witness during the criminal proceedings. In Ireland and Scotland, the description by the Victims’ Directive is explicitly supported under the revised (2015) Code of Practice for Victims of Crime, and it is agreed that a natural person or family member of a deceased person can be a victim whether or not, in either case, a complaint alleging the commission of an offence has been made or any offender has been identified, apprehended, charged or convicted in relation to the offence, and regardless of a familial relationship between offender and victim.

In Hungary (as well as in Germany and Denmark) the term ‘victim’ is used only in the act regarding victim support and compensation. In this definition, the victim is any natural person who has suffered injuries (in particular bodily or emotional harm, mental shock or economic loss) as a direct consequence of criminal acts or misdemeanours committed on the territory of Hungary. In the criminal proceedings act, however, the term ‘injured party’ is used, defined as a party ‘whose right or lawful interest has been violated or jeopardised by the criminal offense’. The expert interviewed would be in favour of using the same expression in these acts, preferable the term ‘victim’, in order to harmonize the different terms and have a unified expression used by all institutions dealing with victims (i.e. victim support services as well as the police, prosecutor and judge). A case in point is made about Denmark, where the word ‘victim’ is also only used in relation to state compensation and support. The expert interviewed mentioned that some people who look for support after having been victimized,

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<sup>6</sup> Austria, Bulgaria, Croatia, Czech Republic, England, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Scotland and Spain.

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frequently do not search with the term ‘victim’ because of its infrequent use. There is also some confusion about definitions in Malta, where victim is defined similarly to what is written in the Victims’ Directive, but is used infrequently in legislation next to the term ‘injured party’. A consequence of this is that there is legal ambiguity regarding whether the rights of the victim are also attached to those designated injured party.

### Direct and Indirect victims

In most countries, a further distinction is made between direct and indirect victims. As written in the Directive, “It is possible that family members of victims are also harmed as a result of the crime. In particular, family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime”. Indirect victims are thus those ones close to the deceased victim, who may make use of the same rights a direct victim can make use of. In Spanish legislation, the indirect victim is defined as the person suffering loss or damage as a consequence of the death or disappearance of the direct victim. By indirect victims, usually the family members of the deceased are meant. According to the Directive,

1. (b). ‘family members’ means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;
2. Member States may establish procedures: (a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and (b) in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

In most countries, indirect victims (i.e. family members) mentioned include a deceased victim’s spouse, a registered partner, people living under the same household, and children. This is mentioned to be the case, for example, in Austria, Bulgaria, Croatia, Czech Republic, and Finland. Including people who live ‘under the same household’ guarantees the equal rights for same-sex and non-married partners as for spouses. However, in Sweden it is recognized that people who do not live ‘under the same household’ may still be counted as indirect victims and may in some situations receive state compensation. This usually depends on the closeness of the relationship between these people (usually family members), which may at times be hard to measure. An Austrian expert mentioned that siblings are included in case of the death of their brother or sister and, together with other further relatives, in case of witnessing the homicide. Siblings and parents are also included in the definition of indirect victim in Finland and Lithuania. In Lithuania, foster parents and children are also explicitly included, as well as spouses of family members. Extended family such as grandparents, aunts, uncles, nephews and nieces are mentioned by the experts from Scotland, although there is no definition in legislation (Victims and Witnesses, Act 2014) of the term ‘victim’. An expert from the Czech Republic also stated that if committal of the crime caused death to a victim, the victim’s relatives in the direct line of descent, a sibling, adoptee, adoptive parent, spouse or registered partner if the person was close may also be considered a victim. If there are multiple such persons, each of them is considered a victim.

Frequently, family members of *survivors* are not included in the definition of (indirect) victim. In the Netherlands, for example, one of the experts stated that it is questionable whether a father who sees something harmful being done to his child is regarded as a victim with rights according to legislation.

### Definition of victim broader than in Directive

In some countries and in specific circumstances, who might be considered a victim and treated as such can be more extensive than the definition that is given in the Victims' Directive. An example of such a country is Austria where in practice, victim support organisations decide when to assist a person even when his/her victimization is not recognized by law. The same is true for the Netherlands: as soon as someone says "I am a victim", (s)he can expect to receive support from the national victim support organisation. In Sweden it is also accepted in several contexts that in order to benefit from victim support there is no need for identification, apprehension, prosecution or conviction of the perpetrator.

In Austria, Croatia, Czech Republic, Estonia, Finland, the Netherlands, and Poland, a distinction is made between natural persons and legal persons, but both may be considered a victim (or in some cases, injured party). In the latter case, the representative of a company or organisation is regarded as the victim in criminal proceedings. Including legal persons in several of the rights gives the term 'victim' a broader definition than is officially required by the Victims' Directive.

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Table III-1: Terms for 'victim' used and their definitions

Member State	Terms used	Definitions
<b>Austria</b>	Victim	Natural persons as well as legal persons [in this last case, the representative of the company or organisation is regarded as a victim]. Material and non-material damages which are a direct or indirect consequence of the crime apply.
<b>Belgium</b>	Injured party; Civil party; Victim	Injured party: a person who claims to have suffered damages as the consequence of a criminal offense.  Civil party: relevant for claims for compensation and additional rights.  Victim: definition aligned to the Victims' Directive [between 2006 and 2013, the definition referred only to rights relevant to the execution of the prison sentence].
<b>Bulgaria</b>	[Direct] Victim	The physical person having sustained material or moral damage from the relevant crime.
<b>Croatia</b>	Victim; Injured party	Victim: a person that suffered physical and mental effects for the criminal offence, material damage or substantial violation of fundamental rights and freedoms.  Injured party: the victim as participating party in criminal proceedings.
<b>Cyprus</b>	Victim	No specific definition of the term victim; Directive's definition will be implemented.
<b>Czech Republic</b>	Victim; Injured/ Aggrieved party	Victim: a natural person who as the result of a crime has or may have received bodily injury, incurred property or non-pecuniary damages, or at whose expense the offender gained from the crime.  Injured party: a natural or legal person to whom the criminal offence caused bodily harm, damage or non-material damage or at the expense of whom the offender enriched themselves through a criminal offence.
<b>Denmark</b>	Aggrieved party	No specific definition of the term victim.
<b>England and Wales</b>	Victim	Somebody who has directly been affected by a criminal offence. A victim is not a party to the criminal proceedings, and will act as witness.
<b>Estonia</b>	Victim [after 15-11-2015]	A natural or legal person, whose legal rights have been directly violated by a criminal offence or by an unlawful act committed by a person not capable of guilt. In case of a crime attempt, a person is also a victim if instead of the attacked legal right, another related legal right is violated.
<b>Finland</b>	Injured party [asianomistaja]	1) The bearer of the legal value protected by the criminal offence and 2) The one who has suffered harm directly caused by a criminal offence.

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<b>France</b>	Partie civil	<p>No specific definition of the term victim; Victim support organisation INAVEM refers to the UN definition.</p> <p>Partie Civil: term used to explain the rights of a victim as participant [civil party] in criminal proceedings.</p>
<b>Germany</b>	Co-plaintiff; Injured party	No specific definition of the term victim.
<b>Greece</b>	Victim; Injured/ Aggrieved party	No specific definition of the term victim.
<b>Hungary</b>	Victim; Injured party	<p>Victim: any natural person who has suffered injuries [in particular bodily or emotional harm, mental shock or economic loss] as a direct consequence of criminal acts or misdemeanours committed on the territory of Hungary.</p> <p>Injured party: a party whose right or lawful interest has been violated or jeopardised by the criminal offence.</p>
<b>Ireland</b>	Victim	<p>[a] A natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence perpetrated against him or her, or</p> <p>[b] a family member of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.</p>
<b>Italy</b>	Offended person; Damaged person	No specific definition of the term victim.
<b>Latvia</b>	Victim	1] Someone who has suffered from a criminal offense; 2] Recognized by criminal justice authorities as a status that comes with rights and several duties.
<b>Lithuania</b>	Victim	A natural person who suffered physical, mental harm or harm to property as a consequence of criminal activity.
<b>Luxembourg</b>	Victim	The one who claims to have suffered damage resulting from an offense. The person who formally reported the [direct or indirect] damage suffered from the criminal offense to police or prosecutor.
<b>Malta</b>	Victim; Injured party	Victim: definition is the same as in the Victims' Directive.
<b>Netherlands</b>	Victim	A natural or legal person who has suffered property damage or other disadvantages as direct consequence of a criminal offense.
<b>Poland</b>	Victim; Injured party	Victim: person whose property or rights have been directly or indirectly violated or threatened by an offence.

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		Injured party: natural or legal person whose property or rights have been directly violated or threatened by an offense.
<b>Portugal</b>	Victim	Very similar to definition used in the Victims' Directive.  Injured party: holder of interests that the law specifically intended to protect with the incrimination.
<b>Romania</b>	Victim	A person who suffered a physical injury or a material or moral prejudice as a result of a criminal act.
<b>Scotland</b>	Victim	No specific definition of the term victim.
<b>Slovakia</b>	Aggrieved party	Any person whose health was aggrieved by the commission of a criminal act or to whom property damage, moral damage or any other damage was caused, or whose rights or legally protected interests or freedoms were infringed.
<b>Slovenia</b>	Victim; Injured party; Applicant	No specific definition of the term victim.  Injured party: a person that due to a violent intentional crime suffered damage.  Applicant: an individual who submits an application for compensation as a victim of a violent international crime committed against him or her.
<b>Spain</b>	Victim	Any natural person who has suffered loss or damage on his person or property, physical or mental injury, emotional suffering or economic loss directly caused by an offense.
<b>Sweden</b>	Aggrieved party; Injured person	Any natural person who has suffered physical, mental or emotional harm or financial loss as a result of a crime.

### No use or definition of the term 'victim'

In several countries, no exact definition of the term 'victim' exists.<sup>7</sup> In Greece, a definition for the general concept of victim is missing but legislation instead includes definitions of the victim depending on the crime, such as domestic violence according to the law "on Domestic Violence and other provisions". These definitions do include as a general component "any person against whom a punishable act is committed". A similar condition is true for Italy, where the term 'victim' is also not used in legislation, unless for specific victims of crime, such as victims of gender-based violence. In the Criminal Code of Greece, the terms 'offended person' (i.e. the direct victim of crime) and 'damaged person' (e.g. family members or witnesses of the crime) are used during criminal proceedings. The word 'victim' is, however, regularly used in the field of psychology in Italy. In Poland, the term 'victim' is occasionally used in the Polish legal literature as a broader notion than 'injured person'. The distinction made is that a victim may also be indirectly violated or threatened by an offense, whereas for an injured/aggrieved person, only direct consequences of the offense are considered. In the law, the term 'victim' is not used.

<sup>7</sup> Cyprus, Denmark, Finland, Greece, Germany, Poland, Scotland, Slovakia and Sweden.

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Of the countries falling in this category, an expert from Cyprus states that the country will transpose the definition of victim that is included in the Victims' Directive. However, it should be noted that an absence of a generic definition for victim does not always mean that the word is never applied in practice or in legal proceedings (e.g. in Scotland), and sometimes other words may be used that serve similar functions as the term victim and are accompanied by the same rights as those reserved for victims. Finland is interesting example of a country that does not use the term "victim" and a specific definition for it, but does in practice and in legislation recognize the group of victims to a significant extent. In Finland, the word "asianomistaja" is well established in legislation and used to indicate the injured party, perhaps best translated in English the person "who owns the case". The injured party is 1) the bearer of the legal value protected by the criminal offence and 2) the one who has suffered harm directly caused by a criminal offence. The term "asianomistaja" is in fact broader than the definition of victim in the Directive. The term "asianomistaja" covers a person referred to in Article 2 of the Directive (a person who has suffered harm as a result of a criminal offence). In addition, the term "asianomistaja" covers a person against whom the criminal offence has been committed but who has not suffered harm as a result of the offence. Also, the term "asianomistaja" covers legal persons.

### [Lack of] specific definitions of victim in Poland and Germany

As noted by experts from Italy, Poland, and Sweden, sometimes adding the definition of the term 'victim' in legislation seems unnecessary because other terms, such as 'offended person' or 'injured party' already cover the relevant conditions and situations of being a victim. In fact, an expert from Poland argued that where rights of indirectly injured persons are concerned, explicit descriptions such as 'family members' or 'relatives' are used. These wordings are considered to be more precise and informative than vaguer terms such as 'victim' or 'indirectly injured'. In Poland, then, there is no intention to introduce the term 'victim' in national law for indirectly injured persons. Other words may serve to cover the contents.

German legislation also generally has no definition for the word victim, which instead depends on the context. The only law where the word victim is literally used is in the Victim Compensation Act, which regulates state compensation for victims and concerns those situations where an individual offender cannot be found. In the criminal procedure code/act, the term "injured party" is used because of the presumption of innocence of the suspect. There is no such thing as 'the presumed victim', but to keep the phrasing neutral, the term injured party is used. However, one of the experts does think that the term injured party in Germany legislation is not as broad as the term 'victim' in the Victims' Directive. The problem, according to this expert, is that there are no general provisions for indirect victims.

Although Croatia does use the term victim, the term 'injured' party is used to indicate the victim as participating party in the criminal proceedings. Similarly, in the Czech Republic the term 'injured party' or 'aggrieved party' is used in the Criminal Procedure Code. An injured party is a person to whom the criminal offence caused bodily harm, damage or non-material damage or at the expense of whom the offender enriched themselves through a criminal offence. While a victim according to the definition in the Czech Republic is a natural person, the

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‘injured party’ can be a natural as well as a legal person. The Criminal Procedure Code gives the injured party rights during the criminal proceedings, mainly about requesting damages from the perpetrator. As for the victim in the Czech Republic, the main rights are linked to the prevention of secondary victimization.

### Procedures to be called “victim/injured party”

It is clear that in general the term victim indicates a group of people who have suffered as a direct or indirect consequence from an offense. This may be the definition that laypeople take up for the group of victims, and is also frequently the broad definition used in criminal proceedings. However, several experts pointed out that in their countries the label ‘victim’ (or ‘injured party’) is only granted by authorities after the completion of several procedural steps.

In Latvia, for example, the term ‘victim’ can refer to someone who has suffered from a criminal offense, as well as to a legal party to criminal proceedings. According to the Criminal Procedure Code, the status of ‘victim’ in Latvia arises from the second definition and is granted by authorities. This means that if one is a victim of a crime but does not refer to any authorities such as the state police or a prosecutor’s office, he or she will not be recognized as a victim of crime. Even when someone does report a crime, it is possible that there are no legal grounds to recognize the person as victim. There are several criteria which the authority evaluates (e.g. specific incident, harm done) before granting the status of victim. Sometimes it happens that someone is not officially recognized as a victim and can only participate as a witness. In the infrequent event that a person does not *want* to obtain the status of victim, the person can also be recognized as a witness instead. In case the status is granted by the authority, the two parties go into a sort of agreement whereby the victim indicates that (s)he understands that (s)he is recognized from that moment as a victim of crime, and that the authority has introduced the victim with the responsibilities and rights that arise from that status. This agreement is a written document signed by both parties, usually by the police officer and the victim. In most cases it is the police officer receiving the report from the victim about an offense who grants the status of victim. In some cases it could be the prosecutor, for example if in the first few days it is not clear who the victim is in the case. A person recognized by authorities as a victim has rights and to some extent several duties. These duties include, for example, to arrive when the authorities ask him/her to arrive or to participate in some investigatory procedures. He or she has to cooperate in the procedures and be available at the address, or contacted through the telephone number, that the victim has given. In other words, the victim must be available for contact.

Lithuania also abides by this twofold definition of the term victim. On the one hand, a person can become a victim after damage or harm is suffered as a consequence of criminal activity. On the other hand, formally a person becomes a victim once (s)he is recognized by a pretrial investigator, prosecutor or a court in a formal decision. This means that currently, access to victims’ rights is only given after a formal decision is made in recognizing the victim status. According to the expert, changes will be made following the implementation of the Victims’ Directive.

In Belgium, as well, the nomination or definition of “victim” is determined in function of the phase of the criminal procedure. In criminal proceedings, a victim may be referred to as “injured party” or as “civil party”.

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The term injured party refers to any person who has suffered as a consequence of an offense. If this person wishes to receive information about any action taken in respect of the report they have given to the police, they have the legal right to register as an injured party (*benadeelde persoon/personne lésée*). To do so, a person submits a declaration to claim that they are an injured party, either personally or through a lawyer, to the police officer drawing up the official report or later at the police station, or to the secretariat of the public prosecution service in person or by sending a registered letter. Persons will receive a template for making such a declaration when they receive the document confirming that they have made a report to the police. As an injured party one has the right to receive information in writing about the decisions taken by the public prosecutor (for example, a decision to close the case and the reasons for this, or a decision to start a judicial investigation) and the date of any hearing before an examining court. Additionally, one has the right to add any document deemed useful to the file, and to request access to the file and to obtain a copy of it. If someone registered as injured party wants to make a claim for damages, or obtain further rights, this person must enter a claim as a “civil party” to the criminal proceedings (*burgerlijke partij/partie civile*). This can be done by submitting an express declaration personally or through a lawyer at any stage of the proceedings. As a civil party one can request access to the case file and obtain a copy of it, ask for additional investigative steps to be taken, claim damages, bring legal challenges against the decisions reached, and be consulted and informed regarding the execution of the imprisonment of the offender. Both as a civil party to the criminal proceedings and as an injured party, persons have the right to be represented by a lawyer during contact with the authorities. Investigations are confidential and it is not possible for the victim to be present during the investigation (e.g. for the questioning of the suspect), except where there is a visit to the scene of the crime in order to carry out a reconstruction, in which case a civil party may be present.

### Distinguishing the victim/injured party

In the case of certain rights, a further distinction between victims may be made, such as between the ‘normal’ victim and the especially vulnerable victim in need of extra protection (see also, the section on vulnerable groups and the individual assessment). For example, in Bulgaria, the only victims who have the right to assistance and compensation are victims of terrorism, premeditated murder or grave bodily injury, rape, human trafficking crimes, and other serious (carrying a punishment of more than 5 years of imprisonment) premeditated crimes as a legally stipulated result of which death or grave bodily injury have occurred. In Spain and Portugal for example, even before the implementation of a general definition for the term ‘victim’, several groups of victims, such as victims of gender-based violence, already enjoyed protection rights under specific laws.

In Croatia, an expert also stated that the rights of victims of crime can be divided between the basic rights applicable to all victims of crime and those rights which apply to certain categories of victims or victims of certain type of crimes. Another interesting example is to be found in Germany, where there are two different groups of victims depending on the crime.<sup>8</sup> In some cases a victim can only be a witness in the criminal process and in others a victim has the right to be co-plaintiff, or ‘accessory prosecutor’ as one of the experts prefers, in the criminal proceedings. In which group a victim falls is again dependent on the distinction between non-vulnerable and vulnerable victims, where those who have become a victim of a sexual or extremely violent crime may have the right to be co-plaintiff. These different victim statutes are connected to different victim rights. A victim who is co-plaintiff is entitled to special victim rights, for example, being informed about the criminal proceedings,

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<sup>8</sup> Note: The word ‘victim’ is used in the text although it is recognized that there is no legal definition of this term in the legislation of Germany. Victim is spoken of in the non-legal sense of the word.

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inspecting the files, being allowed to ask questions, etc. There are some differences between the rights of victims and witnesses. Only a victim acting as co-plaintiff is allowed to be in the courtroom from the beginning of the trial to the end. As one expert summarized it, victims of ‘petty crimes’ (i.e. given the status of witness) only have the standard protection rights and rights to victim support and victim counselling, whereas the far-reaching procedural ‘active’ rights are only available for the accessory prosecutors/co-plaintiffs. A witness is only allowed in the courtroom from the time she/he is called in. This makes sure the testimony is not conflicted by information the witness could hear while being in the courtroom from the beginning. But the witness can stay in the courtroom after its testimony until the end of the trial as long as the trial is open to the public. So in Germany, a victim is always an aggrieved person but not every aggrieved person has the rights of a victim who acts as co-plaintiff. As a co-plaintiff you have the victim rights which are, for example, the right to read the file, being informed about the proceedings and being allowed to stay in the courtroom during the criminal proceedings, being allowed to ask questions and reject the judge because of bias.

### Plans of implementation and strategies<sup>9</sup>

As stated previously, Cyprus is one of the countries that aims to implement the same definition used by the Directive. However, there are also countries who do include the term ‘victim’ in their current legislation but wish to expand this definition as a consequence of the guidelines of the Victims’ Directive.

In Estonia, the current definition of victim is “a natural or legal person to whom physical, proprietary or moral damage has been directly caused by a criminal offence or by an unlawful act committed by a person not capable of guilt.” After the deadline of the 16th of November, 2015, the definition will be changed into: “A natural or legal person, whose legal rights have been directly violated by a criminal offence or by an unlawful act committed by a person not capable of guilt. In case of a crime attempt, a person is also a victim if instead of the attacked legal right, another related legal right is violated. Victims are also family members of a person whose death was directly caused by a criminal offence or by an unlawful act committed by a person not capable of guilt and who have suffered harm as a result of that person’s death”. We see here that the previous distinction of direct and indirect victims, but also the phrasing of “suffering the direct or indirect consequences of a criminal offense” have been incorporated in the newer definition of victim in Estonia.

In the Netherlands, a broad definition of the term victim is already in place and all groups mentioned in the Directive are currently included in the definition, except “persons dependent on the victim”, such as foster children. This is something that the Netherlands will change in the near future to make their legislation correspond to the Directive.

### Conclusions

Whereas not every country uses the exact term ‘victim’, most either do or use similar phrases that are accompanied with a definition closely resembling that which is included in the Directive. Several experts have

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<sup>9</sup> Note that interviews were conducted in a period of several months before the official implementation deadline set by the Victims’ Directive of November 16th, 2015.

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mentioned that their countries have changed, or intend to change, the definition of victim to adhere to the one included in the Victims' Directive. Taking a look at some Member States that have many victim' rights in place but lack an exact definition of the term victim, it may not be the exact wording that it is of the most importance, but rather the semantics of these terms. Clear definitions do, however, make the law more accessible to lay people and give those who have suffered as consequence from an offense a better idea of what rights they may count on and what role they may play in criminal proceedings. This chimes with the view of some of the experts that a Member State may comply with the Victims' Directive without the establishment of a definition of the term victim, but that a legal definition may contribute to better support of victims. The legal definition creates awareness about the understanding of the term victim and about the fact that this is an international term established in legislation which is applicable in a country. In this way it contributes to creating awareness about the Victim' Directive, as well as the other rights for victims that are contained within it. A definition in domestic law might be preferable because it advocates a view in which the Directive is given a clear and concise transposal.

### Victim Support (Art. 8 & 9)

#### Introduction

One of the three main components of victim assistance that is specifically mentioned in the title of the Victims' Directive is victim support. Article 1 of the Victims' Directive states that "Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with *victim support* or restorative justice services or a competent authority, operating within the context of criminal proceedings". As organisations that frequently operate outside or in cooperation with the criminal justice system, without necessarily being one of the components of that system, victim support organisations can serve an important mission for victims. Article 9 of the Victims' Directive prescribes the minimum standards of the support that should be offered, and in article 8 of this Directive the right to access to and support from victim support organisations is communicated.

Many EU countries have several organisations, state-funded or as NGO, that provide general and/or specialised help to victims. There are also smaller organisations limited to certain regions or limited to certain categories of victims of crime.

While a relatively large amount of information is available on victim support, for the purpose of this chapter, experts were asked to provide more detail about the accessibility of it, the cooperation between different services, and the type of support provided in the Member States.

#### Providers responsible for victim support

Experts mentioned that victim support services are organized by the government (either at the national, regional or provincial levels) or by NGOs (nationally or locally distributed). Most national experts named multiple victim support organisations providing support to victims of crimes in their country. If this is the case, then the government is most likely to organise or fund the general (nation-wide) victim support organisation, while the local and specialist services experience less involvement from the government. Even when victim support services are not organised by the government, the government frequently plays a role by providing (part of) the funding for these services.

Whereas funding may be an obvious marker of the difference between governmental and NGOs, a Spanish expert mentioned another important difference between those organisations. In Spain, a major difference between the state-provided services and the NGOs is that while the first ones are legally recognised and must follow a series of regulations, the last ones depend on the sensitivity of local workers and are not obliged to follow any training or standard measures. A risk of the services that are provided by different institutions that was mentioned by a Swedish expert is that it may create a gap of responsibility of the state and municipalities and the fact that NGOs provide these services.

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### National governmental providers

A country where the government takes on a significant role in providing victim support services is Sweden. The Swedish Crime Victim Compensation and Support Authority (*Brottsoffermyndigheten*) aims at assisting victims of crime and raising awareness about their rights and interests. It mainly deals with compensation and legal matters. It is subordinated to the Ministry of Justice and led by a Director-General appointed by the Government. Victim Support is also a governmental institution, but it deals directly with victims giving them counselling. For example, in Gothenburg the Victim Support has the office inside the newly constructed court.

#### An umbrella victim support organisation in Sweden

In Sweden, there are hundreds of voluntary organisations providing victim support thanks to about 8000 members. These organisations belong to the umbrella-association 'Victim Support Sweden' which started in 1988. In general, they are well organized. They work with volunteers that dedicate about 80000 hours a year to assist victims of crime. These volunteers are called 'support persons' and they listen, give advice and share experience. The time invested with each victim of crime depends on the individual victims' needs. Access to victim support is facilitated by the availability of services (about 100) all over the country.

In Croatia, victim support is nationally organized by the Ministry of Justice - *Independent Service for Victim and Witness Support*, which coordinates the 7 'Victim and Witness Support Offices' at the regional courts. Victim support in Croatia is also provided and evaluated by the following institutions: Departments for Victim and Witness Support at County Courts; the National Call Center for Victims of Crime and Misdemeanour; and the Committee for Monitoring and Improvement of Victim and Witness Support System.

In Hungary, as mentioned by the respondent, the whole victim support system is supervised by the Ministry of Justice. Victim Support Services are the governmental organisations dealing with all victims of crimes. In Luxembourg, the *Service d'aide aux victimes* is the only governmental victim support public service (part of the general public prosecutor's department). Victim support services are well organized in Luxembourg thanks to the closed collaboration with the Ministry of Justice. The respondent from Czech Republic included also another institution having a role in supporting victims of crime: the Probation and Mediation Service, which is a state-founded body responding to the Ministry of Justice.

In general, as it will be seen, these national governmental providers act as umbrella-organisations for local services or rely on NGOs working in direct contact with victims of crime.

In Romania, the activity concerning the victim's support (psychological counselling) is regulated by Law no.211/2004 and is provided by Victim's Protection Services and reintegration of offenders functioning pending County Tribunals (41 tribunals).

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### Local/regional governmental providers

Across Spain, there are '*Oficinas de Asistencia a las Víctimas de delito*', offices of assistance to victims of crime. These are regulated in the new Statute, especially in terms of coordination of these services. They are mostly financed by the State, but the distribution of funding for justice depends on each community. If medical support is needed, the *Oficinas* refer the victim to the health services, '*SAMUR - Servicio de Asistencia Municipal de Urgencia y Rescate*' (the emergency service assisting victims at first) and/or the institutes of legal medicine.

In Belgium, the '*Communities*' (Flemish, Walloon and German) are the competent authorities responsible for the organisation of victim support. Since the 1st of January 2015, the Houses of Justice, including the assistance of victims during the criminal procedure (*slachtofferonthaal/accueil des victimes*) were also transferred to the Communities.

### NGOs providers

Several experts explicitly mentioned little cooperation with, or funding from, the government when it comes to victim support services. For example, in Latvia there is not one general (nation-wide) victim support organisation and the specialised victim support organisations in Latvia are mostly not financed by the State (except psychological support for children in some cases). Some organisations are financed by the European Commission through different projects. However, these funded projects are often related to specific types of vulnerable victims or specific themes, thus, even if good practices are in place, these terminate with the end of the project and are not accessible to other types of victims. Within those limits, organisations were said to be inventive with how to work with little financial means to achieve their mission.

Also in Cyprus, NGO provide (general or specialised) victim support, such as the 'Domestic Violence Association' and 'Hope for Children', both operating victim help lines and shelters. In Austria, victim support is well organized and appropriate for all victims of crime. There are two main organisations for generic victims of crime providing victim support: *Opfernotruf* (victims' emergency number) and *Weisser Ring* Austria (an NGO).

In Portugal, APAV (Portuguese Association for Victim Support) is the only national non-governmental organisation in the country that provides support, free of charge, to victims of crime, their family and friends. As a voluntary based organisation (around 250 volunteers each year), APAV has a range of twenty one different services available to victims: fifteen local victim support offices; three specialised networks (support to family and friends of homicide victims, support to migrant victims and support to children and youngsters victims of sexual violence); two shelters for women and children victims of domestic violence; the 116006 helpline for victims of crime. Throughout the years this organisation was able to build a funding structure characterised by a wide variety of sources, not depending solely on the State funding.

In Malta, the NGO Victim Support Malta is the only victim support service in the country. They also do not have automatic funding by the government. There are other services, such as a social worker agency that has a domestic violence unit, but they do not meet the criteria for being a victim support service and are mostly considered 'social work' services.

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In Croatia, there are also several NGOs providing support to victims of crime, but these are not coordinated at the national level and they provide services by their own. In Hungary, besides victim support services, there are quite a few NGOs dealing with crime victims. NGOs are adjusting to local specificities, opportunities and activity, thus being able to reach a wide range of people. The most important NGOs in this theme are the *Fehér Gyűrű Közhasznú Egyesület* (the White Ring Association), charities like Red Cross, Maltese Charity Service and specialised organisations (e.g. Street Caregivers).

Other experts mentioned victim support services as NGOs that are funded by, or work together with, the government. For example, in 2015 there were 26 NGO's in Poland providing support with use of *The Fund for Crime Victims and Post-penitentiary Support*, which is national purpose fund created on the basis of article 43 of the Executive Criminal Code of 1997, and another 15 financed from *Norway Grants*. All of them provide support in the whole country. The support is given not only in the residence places of the NGOs but also in their branches. That means that support is provided in about 290 places. The support given with use of *The Fund for crime Victims and Post-penitentiary Support* started in 2012. Year by year there are some changes and the system is being improved. At the moment all regulations regarding the Fund are found in the Regulation of the Minister of Justice on the Fund of the Crime Victims Support and Post-penitentiary Support of 6th of February 2014. The regulation determines the operation of the Fund and provision of services to people affected by crime.

In Spain as well, several organisations provide victim support together with multidisciplinary teams at the justice department, state security corps (i.e. the police), departments of social welfare (i.e. institute for women, children and the elderly), municipalities, health departments (emergency service, psychiatric and mental health departments), communities, education and employment services, and NGOs.

### Types of victim support

In general, emotional, legal, medical and financial support is provided to victims of crime. In Italy, where victim support services are often provided by ex-victims or volunteers, specific medical and psychological support is provided by public institutions. An expert from Germany emphasized that in this country every victim gets the support needed, but that one should keep in mind that there are differences regarding the kind of support. Sometimes it is enough just to listen and be there and maybe offer some advice. Sometimes there has to be financial support or legal support or some other kind of material help as well as psychological help. Most Member States seem to have organisations that offer general support and organisations that offer specialised support.

### General support

Some Member States still lack a general, nation-wide, victim support organisation<sup>10</sup> providing support to generic victims of crime. In Italy, several organisations provide victim support for generic victims of crime at the regional and provincial levels, mostly in the centre and north of Italy (Lazio, Emilia Romagna, Lombardia and Piemonte). There is no national victim support service yet, but there is an open debate to establish one in order to be in line with the Victims' Directive. Similarly, in Greece there is a lack of resources for generic

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<sup>10</sup> Italy, Lithuania, Latvia and Greece.

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victim support at the national level. According to the expert, due to the financial crisis, there are no funds for the establishment and function of the victim support services as described in the Victims' Directive. In Latvia, two organisations originally dealing with vulnerable groups only, *Society Skalbes* and *Marta*, are now welcoming other categories of victims and people in need<sup>11</sup>.

Other Member States, instead, seem to have a well-established victim support service for all victims of crime. In Croatia, for example, the Departments for Victim and Witness Support at County Courts provide emotional support, information about the rights and practical information to victims and witnesses. In Luxembourg, the *Service d'aide aux victimes* is open to all kind of victims of offences and it offers psychological and psychiatric help to victims of offenses. In Finland, Victim Support Finland is the organisation that provides general support.

In Denmark, there are various organisations that provide victim support: Victim Support Denmark, *Konfliktråd I straffesager* (Victim-Offender Mediation) and *Hjælp Voldsofre* (Victim support). Victim Support Denmark consists of a board of civilians in all twelve police districts in Denmark. Neither Victim Support Denmark nor *Konfliktråd* offer medical or financial support but *Hjælp voldsofre* is able to finance support. It is the state that offers medical help and financial help. All victims of a crime are offered help to apply for compensation from the state.

### Specialised support

It seems that even when no nation-wide organisation dealing with generic victims of crime is existent in a Member State, there are frequently still multiple specialist organisations that offer support to specific groups of victims, most commonly victims of sexual or domestic violence.

In Croatia, for example, the expert stated that there are many NGOs helping in this field and it is not possible to say which the main ones are. Some examples include the White Ring, *InIustitia* (victims of hate crimes), ROSA, ProFem, RIAPS, *Persefona*, and *Adra* (victims of domestic violence). The type of support that is offered are social, legal and psychological support.

Likewise, although there is no generic victim support organisation in Greece, there are still support services offered for certain types of victims and victimization. There are many organisations for the protection of certain kinds of victims, such as family violence victims, child victims, and victims of trafficking. In Greece, emotional and medical support is provided, but not financial support to the victims. The latter is provided by special laws on the financial compensation.

In Ireland, the Victims of Crime Office provides funding to organisations providing front-line support to victims of crime including to tourist victims, those affected by homicide and general volume crime. Specialist services are available for those affected by domestic and sexual violence. Support services for victims of domestic violence are delivered to men and women by different organisations.

The Bulgarian 'Association of Organisations Supporting Victims of Crime' provides information on the activity of its constitutive organisations in the different regions. It includes the Foundation for Assisting Victims of Crime and Combating Corruption, Nadya Centre, ACET, the Bulgarian Gender Research Foundation and

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<sup>11</sup> See below under 'specialised support'.

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other organisations for the purpose of electing a standing representative in the National Council for Assistance and Compensation of Victims of Crime.

Even in Member States where generic support is provided at the national level, specialised services are provided for certain categories of victims. This is the case in Luxembourg, for example, where there are other services specialised in specific domains (e.g. mistreated children, women) such as: *Femmes en Détresse*, *La Main Tendue*, and *Alups*. These are private organisations, but also free of charge services and accessible to all victims. Also in Portugal, there are non-governmental organisations providing support to women and children victims of violence and some municipalities developed locally specific offices for supporting victims of domestic violence.

In Finland there are also organisations providing specialised support for certain categories of victims such as: National Women's Line, Federation of Mother and Child Homes and Shelters, Rape crisis center Tukinainen, HUOMA for friends and relatives of homicide victims, Pro Centre Finland for sex workers in certain regions, Monika Multicultural Women's Association for guidance for immigrant women, Finish Association for Mental Health with SOS crisis center. These are the main organisations providing support for victims of crime. In addition to these, there is *Suvanto* - For A Safe Old Age, an NGO that strives to raise public discussion about the abuse of the elderly, help elderly people and those close to them in times of need, and to prevent abuse of the elderly. Also worth mentioning is the national assistance system for victims of trafficking coordinated by the *Joutseno* reception centre. This service is funded and organized by the government.

In Lithuania, several organisations provide victim support for victims of specific categories of crimes, such as the 'Children Support Centre' (for children victims of domestic, physical, sexual or psychological violence), the 'Crisis Centre' (for victims of domestic violence) and 'Caritas' (for victims of human trafficking and prostitution). Victim support organisations provide legal, financial, social and psychological support but in practice the main focus is on legal and social support. Only the Children Support Centre gives attention to psychological support. Although there are several specialised organisations, there is not one general victim support organisation. This means that if generic victims of crime want to receive general information, they can ask for help to these organisations, but if they ask for special assistance this is not possible. The National Court Administration has started a project with *Norway Grants* in order to improve the quality of services for victims and witnesses in court.

In Latvia, centre *Dardedze*, *Society Skalbes*, and *Marta* are well-known organisations. *Dardedze* is mostly specialised in support for children, including children who are victims. *Society Skalbes* mostly act as a crisis center; they provide psychological services for victims but also for other people in need. *Marta* is mostly meant for victims of domestic violence; although their title still says 'for women', they deal with all victims, also male victims. *Safehouse* is an additional specialist organisation working mainly with victims of human trafficking.

In Romania, Victim Protection Service provide support only to victims of serious crimes committed with violence, sexual crimes, trafficking in human beings, etc. Access to psychological counselling is free and is provided for a period of 3 months and of 6 months for minors.

In Italy, experts emphasized the existence of many victim support services for specific victims of crime; for example, the South of Italy offers support to victims of mafia, organized crime, extortion, human trafficking, sexual harassment and terrorism.

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### Compensation and providers of specialised care in Estonia

In 2007, the Victim Support Act was changed and since then a victim of an offence not resulting in death, serious damage to his or her health or disability lasting for at least six months, has the right to receive compensation for the cost of psychological care in an amount equal to up to one minimum monthly wage. In 2013, the sum is 320€ per person. The compensation can cover counselling, psychotherapy or attending a support group. Children, parents and grandparents and other family members (specified in subsection 22 of the Estonian Social Welfare Act) of a victim of any offence are also entitled to the compensation if their ability to cope has decreased due to an offence committed with regard to the victim. Compensation shall be paid in an amount equal to up to one minimum monthly wage per family member, however, not more than in an amount equal to up to three times the minimum monthly wage per family. The application for the compensation for costs with of psychological care has to be filled within one year after the crime. A person may turn to victim support at any point.

In practice, a victim comes into contact with the victim support specialist and there is a questionnaire that shows the need for psychological care. Then the victim support specialist seeks out the proper service provider. According to the Victim Support Act, the provider of the specified care needs to match up to certain standards:

- Is registered as an health care professional with the Health Board or as a clinical psychologist or a school psychologist in the register of professions;
- Operates as a sole proprietor, is in employment or law of obligation relationship with a sole proprietor or legal person holding an activity license for providing specialised psychiatric care;
- Whose activities as specified in the articles of association include provision of the psychological counselling, psychotherapy or support group services.

The problem with the providers is that not every specialist is qualified due to the above-mentioned reasons. Therefore, there are areas in Estonia where they don't have specialised helpers who could provide the service to the victims. Since the victims are often in poor financial condition, travelling to receive specialised support takes extra money they may not have and it can be time consuming.

### Safeguards in victim support

The Victims' Directive mentions several criteria that victim support in Member States should adhere to. According to article 8 of the Directive, "Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings". Family members should also have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the

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criminal offence committed against the victim. In Denmark, according to the respondent, all these provisions are in place. A Belgium expert also stated that the victim assistance organized by the Communities is free of charge, confidential, does not exclude categories of victims, and is accessible for family members of the victim. In Poland, there was also no mention of criteria that excluded certain types of victims or their relatives.

### The function of Victim Support Finland

The main function of Victim Support Finland is to provide support to victims of crime, as well as family or close friends and to witnesses. Witness support is not widely available at this moment; it only works in some regions and this is something that Victim Support Finland would like to expand on but it has not had the resources to do so far.

Victim Support Finland provides advice by phone, through help line systems as well as a legal helpline where volunteer lawyers answer the phone 2 hours from Monday to Thursday. The normal helpline is open from Monday to Friday until 9 pm. There is also information on the website and a chat service. People can send written questions concerning their situation as victims, or legal issues. It is an anonymous system where victims do not have to give their names. This goes for all the Victim Support Finland services so that victims do not need to give their personal identification if they do not wish to do so.

In addition to these services, Victim Support Finland has 300 volunteers all over the country who work as support persons to victims of crime. This means that the volunteers can take part during the initial police investigations. Support by victim services can start already at the moment when the victim wishes to report the crime to the police. At this point the support person can already join them, and take part in the investigation, go to court with the victim, etc. They can support them throughout the whole criminal proceedings. The support person does not work as a legal advisor, but provides support regarding practical issues and psychosocial assistance.

## Access to victim support

According to the Victims' Directive, "support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution across the Member State to allow all victims the opportunity to access such services" (par 37). The following section discusses these possible obstacles to the accessibility of support services, with a focus on the referral procedures and coordination measures across Europe. In general, if access to victim support is problematic, the lack of funding has been mentioned as the main reason (Spain, Italy, Greece). In Italy, the lack of specific victim support services is balanced by a general 'Italian culture of assistance' provided by the State in terms of social services and public institutions.

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### Referral procedure

In many cases, victims are referred to victim support services by the police.<sup>12</sup> In Denmark, victims are informed and referred by the police to Victim Support Denmark, as well Victim-Offender Mediation. The Police have the administration role for both victim offender programmes and victim support services. In Sweden, every victim support centre helps more than 40000 victims of crime a year and approximately half of them are referred by the police. The other half contact the victim support centres on their own. Victims who report crimes to the Irish Police are given a list of services available to them, including a national Crime Victims Helpline and relevant local and national support services. In the Netherlands, a very proactive approach is taken when it comes to offering support to victims of crime. The police officer who is the first to have contact with the victim will offer the victim a form (electronically or on paper) that requests the victim to indicate if the victim *does not* want to be contacted by victim support services. This way, the default option is that Victim Support Netherlands will contact the victims to ask if they need support.

#### Referral to victim support in Scotland

Victim Support Scotland is the main and only provider of support in Scotland available to any and all victims of crime. Other agencies that provide victim support in Scotland focus either on particular groups of victims or types of offences. Victim Support in Scotland is well organised. It is run nationally with a local presence in each Local Authority Area, and is available to all victims in all parts of Scotland. They have around 100 staff and 750 volunteers. Victim Support accepts referrals from anyone, including the victim directly. For crimes that have been reported to the police, the police facilitate referrals to Victim Support Scotland. However, the referrals they do receive from the police varies by area, and some areas do not receive certain crime types, such as domestic and sexual offences. It is expected that when the new IT system comes into place, that will be the case for the whole of the country where they do not receive referrals for such crimes.

They are currently in the midst of setting up a protocol for receiving murder referrals. Currently, Victim Support Scotland feels that the cooperation between victim support services and criminal justice authorities in Scotland is very good.

In Poland, victims of crime have access to legal and psychological support which is given automatically during criminal proceedings. The *'First Contact Supporter'* and lawyer or psychologist decide for how long support should be given to a victim. In Germany, victims are not contacted by a victim support organisation. The victim has to decide if she/he wants to have contact and then has to contact an organisation. Also in Austria, the police or prosecutors inform the victim and the victim has to take the initiative: there is no automatic referral procedure.

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<sup>12</sup> Denmark, Sweden, the Netherlands and Ireland.

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### Access to victim services in Portugal

As is the case in some of the other Member States, local offices and networks of victim support in Portugal do not cover all the territory and some areas are not protected in terms of direct face-to-face support. This is something that has so far not been signaled by the government. The respondent mentioned funding also as something problematic in terms of accessing to victim support. Most important, according to the expert, is the provision of information: in Portugal, they have already had in place legal provisions concerning information, but they were not being respected. There is no strategy that ensures that every victim of crime, regardless of the specific place in the country where the victim reports the crime, and of the authority with whom the victim gets in touch to make a complaint, receives the same package of information. A good practice would be that criminal justice authorities, in cooperation with victim support and the government, ensure that this information is provided on a standardized basis.

In 2010, the Portuguese Association for Victim Support applied to the Criminal Justice Programme of the European Union, with Project Infovictims<sup>13</sup> in order to tackle the problem and mitigate the difficulty of victims to access information about the criminal justice system, its proceedings, the role expected from them and the services available to support them in the aftermath of crime. Project Infovictims was widely disseminated and rapidly the interest of other Member States grew to implement in its own countries the materials developed under the project. The Project reached Portugal, Germany, Poland, Scotland, Austria and Czech Republic and indirectly is contributing to increase the victims' confidence in the criminal justice system.

### Geographical limitations

Frequently, specialised services and smaller NGOs may be hard to access due to the small geographical region in which they operate<sup>14</sup>. An expert from Sweden stated that there are problems in the practical implementation across the country in the provision of victim support. One of the reasons for this is that the coverage of victim support across all the country is an issue; there is an uneven distribution of services. This has a lot to do with the geographical characteristics of the country: Sweden is large but mostly very long country with a small and rather dispersed population. In Greece, there are services even in the big cities of the regions that cover the geographical area of the region, though there are no support services in every village. Another expert also acknowledged that this is also the case in some remote areas of Austria where services are more limited than in the capital city of Vienna. Similarly, in Latvia, the organisations are mostly based in Riga, which means that, due to limited access, regional parts of Latvia are not very well covered. In some rural parts of Germany it might also be difficult to get access to a specialised victim support service. But there are victim support organisations, as the *Weisser Ring* (White Circle), which offer help to all victim groups and cover every spot in Germany. There are also other helplines such as *Hilfetelefon Gewalt gegen Frauen* (The violence against women support hotline) or the *Hilfetelefon sexueller Missbrauch* (Helpline sexual abuse). Similarly, in Portugal, APAV is in charge of the 116 006 – the Helpline for Victims of Crime. Working since May 2015, the helpline counts with the collaboration of a group of highly trained and qualified volunteers that, based upon a detailed script,

<sup>13</sup> More information about Project Infovictims is available on the practice sheet on Cooperation and Awareness available at [www.apav.pt/ivor](http://www.apav.pt/ivor) and/or at the project website <http://www.infovictims.com/com/index.html>.

<sup>14</sup> Austria, Sweden, Germany, Greece and Latvia.

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gathers information about the victimization, provides emotional support, develops a safety plan, in accordance with the victims' needs, and refers to the victim support offices or other services.

### For specific categories of victims

Accessibility for some kinds of victims is problematic. For Sweden, the groups mentioned consisted of several vulnerable groups such as those that have suffered hate crime or honor related crimes and LGTB (lesbian, gay, transsexual and bisexual) groups. An expert from Denmark also mentioned that accessibility for certain groups of victims is a concern. Women with an ethnic background are (legally) isolated. Both experts from Denmark and Greece mentioned that dealing with psychiatric victims is also problematic. An expert from Finland stated that the biggest challenge may be referring cases to victim support services: statistically and looking at the gender (im)balance of referred victims, there must be a big number of victims who do not hear of the possibility of receiving support. The police may be less proactive in informing and referring male victims to victim support services than they are for female victims. Still, mostly the difficulty in accessing these types of victims is not because there is an unwillingness to approach these victims but because they are difficult to reach or hard to identify. It is mostly mentioned that there are no specific exclusion criteria for receiving victim support. An expert from Austria mentioned that even prison inmates can have access to victim support, meaning that previous offending is not an exclusion criterion.

None of the experts mentioned that in their countries, in those cases where victim support services were available, victims needed to provide proof that they had been a victim before they could gain access. An expert from Poland stated that to receive support, a crime victim is not obliged to prove that he or she is a crime victim, but it is sufficient to substantiate (make it plausible). Amendments on the law in Bulgaria also foresee that access to victim support services should not depend on the victim's formal complaint to the police. Likewise, in Austria there is no need of an official complaint from the police in order to have access to victim support: the Austrian system makes sure that victims can receive support before any official procedure or act takes place.

### Coordination between different victim support services

Clearly, many, if not all, of the Member States have multiple organisations that provide (specialised) support to victims to some extent. Experts frequently mentioned, however, that there is a notable lack of coordination and/or cooperation between these different services<sup>15</sup>. In Denmark, it was stated that there is no coordination between the different organisations that deal with victim support. This may partly be a consequence of the fact that NGOs can start victim support organisations and offer support without necessary interference of the government of local authority. The Danish Police does, however, facilitate the main organisations Victim Support Denmark and Victim-Offender Mediation (*Konfliktråd*). In Poland as well, all NGOs work independently. Each NGO has contact with the relevant authorities locally and in their own way. In Lithuania, there is both a lack of victim support services as well as a lack of cooperation between institutions and NGOs. In Greece, there is also generally little coordination between the victim support organisations.

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<sup>15</sup> Denmark, Poland and Lithuania.

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### Coordination of victim support services for domestic violence in the Netherlands

Besides the main general victim support organisation in the Netherlands, Victim Support Netherlands (*Slachtofferhulp Nederland*), there are several organisations that provide specialised support, such as *Steunpunt Veilig Thuis* (Support point 'Home Safely'; previously *Steunpunt huiselijk geweld* translated as 'Support point Domestic Violence'). These support points operate in the whole of the Netherlands; care is coordinated but also given by those organisations themselves. However, these organisations are not all the same: some are real organisations that provide extensive services, while others consist of only one man or woman with a phone. They provide support for victims of domestic violence, whereas Victim Support Netherlands does not take on many of these cases. According to the Dutch victim support expert, these crimes are in a way more complex because a whole system is involved and victim and perpetrator know each other. Victim Support Netherlands does not have the tools to deal with this extensively: they cannot act as mediators in a family, though they can provide some general social support and some judicial support (e.g. apply for a restraining order).

## Conclusions

It is not an easy task to map the current victim support providers across Europe. The Project IVOR attempted to identify how such services are initiated (governmental or non-governmental institutions) and at which levels (at the national, regional, and/or local level), what type of support is given (general or specialised), how the referral procedure takes place (in terms of information, awareness and coordination of services) and what are the limitations for victims to access these services.

Certain results often repeat across Member States. For example, few Member States are able to provide generic victim support services at the national level; mostly, victim support is either present at the regional or local levels or it deals with specific categories of crime, limiting access to other victims of crime. The lack of funding seems to be the main reason for this constraint of services, but respondents also identified other problems, such as the lack of coordination between victim support services (which is surprisingly better with criminal justice authorities, i.e. the police) and the lack of awareness about victims' rights and needs (which remains the main responsibility of NGOs working with victims of crime). Victim support is also influenced by external factors (see also Chapter II), such as the territorial division of larger countries which makes it difficult for certain victims to access services and for the state to evaluate and monitor them.

### Restorative Justice (Art. 12)

#### Introduction

Among other lacunas and issues concerning the legal and practical implementation of the Victims' Directive, the Project IVOR identified conceptual misunderstandings about restorative justice as well as practical problems to grant access to restorative justice services, despite the fact that a clear definition and the benefits of restorative justice are mentioned in the Victims' Directive.

The fact that for some experts it was needed to further explain what restorative justice is about shows a certain unfamiliarity with the term and the practice, a possible consequence of the minor attention given to restorative justice in the Victims' Directive. This could be considered a finding by itself, leading to the conclusion that, in order to move forward with restorative justice practices, it is needed to adopt more than legal safeguards to protect victims of crime.

Another finding relates to the gap between legislation and practice. The presence of restorative justice (or mediation) in national legislation does not automatically imply that services are available and/or competent in the given Member State. Additionally, the fact that the referral procedure is not described in the Directive leaves room for an implementation failure of the services. Informing victims about restorative justice, training practitioners to give safe and competent services and listing the conditions for protecting victims for further victimization is not sufficient for granting access to restorative justice services.

In the interviews with the experts, questions were asked about definitions, practices and accessibility to restorative justice services. Below the information collected during the interviews is presented: first, a section is dedicated to the way restorative justice is understood and presented in national legislation and practice; second, given the protection measures listed in the Victims' Directive, a section is dedicated to the legal safeguards protecting victims of crime (as well as offenders) when restorative justice services are provided in different Member States; the final section describes how access to restorative justice is given to victims across Europe.

#### (Mis)understanding restorative justice

According to Art. 2 (1d) "restorative justice' 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 criminal offence through the help of an impartial third party'. This is a broad definition which leaves room to a range of different services (i.e. 'victim-offender mediation, family group conferencing and sentencing circles', as mentioned in recital 46) which can be practiced in different ways (e.g. through direct or indirect meetings) and which can lead to different outcomes (e.g. mere exchange of information, or an agreement between the parties) and which can take place at any stage of the criminal proceedings (e.g. from investigation to sentence). The definition focuses on the core principles of restorative justice: the *active participation* of the people involved in the crime, the *voluntariness* of the parties to participate and the *impartiality* of the third party present during the process.

Despite the fact that restorative justice is defined in an easy and straightforward way, or maybe exactly because

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of this, restorative justice is (mis)understood in different ways across all Member States.

Only a few countries mention the term 'restorative justice' in their legislation. For example, in Malta a 'Restorative Justice Act' entered into force in 2012: still, this act only refers to victim-offender mediation as a restorative justice practice. France, instead, integrated restorative justice in a law enforced in 2014 (Law 2014-896)<sup>16</sup>, for which practitioners are still waiting, one year after, for the circular concerning its practical implementation. Luxembourg is considering to introduce the term 'restorative justice' in national legislation; for other respondents, this seems not to be a matter of special relevance, since it is not required by the Directive. Still, even if not recognised in national legislation, the term 'restorative justice' is familiar in some Member States, such as Austria, Belgium, Hungary, Latvia and the Netherlands.

Most of the Member States use the term 'victim-offender mediation' in legislation<sup>17</sup>. Still, in practice other restorative justice methods may be adopted, such as group conferencing and peace circles<sup>18</sup>. Other terms referring to mediation practices are also used in national legislation, such as 'offense resolution' (Austria), 'out of court settlement' (Croatia), 'settlement with intermediary' (Latvia), 'settlement agreement' (Slovenia), 'conciliation'<sup>19</sup>, or 'reconciliation' (Lithuania). Despite the use of these different terms in legislation, the restorative justice practice mostly adopted in practice is victim-offender mediation.

In some cases, restorative justice was interpreted with different types of alternative conflict resolutions (e.g. when a 'peace judge' encourages the party to find a solution to their matters) mostly used in civil, family or labour cases. Often, other restorative methods were mentioned as part of the larger 'restorative justice package', such as community work or compensation for the damages (e.g. Cyprus, Lithuania, Slovenia), despite the fact that these methods focus only on one of the parties and they do not include any communication process between them. In other cases, restorative justice services have not been yet properly implemented in practice, or they are still used merely as diversion measures in favour of the offender<sup>20</sup>. This seems the case also in Denmark, where 'restoration' (i.e. victim-offender mediation) takes place at the police level only if the offender wants it<sup>21</sup>, and in Malta where the victim is contacted only once the offender applied for parole to show 'what the impact on the victim would be', and in Scotland where 'victims are only offered involvement in cases whereby the offender has first been approached and has agreed to participate.'

Different (mis)understandings about restorative justice also depend on the position that these services have been given in national legislation. Experts listed different options, such as the adoption of specific laws on mediation<sup>22</sup> which in some cases<sup>23</sup> created the legal basis for mediation practices to be included in the criminal codes and/or criminal procedural codes.<sup>24</sup> Mediation has been included also in juvenile justice acts<sup>25</sup> or in probation acts (Italy) or in acts regulating the intervention of a peace judge (Italy). Differences in national legislation (in terms of specificity or broadness of the law, or in terms of level of enforcement from criminal justice authorities involved in the referral procedure to restorative justice) may influence behaviours and attitudes towards restorative justice: for example, while strict regulations and procedures in the law may give legitimacy to restorative justice practices, especially in countries where they are not as well known yet, in other cases rigid rules may block the creativity and flexibility needed to different cases.

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<sup>16</sup> More information at [www.apav.pt/ivor](http://www.apav.pt/ivor) (see practice sheets on restorative justice).

<sup>17</sup> Belgium, Bulgaria, Czech republic, France, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia and Sweden.

<sup>18</sup> Belgium, Hungary, Latvia and the Netherlands.

<sup>19</sup> Estonia, Finland, Spain and Slovakia. The respondent from Slovakia mentioned that mediation is developing in the country, with social workers being trained in mediating between victims and offenders. Still, no awareness exists about the term 'restorative justice' yet in this country. Similarly, the Slovenian respondents were not aware about the term 'restorative justice'.

<sup>20</sup> Greece, Italy, Malta, Portugal and Slovenia.

<sup>21</sup> In Denmark, mediation is administered by the police since 2010.

<sup>22</sup> Belgium, Finland, Hungary, Luxembourg, Romania and Sweden.

<sup>23</sup> For example, in Belgium the laws on mediation of 1994 and 2005 introduced some new articles in the criminal procedure code. The same applies for France, where a law on restorative justice aims at changing the French criminal code.

<sup>24</sup> Austria, Belgium, Germany, England, Hungary, Luxembourg and the Netherlands.

<sup>25</sup> Belgium, Germany, Croatia, Ireland, Italy, Luxembourg, Poland and Spain.

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**Table III-2:** Restorative Justice [RJ], Victim-Offender Mediation [VOM], others or none, in type of national legislation mentioning these concepts [specific, juvenile justice - JJ, criminal codes - CC]

Member State	Concepts					Legislation			
	RJ	VOM	Others	None	No Info	Specific	JJ	CC	No Info
Austria			offence resolution conference					x	
Belgium		x				x	x	x	
Bulgaria		x							x
Croatia			out of court settlement				x		
Cyprus				x					
Czech Republic		x							x
Denmark		x							x
England and Wales					x			x	
Estonia			conciliation					x	
Finland			conciliation			x			
France	x	x				x		x	
Germany		x					x	x	
Greece		x							x
Hungary		x				x		x	
Ireland							x		x
Italy		x					x		
Latvia		x	settlement with intermediary reconciliation						x
Lithuania									x
Luxembourg		x				x	x	x	
Malta	x								x
Netherlands		x						x	
Poland		x					x	x	
Portugal		x					x		
Romania		x				x			
Scotland					x				x
Slovakia			conciliation						x
Slovenia		x	settlement agreement conciliation						x
Spain							x		
Sweden		x				x			

### Safeguards in restorative justice

Recital 46 recognises the benefits that restorative justice can have for the victim and it stresses the need for ‘safeguards to prevent secondary and repeat victimization, intimidation and retaliation.’ This is further stressed in Art. 12, together with a list of concrete safeguards protecting victims who freely consent to participate in restorative justice processes.

Art. 12 states that victims have the right to ‘safe and competent restorative justice processes’. The Directive mentions twice (in recital 46 and Art. 12) that such processes should consider victims’ needs and they should be used only if they are in victims’ interests. As explained above, experts stated that in some countries the needs for the criminal justice system to move on and/or to rehabilitate the (young) offender are still of primary consideration and little attention is given to victims’ needs and interests. Still, experts ensured when restorative justice practices (mostly mediation) are provided the following safeguards ensure that victims of crime are protected from further victimization:

- Victims must receive ‘full and unbiased information’ about restorative justice procedures and possible outcomes (12b);
- Victims should provide a ‘free and informed consent’ (12a);
- The victims’ consent ‘may be withdrawn at any time’ (12a);
- The whole process takes place under the confidentiality rule (12e);
- If an agreement is reached, this is done voluntarily and may be used in criminal proceedings (12d);

All Member States ensure that, as far as restorative justice services exist, they fulfill these fundamental values of restorative justice (i.e. voluntariness and confidentiality). Two other safeguards, instead, appear to be more complicated to be understood or to be put into practice. Both safeguards have an influence on the accessibility to restorative justice services.

The first one is difficult because of how it is interpreted and it refers to Art. 12c, which requires that ‘the offender [acknowledges] the basic facts of the case’. This is needed to ensure that the presumption of innocence and the right to silence of the offender are preserved, while the communication process between the two parties affected by the offense takes place. Art. 12c is particularly important when considering the conditions permitting a restorative justice process to be initiated. Indeed, thanks to the formulation of this article, more offenders are eligible to participate in a restorative justice process. Still, the article seems not to be properly understood at a first sight. In many cases, respondents needed to be reminded about the difference between ‘admitting’ and ‘acknowledging’ the facts of the case and only after comprehending the difference they could properly answer the question about Art. 12c. An exception is Latvia, where the offender must admit his/her guilt in order to participate in a restorative justice process. In Denmark, where mediation takes place at the police level for minor offenses, the confession of the offender is needed.

The second safeguard is difficult because of practical arrangements which are not concretely in place yet: this concerns training of practitioners working with victims of crime, including restorative justice practitioners (recital 61 and Art. 25, 4). The Directive speaks about ‘initial and ongoing training’ for generic victims of crime or victims with specific needs in order to ‘observe professional standards to ensure [that] such services are provided in an impartial, respectful and professional manner.’ In practice, respondents could not clearly detail

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how training about restorative justice (not only for restorative justice practitioners, but also for criminal justice authorities and/or victim support organisations) takes place in their Member States<sup>26</sup>. This lack of information leaves room for doubts about the way training is delivered and, consequently, the way that ‘safe and competent restorative justice services’ are provided across Europe.

### Accessibility to restorative justice

As explained above, the Directive gives explicit recommendations on the protection measures for victims to participate in a safe restorative justice process without facing further victimization and Member States seem to be in line with most of these measures (at least according to their national legislation). Still, apart from assessing the quality of such national legislation, it is interesting to address how the restorative justice process takes place in practice, especially in terms of how victims are given access to these services and how they are protected at all stages.

Although the Directive does not give a direct input on the referral procedure to initiate a restorative justice process, some crucial ‘steps’ linked to accessibility can be identified in different articles (some are linked to the safeguards mentioned above):

- Information about restorative justice;
- Training practitioners about restorative justice;
- Conditions for having access to restorative justice.

*Information* about the availability of restorative justice services is a victims’ right: it is also the only concrete step for encouraging access to these services. Information should be offered to victims ‘without unnecessary delay, from their first contact with a competent authority’ (Art. 4,1j) and it ‘should be provided in simple and accessible language’ using different types of media (Recital 21). Receiving information from criminal justice authorities may increase the legitimacy of and trust in restorative justice practices and raise awareness on the possibility to meet and communicate with the offender. In practice, some Member States created public awareness campaigns to raise awareness about restorative justice service (e.g. Belgium, Czech Republic, Denmark)<sup>27</sup>.

Despite the fact that information about restorative justice is a right, some respondents mentioned that it is up to the individual practitioners (embodying the ‘competent authorities’) to inform victims (Austria). Even more interesting is what is happening in daily practice in Sweden, where victims are informed only once the offender confirmed to have an interest in participating in restorative justice. The expert explained that this is justified by the need for avoiding further victimization in case the offender does not want to meet the victim, but it undermines the victims’ right to know about restorative justice and it undermines his/her right to be given a voice and actively participate in the resolution of his/her case. Similarly, according to a respondent in Denmark victim-offender mediation is possible only at the police level and only once ‘the offender has agreed [and understood] it has a purpose. He has to really want it’.

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<sup>26</sup> More information on training on restorative justice can be found below on Training of practitioners.

<sup>27</sup> The respondent from Czech Republic shared an informative leaflet ([https://www.pmscr.cz/images/clanky/PMS\\_letak\\_OBETI\\_en.pdf](https://www.pmscr.cz/images/clanky/PMS_letak_OBETI_en.pdf)) and the respondent from Denmark shared an informative website ([www.offerraadgivning.dk/om/english.html](http://www.offerraadgivning.dk/om/english.html)), where information can be found in English too. More information can be found on the practice sheet on restorative justice available at [www.apav.pt/ivor](http://www.apav.pt/ivor).

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### Access and referral procedures to restorative justice in Austria

In Austria, the parties involved in a crime have the right to be informed about the possibility of 'offense resolution' at all stages of criminal proceedings by the police, prosecutors and victim support organisations. There are also special written forms describing the rights of the parties during the 'offense resolution'.

However, the parties involved in the crime, thus victims included, cannot decide to take part in a 'offense resolution' process. Instead, this is the prosecutor's decision, thus victim-offender mediation is still a state-initiated process. In this sense, victims' rights to initiate the process are limited. One of the respondents also stated that victims' rights are undermined since the decision to use diversion measures is left to the prosecutor and not to the victim itself and this is particularly dangerous for cases of domestic violence. Additionally, the principle of voluntariness may be undermined if the process is proposed by the prosecutor, instead of being initiated by the victim itself.

*Training* practitioners is linked to the victims' right to have access to safe and competent restorative justice services. Training could focus on understanding the law about restorative justice and learning about practical tools for informing about restorative justice, for referring a case and for initiating and concluding a process. Training is also important for learning the benefits of restorative justice and share experiences, thus it influences the general awareness that criminal justice authorities have about restorative justice practices. Practicalities on how these trainings are provided in all Member States have not been well-explained by respondents; still, major differences seem to exist.

For example, in Bulgaria, a 60-hours certified training course on restorative justice theories and practices is provided by NGOs and universities. In Croatia, a one-time 170-hours certified training course (including lectures, role plays, exercises and supervision) was given to 60 mediators with a background in social pedagogy and/or social work. Also Lithuania provided a one-time course on mediation for 80 practitioners spread across the country. In Sweden a minimum of 4-day training is provided by the Agencies for Social Services: mediators (mostly volunteers with a background as social workers, lawyers, doctors) are asked to read a comprehensive manual and watch the related films in order to get the certification to work. Only the mediator coordinators receive further 4-day training.

Even when training seemed to be successfully implemented for restorative justice practitioners, respondents suggested ways to improve the system. One way could be to find a concrete method to share best practices across Member States. The lack of a standardised procedure for training restorative justice practitioners in Europe seems to be a major obstacle in understanding restorative justice and further implementing these practices in all Member States. This vagueness and little transparency on training procedures limits further comprehension on the benefits that restorative justice may have for victims of crime, since the 'safety' and 'competency' of services may be undermined. Consequently, it may influence attitudes towards restorative justice.

In the interviews respondents were also asked to share best practices for raising public *awareness* and change *attitudes* about restorative justice. While the gatekeepers for referring the parties to restorative justice services

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may be police and prosecutors, the role of practitioners working for victim support, probation, offenders' programme, law firms, social work, health system should not be underestimated, as well as the role the general public regarding its knowledge and experience about restorative justice.

### Restorative justice awareness in France

In France, awareness about restorative justice principles and practices is mostly done by I.N.A.V.E.M., the national institute of victim support and mediation. The French combination of victim support and mediation within the same institute is original and innovative, since in other Member States the two services are kept separated. This separation was explained by a Swedish respondent as a consequence of different focuses that victim support and restorative justice services may have (see information below).

Instead, according to the French respondent, I.N.A.V.E.M. 'believes that restorative justice is a complement of criminal justice' where 'an extra-service is given to victims'. The respondent stresses the fact that while criminal justice focuses on the consequences of the criminal act, restorative justice focuses on its repercussions on people, which 'are never treated in criminal justice, but always dealt by external associations or by restorative justice, where a space for words is provided'.

Given its commitment and belief in restorative justice, in the past I.N.A.V.E.M. organised meetings between victims and prisoners, or between victims and offenders who were not imprisoned. Since one year, it is also committed in the promotion of restorative justice practices in all the territory. According to the respondent, the main issue for the lack of concrete restorative justice experiences in France is linked to the lack of awareness about it.

I.N.A.V.E.M. then takes an active role in informing victims of crime about this possibility. Since there is not yet a circular explaining the practical implementation of restorative justice in France, it is difficult to identify other ways for granting access to these services to victims of crime. Once more, it is crucial to stress the importance of having legislation regulating these practices in order to grant equal access to victims of crimes who may be interested in it.

Awareness and attitudes about restorative justice are also influenced by general approaches towards the criminal justice system: it may be more difficult for countries experiencing a more punitive culture to understand and adopt restorative justice measures<sup>28</sup>. It is interesting to note that punitive attitudes may also influence the conditions for certain criminal cases and their parties to have access to restorative justice.

The Swedish respondent stressed the different views that victim support officers and restorative justice practitioners may have about restorative justice practices. While victim support practitioners call for a 'victim-oriented practice' (in line with the Victims' Directive), restorative justice practitioners stand as impartial parties in the process considering both parties equally. These views may affect victims' access to restorative justice services,

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<sup>28</sup> This is the case for example in Czech Republic, Hungary, Italy and Lithuania.

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especially in terms of the (type of) information given to them. Together with police and prosecutors, victim support officers have one of the first contacts with victims.

Despite this debate, focusing either on victims or on both parties, in reality Member States still have an ‘offender-oriented practice’ since in most cases restorative justice aims at stopping criminal proceedings as a diversion measure for offenders<sup>29</sup>, especially in cases of juvenile justice where the young offender is to be rehabilitated. In these cases, victim support officers may take the position of over-protecting victims of crime from practices which are not fully focusing on victims’ needs. However, as one of the Austrian respondents points out: can we really speak about restorative justice when the process is initiated as a diversion measure?

In some cases, awareness and attitudes about restorative justice have been influenced by the adoption of mediation acts in national legislation. Bulgaria is a concrete example of how the institutionalisation of restorative justice played a crucial role for disseminating restorative justice principles and idea: after the adoption of the Mediation Act in 2004, local NGOs and universities organised public campaigns and conferences and published articles and books on restorative justice, with the support of the Ministry of Justice. As a consequence, criminal justice authorities considered more often the option to refer a case to restorative justice.

Similarly, in Sweden the existence of a ‘Mediation Secretariat’ funded by the government helped the implementation of good mediation services all over the country. The Swedish respondent explained that in the 1990s there were a project and a research showing the benefits of restorative justice. The law was made just after. Between 2003 and 2008, the Mediation Secretariat had the responsibility for handling mediation services. This Secretariat set up meetings in local municipalities and managed to initiate regional offices. In 2008, the government transferred the responsibility of mediation services to the Social Services Agency, which focuses on many other services and, according to the respondent, ‘loses’ the attention on mediation as such.

A last aspect influencing the referral procedure mentioned in the Directive are the *conditions* for having access to restorative justice. There are no concrete exclusion criteria listed in the Directive, but only a list of factors to be considered to protect victims permitting them to make a proper choice before participating in a restorative justice process. The factors mentioned are: ‘the nature and severity 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’ (Recital 46). The only concrete exclusion criterion mentioned in the Directive is listed as a safeguard to protect victims of crime: the offender must acknowledge the basic facts of the offense in order to take part in this meeting(s) (Art. 12c).

Despite the fact that the Directive merely proposes to consider these factors before proposing restorative justice to victims of crime, certain Member States have specific exclusion criteria in their legislation. For example, the seriousness of the crime and its influence on society may deter certain victims from having access to restorative justice services<sup>30</sup>. The seriousness of the crime is defined according to the maximum years of punishment foreseen for a certain offense (some Member States define ‘seriousness’ with more than 3, 5 or 10 years of punishment), but also according to the type of crime (e.g. sexual violence, domestic violence, or a crime causing the death of the victim). Austria, Hungary and Lithuania also look at the fact that the offender is not a recidivist; Bulgaria requires that the victim made an official complaint to the authorities. In some Member States, limitations exist for adult or juvenile offenders, or for different stages of criminal proceedings. In all these cases, the victim can still play a role in the criminal justice system, as an instrument for solving the case and giving punishment to the offender, but he/she is excluded from restorative justice.

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<sup>29</sup> This is the case for example in Greece, Italy, Portugal and Slovenia.

<sup>30</sup> Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Greece, Hungary, Italy, Lithuania and Portugal.

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### Exclusion criteria in the UK

According to a respondent, a mayor debate in England and Wales is whether restorative justice should apply to cases of domestic violence. 'The government has stated that it doesn't think [victims] should be denied restorative justice purely because of the crime type.' Consequently, restorative justice 'is available to victims of any crime type, but provisions are patchy. Depending on where you live in the country would depend upon whether there is a service that you can access.' Geographical limitations seem to be an issue in more Member States across Europe, not only depending on their territorial size.

A respondent from Scotland stated that 'many victims are excluded from participation in restorative justice due to the age of the offender. [...] youth offending RJ processes are well established, but there only a few local authority areas in Scotland that have RJ processes for adult offenders, and these are primarily at the diversion from prosecution stage.' In addition, restorative justice is mostly used for crimes 'of a more minor nature'.

## Conclusions

It seems to be clear that most countries are not familiar with the term restorative justice, even if they have adopted the specific method of victim-offender mediation. Most probably, the recommendation R(99)19 on mediation in penal matters of the Council of Europe played a role in the diffusion and understanding of victim-offender mediation. It is also clear that the need for complying with European standards concerning alternative ways for conflict resolution definitely contributed to further implementing restorative justice practices in most Member States. This compliance could be particularly important for countries that entered more recently in the EU. Still, restorative justice seems not to take yet a concrete position for strengthening victims' rights and fulfilling victims' needs; indeed, restorative justice practices are often linked to probation services, aiming at rehabilitating the (mostly juvenile) offender and, consequently, also reducing the overburden of the criminal justice system.

What could help these services to improve and move forward is to make sure that 'systematic and adequate statistical data' (Recital 64) is collected in each Member State to monitor and evaluate restorative justice services. These data should include the number of (self-)referrals, the successful and unsuccessful cases, the level of training, etc. It is also crucial to inform (criminal justice) authorities about the status of restorative justice processes in order to raise awareness, change attitudes and increase cooperation with restorative justice services.

It may be valuable to share experiences on how practitioners can deal with the consequences of mediating between victims and offenders. Training restorative justice practitioners to deal with the personal stories heard during these communication processes may be needed to ensure that their work can be concluded in a proper way, without affecting victims (or offenders). It is a call for European institutions like the European Forum for Restorative Justice to take these suggestions into account and be a platform for sharing best practices and, possibly, standardise national methods throughout Europe.



### **Victims resident in another Member State (Art. 17)**

#### **Introduction**

A key issue in European legislation for victims of crime concerns the treatment of victims resident in other European countries. The Directive proposes three different ways in which reporting a crime and participating in criminal proceedings can be facilitated for victims from other EU Member States. The first concerns the possibility of taking a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority. The second concerns recourse to the provision on videoconferencing and telephone calls. Finally, Member States shall ensure that victims of a criminal offence committed in Member States other than where the victim is resident may make a complaint to the competent authorities of the Member State of residence. These three recommendations were discussed in the interviews with national experts and will form the main starting point of the following text (see also Table III-3).

This chapter will provide a broad overview of the type of provisions available in the EU Member States, either specifically intended for the benefit of non-resident victims or generally implemented in practice for those in need, and the difficulties mentioned by the experts regarding such implementation.

#### **General overview of rights relating to non-residents**

The article on victims resident in another Member State, although it may be considered the starting point of the creation of the Victims' Directive in the first place<sup>31</sup>, has certainly not received the most attention amongst Member States. Indeed, many of the experts interviewed were uncertain of the provisions available in their country or asserted that it was one of the most difficult articles to implement. Replies often included that whereas these issues are often not explicitly addressed in legislation in one's country, following anti-discrimination legislation, there is general consensus that victims from other Member States should be treated similarly to victims who are residents of the country where the crime has occurred.<sup>32</sup> For example, any person who becomes a victim of crime in England but is not a resident is treated equally to a victim who is a British citizen. The expert is, however, unaware if this entails any additional rights that a non-resident may need and a resident does not. In the German Draft Bill for an Act to Strengthen the Rights of Aggrieved Persons and Witnesses in Criminal Proceedings (*Opferrechtsreformgesetz*), it is stated that all rights that are in the criminal code are independent of nationality and place of residency. Here, this includes the right of victims to request translation free of charge or receive extra explanation concerning the (legal) procedures of the country where they have become a victim. In Luxembourg, article 17 will be covered in a new provision in their national law. A separate bill of law will introduce provision with regard to videoconferencing. A Danish expert mentioned that the provisions about victims resident in another Member State of the Directive may be underdeveloped in Denmark because as a country, Denmark is not very much involved with or related to the European Union. They

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<sup>31</sup> Recognizing freedom of movement as part of the essence of the European Union, one of the European Commission main aims in establishing the minimum standards on the rights, support and protection of victims of crime has been to ensure a basic level of protection to all victims of crime in the European Union, regardless of whether a crime has been committed in a country other than their own.

<sup>32</sup> Estonia, England Germany, Italy, Latvia, Lithuania and Sweden.

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are currently working on strengthening this provision.

One of the respondents from Latvia asserted that in general, the issue is not so much a question of special regulation, but of the manner in which law is implemented in practice. So although it is not written that foreigners have special rights, it should be recognized that if a person needs translation, this person has a right to receive information in his or her own language. In other words, no special attention is necessarily paid to the group 'foreigners' *per se*, but in general to the needs of anyone. Other countries, however, do have specific provisions contained in the national law to guarantee the rights of foreigners, i.e. victims resident in another Member State.<sup>33</sup> However, besides this and related to the above, as will be shown in the following sections, in many countries the distinction between victims does not revolve around residency or non-residency, but instead around the type of crime a victim has suffered. More information about this is provided in the section on the individual needs assessment and vulnerable victims.

As an example from Bulgaria, non-residents and residents victims alike may benefit from free legal aid if they are a victim of certain crimes (i.e. terrorism, murder, premeditated grave bodily injury, sexual violence and rape that led to serious damage to health, human trafficking, any crime ordered or committed by an organized criminal group or any other serious intentional crime where the immediate consequences are death or serious bodily injury) and/or can present evidence that they cannot pay for legal assistance themselves. Residency is not one of the criteria for free legal aid. The same is true for victim support in the Netherlands: every victim, irrespective of nationality or residency, is allowed to make use of these services. In practice, this does not happen often because non-resident victims have already returned to their home countries. In addition, according to the EU Right of Victims of Trafficking in Human Beings, non-resident victims of human trafficking may be given a (temporary) residence permit in the country where they report the crime committed against them. Thus, several provisions that have been included in other international or EU legislation are available to non-resident victims.

### Immediate statement after complaint

In many countries it is possible for a victim or witness, whether (s)he is from the same country or from another country, to give a statement directly after the criminal offence has taken place.<sup>34</sup> Indeed, in several countries (e.g. according to the Criminal Procedure Code in the Czech Republic), it is mandatory for the public prosecutor and police to at least accept reports of facts suggesting that the criminal offence was committed. In Cyprus and Estonia, on the other hand, there are no provisions in national law that impose the obligation on the police to take a statement from the victim immediately after the complaint with regard to the criminal offense. Nevertheless, as a matter of practice, the police takes a statement from the victim immediately after the complaint or at the first possible opportunity. Several experts, such as those of Germany and Belgium, mentioned that if the victim does not speak the language, he or she has the right to ask for an interpreter free of charge. This is a right that is also included in the Directive, though not specifically as a right of victims resident in another Member State. Indeed, it is mentioned that victims who do not understand or speak the language of the competent authority shall be ensured interpretation and translation of certain written documents free of charge (Article 5 and 7 of the Victims' Directive). In practice, this right may at times pose difficulties, especially in cases

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<sup>33</sup> Bulgaria, Belgium, Estonia, Bulgaria, Czech Republic and Romania.

<sup>34</sup> Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden.

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where the victim speaks an exotic language and translators are hard to find. Also, if the victim is a child, who needs to be questioned in a special room, the process may be slightly delayed. Sometimes it is possible for the victim to write a statement in the victim's mother tongue, in which case the statement will later be translated. In the case of Estonia, if a report is completed via other means (post, e-mail or phone), the victim may be required to return to the police station to give a statement. In the Netherlands and in Finland, there is already a practice of "de auditu" procedures, which means that when the victim has reported a crime and has told his or her whole story, many further proceedings can be based on that and it is not necessary for the victim to be present during the following court proceedings. This greatly decreases the necessity for video or telephone conferencing. In Portugal, the Code of Criminal Procedure states that if a witness is leaving the country and this might refrain him/her to attend the trial, he/she can make a statement in the presence of a judge, a prosecutor and the defendant's lawyer during the investigation stage that can be used as evidence in trial, thus avoiding the witness having to return to Portugal. This statement is called statement for future memory. A provision on which little information is available and that may be further explored is the option of providing a statement online.

### Videoconferencing and phone calls

The second way that has been proposed by the Directive as a means of facilitating participation in criminal proceedings for victims of other EU Member States is through the use of videoconferencing and telephone calls. Of interest in the interviews was whether victims have access to these provisions both in principle/law, as well as in practice. Legally and practically speaking, many experts agreed that it was allowed in their country to make use of videoconferencing and phone calls during criminal proceedings.<sup>35</sup> Some experts could name the specific articles in which these provisions had been included; others assumed that their laws did not object to the usage of such methods. However, respondents from Austria, Germany and Finland stated that they believe either too little use had been made of these provisions in practice for proper evaluation or use of these tools proved to be rather difficult. For example, a respondent of Germany stated videoconferencing and phone calls are possible on a case to case basis, but that not every small police station is equipped with such tools. A member of the police force in Portugal also mentioned that in practice, cooperation with other Member States through videoconferencing is sometimes hampered by the reluctance of the other party. Clearly, videoconferencing as a communication tool needs two cooperative parties to be employed successfully.

In a few cases, namely by experts from Hungary, Luxembourg and the Netherlands, videoconferencing is named as an option, either in practice or as specific provision in the law, but is not explicitly connected to non-resident victims. In Hungary, for example, one of the respondents mentioned "Holding a trial by way of a closed-circuit communication system", i.e. using a device for oral and visual communication. The presiding judge may, however, only make use of the closed-circuit communication system in several instances, all of which involve the witness/victim (underage; of very serious offence; with health problems; in a witness protection programme) or the accused/witness whose presence at the trial would endanger public safety. In this article (Criminal Proceedings Act, Sections 244/A-244/D), the term "victim", is in fact not mentioned, but may be inferred from "(b) A witness against whom a criminal offence was committed (...)". The Hungarian respondent did not know specific details about the application and practice of this, and considered that there would/should be alterations in the Hungarian legislation during the transposal process of the Directive regarding this theme. Still, sometimes the

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<sup>35</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Scotland, Slovakia, Slovenia and Spain.

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absence of a clear reference to (non-resident) victims in provisions does not seem to pose any serious problems. For example, in Lithuania videoconference technology is specifically used to protect the identity of threatened/anonymous victims and there is no regulation on videoconferencing with victims who are resident in another country, but in practice courts use videoconference technology in these cases as well if necessary.

### Complaint in Member State of residency

Finally, the Directive states that Member States should ensure the possibility of making a complaint to the competent authorities in a victim's Member State of residence after (s)he has been victimized in another Member State. This, however, only strictly applies to situations where the victim was unable to make the complaint in the Member State where the criminal offence was committed or in the event of "a serious offence". Because of the vague phrasing in the Directive concerning whether the victim was "unable" to report the crime in the Member State where the offence had been committed, it is difficult to say whether the approach in several Member States is in fact still in line with the Directive. If a victim decides to report the crime to the competent authorities within his or her country of residence, then the competent authorities are to transmit the complaints to the Member State in which the criminal offence was committed.

#### Legislation in Portugal on complaint in MS of residency

In Portugal, article 154-A of the Law on International Judicial Co-operation in Criminal Matters states that "1 – Criminal police bodies and judicial authorities receive denunciations and complaints on the perpetration of criminal offences against residents in Portugal having been committed on the territory of another Member State of the European Union; 2 – The Public Prosecutor shall, without delay, send the denunciations and complaints received in accordance with paragraph 1 above to the competent authority of the Member State on whose territory the offence was committed, except where Portuguese courts are competent to try the offence; 3 – The Public Prosecutor receives from the competent authorities of Member States of the European Union any denunciations and complaints regarding criminal offences committed on Portuguese territory against residents in another Member State, for the purposes of prosecution."

This final subsection (2/3) of Article 17 of the Directive is generally agreed upon to be the most difficult to implement. To illustrate, one problematic issue in the Netherlands concerns Dutch residents who become a victim in another Member State and want to report back in the Netherlands. Because of extra-territorial jurisdiction, the Netherlands does not have jurisdiction if the victim is Dutch but the criminal offence against the victim has been committed in another Member State. A consequence of this is that a victim may return to the Netherlands wanting to report a crime that has happened abroad, to find the Dutch police refusing to record the crime. Dutch police officers frequently believe that there is no use in recording a crime when they have no jurisdiction to follow up with an investigation. An expert from Germany also admitted that at this moment, it is very unclear what would happen if a German resident reports a crime that has happened in another Member

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<sup>36</sup> Austria, Estonia, Finland, France Ireland, Hungary, Ireland, Latvia, Lithuania, Poland and Slovakia.

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State to the police in Germany. The respondent assumed that this would depend on the situation and the severity of the crime, but also on the attitude of the police officer who is available to take the statement. However, it is important to emphasize that the Directive does not necessarily require further investigation or prosecution of Member States in this case, but does promote communication between respective authorities. This means that the police ought to record the crime and transfer the report to the Member State where the criminal offense has occurred and where the authorities are competent to investigate and prosecute the crime. There are other countries who, regardless of jurisdiction and in accordance with the intentions of the Directive, do record the statements made by returning residents about a crime, after which the matter is forwarded to the state where the criminal offense was committed.<sup>36</sup>

### Recording and forwarding of complaints in Hungary and Finland

In Hungary (a country whose judicial authorities also have jurisdiction in case of offenses committed against Hungarian citizens abroad) the Criminal Proceedings Act has a regulation as follows: Section 172 paragraph (3) "If the complaint was not filed with the prosecutor or investigating authority having competence and jurisdiction in the case, it shall still be taken over and recorded in minutes, and be forwarded to the party entitled to act."

In Finland, the Criminal Investigations Act also contains that if a victim reports an offence that has been committed in another Member State, the police must transmit the report to the Member State where the offence was committed on the condition that the victim could not have reported the offence in the other Member state or in case of a serious offence.

Even in some countries where regulations are less than clear and the state's jurisdiction does not cover (most) crimes that have been committed in another Member State, respondents from Germany and the Netherlands presume that if a crime is considered serious enough, states (or the police) will react to ensure prosecution. Combined efforts from the country of residency and the country where the criminal offense has been committed are expected in this case.

From several Member States, we did not receive specific information regarding this topic, or answers were framed from an offender-perspective, rather than a victim-perspective<sup>37</sup>. An expert from Portugal mentioned the other side of the possibility for victim's to report a crime in their country of residency. They confirm that in their country, once complaints have been transferred from other Member States to the competent authorities, these authorities have the obligation to create a file based on the complaint. If someone who is resident of another Member State becomes a victim in Germany, the German police would communicate directly with that victim and not via the police station at the victim's place of residency.

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<sup>37</sup> Labels of "no info" in Table III-3 indicate that experts spoke about the relevant topic (Victims resident in another Member State) but did not or could not answer the question concerning complaints about criminal offenses in other countries to the authorities of the Member State of residency.

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Table III-3: Provisions under Article 17 in each Member State

Member State	Immediate statement after complaint	Videoconferencing and phone calls	Complaint in Member State of residency
<b>Austria</b>	Yes	Yes	Yes
<b>Belgium</b>	No info	Yes	No info
<b>Bulgaria</b>	Yes	Yes	No info
<b>Croatia</b>	Yes	Yes	No info
<b>Cyprus</b>	Yes [in practice; not in legislation]	Yes	No info
<b>Czech Republic</b>	Yes	Yes	No info
<b>Denmark</b>	No info	Yes	Yes
<b>England and Wales</b>	No info	No info	No info
<b>Estonia</b>	Yes	Yes	Yes
<b>Finland</b>	Yes	Yes	Yes
<b>France</b>	Yes	Yes	Yes
<b>Germany</b>	No info	Yes	Not regulated by law; depends on officer and circumstance/type of crime.
<b>Greece</b>	No info	In legislation; not in practice	No info
<b>Hungary</b>	Yes	Available in certain circumstances, currently non-residency is not one of the criteria.	Yes
<b>Ireland</b>	Yes	No info	Yes
<b>Italy*</b>	Yes	No info	No info
<b>Latvia</b>	Yes	Yes	Yes
<b>Lithuania</b>	Yes	Yes	Yes
<b>Luxembourg</b>	Yes	Mentioned with regard to child victims in legislation; unknown whether used in practice for non-residents. New provision to be implemented.	No info
<b>Malta</b>	No info	No info	Yes
<b>Netherlands</b>	Yes	Yes	Not regulated by law; depends on officer and circumstance/type of crime.
<b>Poland</b>	Yes	Yes	Yes
<b>Portugal</b>	Yes	Yes	Yes
<b>Romania</b>	No info	Yes	No info
<b>Scotland</b>	No info	Yes	No info
<b>Slovakia</b>	Yes	Yes	Yes
<b>Slovenia</b>	Yes	Yes	No info
<b>Spain</b>	Yes	Yes	No info
<b>Sweden</b>	Yes	No info	No info

\*According to the expert Italian national legislation is already in compliance with Art.17 of the Victims' Directive.

### Other provisions

Interestingly, the matter of victim support is almost never mentioned. One respondent from the Netherlands stated that every now and then Victim Support the Netherlands receives a phone number and attempts to contact the (relatively small number of) non-residents that have become a victim in the Netherlands, but that these victims are hard to reach and have often already returned to their own country. Another respondent from Italy touched upon the topic of compensation and explained that victims who are resident in other Member States that suffered certain types of crime (mafia victims, extortion, racketeering) in Italy can be reimbursed, while if the offender is non-Italian but the victim is Italian there is no reimbursement for this victim. In Romania, there are specific rules on soliciting financial compensation for victims in case of a trans-border situations (Law.no 211/2004).

### Conclusions

Several experts mentioned changes in their country that are to be implemented in the near future as a consequence of the Victims' Directive, such as in Luxembourg, Latvia and Denmark. One of the questions related to article 17 that may pose practical difficulties concerns subsection (2/3): the possibility to report a crime that has been committed abroad to the Member State of residency. Two elaborations on this article concern the seriousness of the crime and the inability of the victim to report the crime in the country where the offense has occurred. Although a definition of 'seriousness of the crime' may still be inferred from other articles in national law, an 'inability to report' gives Member States little guidance in implementing this article. As one of the respondents wondered: What counts as inability? Do we here consider serious obstacles or dangers to reporting, or may it refer to the risk of missing our taxi to the airport? Another concern, as already mentioned, is that it is not always fully understood that the incapability of certain authorities to prosecute a crime committed abroad is not related to the Directive's demand for communication between Member States, and does not imply that statements from these victims should not be recorded. It seems that this provision is the one that is least clear and has frequently not yet been implemented in Member States.

Although article 17 of the Directive seems to be rather difficult to discover literally and fully in national legislation of the Member States, we do believe the situation in practice may not be as dire. First, the provisions that are required in article 16, namely the possibility of an immediate statement after the crime has been committed, the possibility of telephone calls and videoconferencing and the possibility to make a complaint back in the Member State of residency, may frequently take place as a consequence of practical and efficient thinking, rather than because it is prescribed by law. Taking an immediate statement from the victim has the advantage that often a victim need not necessarily be present during the following court proceedings. In case of non-resident victims this may save the victim him or herself, as well as the state, time and financial costs. Hence, it is an appealing course of action to take from more than one perspective. Second, especially the provision of tele- and video communication, is one that frequently mentioned in criminal law in connection to other types of situations. This means that in practice, the tools ought to be available, and hence the chance becomes bigger that these tools are also used in circumstances or for certain victims that are not explicitly connected to the use of these methods, such as for non-resident victims.



### Individual needs assessment and Vulnerable groups (Art. 22 & 23)

#### Introduction

A novel issue in the Directive is the so-called *individual needs assessment* of article 22. This assessment is meant to identify specific protection needs, and to identify whether and to what extent victims may benefit from special measures. According to the Directive: “It is a personalized evaluation taking specifically into account the personal characteristics of the victim, the type of nature of the crime and its circumstances”.

Prior to the adoption of the Directive, most Member States did not have legislation or indeed practices in place concerning the assessment of victims’ individual needs.

The following section discusses the key features of the way Member States have transposed, or are in the process of transposing this article.

The individual assessment is specifically meant to identify *vulnerable* victims or victims with specific protection needs. Because of the overlap between legislation and practices regarding vulnerable victims and the aims and plans for implementation of the individual needs assessment, article 22 and 23 are taken together in this chapter. In the continuation of this chapter, the term vulnerable victims is used to indicate what the Directive calls “victims with protection needs due to vulnerability to secondary and repeat victimization, to intimidation and to retaliation” (Art 22/4). While some groups, such as female victims of domestic violence and children are frequently named in Member States’ national legislation as groups with specific needs, as well as some other types of victims, certain vulnerable groups are less easily identified.

In the interviews with experts, the Project IVOR team tried to get a clear overview of what groups have additional rights or enjoy different treatment in each country. Specifically, related to article 22, it was wondered how such victims are identified in practice when no such tool as an individual needs assessment exists in a Member State.

#### Individual needs assessment mentioned in legislation

Very few to no countries can be said to mention the individual needs assessment in their national legislation. Several experts from Germany, Hungary and Lithuania call this the “most controversial”, the “biggest challenge” and the “most difficult to implement”.

However, as seen in Table III-4, there are a few countries that have an instrument in place according to what the Victims’ Directive requires of the individual assessment<sup>38</sup>. These countries may serve as example for the rest of the Member States to follow. In England, when somebody reports a crime, the police are indeed required to do a individual needs assessment with the victim that will determine whether the victims is vulnerable or intimidated and thus needs special measures, or whether the victim is entitled to other enhanced entitlements because of the seriousness of the crime. After the needs assessment is made by the police, they are required to share it with the other agencies that they

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<sup>38</sup> England, Ireland, Portugal, Scotland, Spain and Sweden.

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work with. If the case comes to court, the police also have to send the information of the needs assessment to the agency that supports the victim that goes to court. Someone who is identified as vulnerable through the individual needs assessment, has access to special measures: for example, the right to more and quicker information from the police, and to more protection services during court proceedings. In Ireland, the individual needs assessment is provided for in a number of separate provisions in the general scheme of the Criminal Justice (Victims of Crime) Bill that deals with the assessment of the victim, special measures during the investigation and special measures during the trial. Provisions guarantee the automatic inclusion of children as recipients of these special measures.

In Scotland, legislation also refers to individual assessments. This is particularly in relation to special measures and *witnesses* who are to give evidence at court but who do not fall into the ‘child or other deemed vulnerable witness’ categories. In other words, in Scotland an individual needs assessment should be made by either the prosecutor or the defense of witnesses who are not automatically deemed to be vulnerable. This should determine whether the person is likely to be a vulnerable witness and if so, what special measures they should adopt to take the person’s evidence. Although to our understanding victims are also included, the explicit purpose of the assessment seems to be the vulnerability of the witness and see what special measures should be used. The legislation does not specify at which point the assessment should be made, only that the party intending to cite the witness must take reasonable steps to carry out an assessment. This means that this will be at the stage where it has been decided that the case is proceeding to court, and also suggests that it should be before or around the time that the witness is cited for court. The matters to be considered in making an assessment of vulnerability include the nature and circumstances of the alleged offence, the nature of the evidence likely to be given, the person’s age and maturity, any behaviour of the accused (or the accused’s family or associates) towards the person along with any other matters the court considers relevant, including social and cultural background and ethnic origins, sexual orientation and any physical disability or impairment. The best interests of the witness should also be taken into consideration when making this decision.

In Sweden, although there is a basic needs assessment in place already, it is not advanced yet and needs to be developed, according to the expert. The expert also asserted that this will be a major challenge for Sweden. In Spain, article 22 has been copied and included in their Statute for Victims (*del Estatuto de la víctima del delito*) in April 2015. However, direct inclusion in legislation is no guarantee for practical adherence of the Directive and no information was received on the latter issue. This is clearly shown in the case of Portugal, where the expert mentioned that a new and very recent law mentions the need for an individual needs assessment but does not expand on any details. Questions of how this is going to take place and who is responsible remain unanswered to a large extent, meaning that no helpful guidelines for implementation in practice are in place. According to the expert, protection and identification mechanisms so far are only in place for victims of domestic violence. Legislation and practices revolving victims of domestic violence will be used as an example for the individual assessment of other types of victims as well.

### Overlap current legislation and contents/purpose of individual needs assessment

In the many cases where there is no mention of the individual needs assessment in Member State’s national legislation<sup>39</sup>, interview questions focused mostly on the existence of plans for implementation in the future, and whether there exist any provisions in legislation that map on to the contents and/or purpose of the individual needs assessment as discussed in the Victims’ Directive. Finally, professionals were asked for their opinion about Article 22.

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<sup>39</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland and Slovakia.

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There are several experts who mentioned that although there is no such thing as the individual needs assessment the way it is phrased in the Victims' Directive, there are several instructions found in the national law for specific groups of (vulnerable) victims, which share the purpose of the individual needs assessment<sup>40</sup> (see also Table III-4).

**Table III-4: Transposal of the individual needs assessment in Member States**

Member State	Transposal of Article 22 "individual needs assessment" in national legislation	No transposal of Article 22, but national legislation that overlaps with individual assessment	No mention of either	No info received
Austria		X		
Belgium		X		
Bulgaria				X
Croatia		X		
Cyprus			X	
Czech Republic			X	
Denmark				X
England and Wales	X			
Estonia				X
Finland		X		
France				X
Germany		X		
Greece		X		
Hungary			X	
Ireland	X			
Italy		X		
Latvia		X		
Lithuania		X		
Luxembourg		X		
Malta			X	
Netherlands		X		
Poland			X	
Portugal	X			
Romania				X
Scotland	X			
Slovakia			X	
Slovenia				X
Spain	X			
Sweden	X [but will be expanded]			

### Vulnerable groups

In Austria, additional rights (i.e. psychological, social and legal assistance) are given to victims who are 'emotionally more affected' by the crime. This refers to victims who directly suffered violence, threat or the violation of their sexual integrity, or victims who indirectly suffer because of their closeness to the direct victim. In Bulgaria, vulnerable groups are children at risk and victims of domestic or sexual violence or human trafficking. In addition, a list of other

<sup>40</sup> Austria, Belgium, Croatia, Finland, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg and the Netherlands.

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groups are considered to be vulnerable, namely illiterate persons or persons with low level of literacy, elderly persons and persons with reduced mobility, especially in rural regions, and specifies the types of dependency the victim may have within the context of his/her family and community: moral, religious, practical or financial. In Belgium, the law provides several specific instructions on referrals or special procedural measures based on, for example, the nature of the crime or the age of the victim. These criteria are used to determine whether persons are to benefit from special measures (independent of an individual assessment). Examples in Belgian national law include automatic referral to specialist centers for victims of child abuse and victim support for victims of certain types of crime. Additionally, victims (or witnesses) under the age of 18 have the right to be accompanied by an adult of their choice when interrogated and such an interview must take place in a suitable room or be done through audiovisual recording.

### Vulnerable groups in Portugal

In Portugal, according to the recent Victims Charter (Law 130/2015), particularly vulnerable victims are those whose fragility arises from their age, health situation, handicap or from the fact that the type, severity and duration of victimization caused damages that provoked serious consequences in their psychological well-being and in their social integration. Victims of violent crimes (crimes against persons punishable with more than 5 years of imprisonment) and of particularly violent crimes (crimes against persons punishable with more than 8 years of imprisonment) are always considered vulnerable. A particularly vulnerable victim must be subjected to an individual assessment in order to determine if he/she shall benefit from protection measures, namely all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice; all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced; measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology; victims shall give a statement for future memory during the investigation stage; trial shall take place without the presence of the public.

In Italy, assessments are made for child victims, victims of human trafficking, and victims of domestic violence, and in Latvia this is the case for human trafficking and child victims of sexual crimes. In Croatia as well, the individual needs of minors, victims of human trafficking and victims of sexual crimes and war crimes are taken care of. In these cases, assessments are made to evaluate the physical and mental condition of a victim and to help him or her stabilize, with part of the purpose being to avoid secondary victimization. These goals overlap with those mentioned for the individual needs assessment in the Victims' Directive. An expert from Greece added that in some cases, when the court needs more information about an individual victim, the court may at this point still decide to appoint an expert for assessment.

In the Czech Republic, Luxembourg, the Netherlands, Finland, and Germany it is also stated that all specific rights for the particular groups seen as vulnerable in the respective Member State are already available under national law. Examples that are named for Germany are: interrogation by a police officer of the same sex, avoidance of questions

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about the private life of a victim that are not related to the crime, and the possibility to exclude the public from a trial for the sake of protection of the victim. Legislation concerning legal aid is also mentioned. Furthermore, some individual needs are automatically taken into consideration, e.g. regarding the interrogation of children, children of sexual abuse, and other victims of sexual crimes. Germany is currently working on a draft of the Victim Rights Reform Law that will soon be implemented, according to which a victim of a serious crime is also entitled to support by a psychosocial process support worker whose job is to ensure the psychological well-being of the victim during the criminal process. In the Czech Republic, it is stated that a request from an especially vulnerable victim must always be granted if “important reasons” do not prevent this. One of its good practices is that the reasons leading to the refusal of a request by the victim need to be listed by the police officer in a report. This may increase the transparency of such procedures, enhancing the victim’s access to certain decisions that were made throughout the process, and enabling the victim to dispute these reported decisions if possible.

In Austria, for example, needs and rights are said to differ according to each group, meaning that although they do not currently make use of the needs assessment, the importance of distinguishing between different vulnerabilities is acknowledged. For victims of human trafficking, for example, the main issues may be to provide shelter or translation and treating them taking into consideration the cultural background. This may be less important for vulnerable victims that are native residents of a Member State. Clearly, the partial adherence to the purpose of the individual needs assessment is largely due to the fact that many vulnerable groups are already given specific (protection) rights and criteria have been formed to identify these groups.

Because the purpose of the individual needs assessment is to serve as a tool to identify those in need of special treatment and additional rights, the link with vulnerable groups is sometimes used by other countries in their approach to adhere to this article of the Victims’ Directive. In the Czech Republic, for example, the definition of vulnerability of victims is considered the starting point for assessing victims. In Latvia, the timely implementation of the individual needs assessment was considered unfeasible by the experts and the (temporary) solution the Working Group has decided on is that, instead, the group of victims that are eligible for extra protection will be broadened. This specifically concerns groups that are foreseen to need extra protection, in contrast to individually assessed persons. Next to minors, the groups that will be included are victims of sexual violence, human trafficking, victims with mental health problems, victims of crime committed by other persons in the family (related or living in the same household), victims who have suffered serious bodily harm or harm of psychological nature, and persons who have been victims on the basis of their race, nationality, ethnicity or religion. All these groups will receive additional protection rights. The criteria for these groups are identified as part of the criminal proceedings. The expert from Latvia recognized that this approach to the assessment is prone to exclude certain types of people. The example named is someone who is devastated after a crime identified as ‘not so serious’ by legislation such as a robbery: these people are left without extra protection.

The groups of victims that are seen as vulnerable and/or have access to additional rights in each Member State according to the national experts are presented in Table III-5. It should be noted that few countries mention hate crimes in their legislation as one of the criteria that makes a victim vulnerable. Perhaps related to this, ethnic minorities are almost never mentioned as groups that are given additional rights. Interestingly, the label of ‘vulnerable’ in Slovenia does not necessarily entail that such a victim is granted additional rights or protection measures. This is only the case for minors. On the other hand, offenders who have committed a crime against a victim indicated as ‘vulnerable’ may receive more severe punishment.

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Table III-5: Vulnerable victims identified in national legislation of Member States

Member State	Minors	Domestic/ sexual violence	Human trafficking	Mental/ Physical disability and/or sickness	Serious Violence	Hate crime	Terrorism/ warcrimes	Other
Austria	X	X	X	X				
Belgium	X	X		X				
Bulgaria	X	X	X	X			X	Illiterate Elderly War Crimes
Croatia	X	X	X		X		X	
Cyprus	X	X	X					
Czech Republic	X	X	X	X	X			
Denmark	X							
England and Wales	X	X		X [Incl. repeat victimization]				Intimidation; 'special needs'
Estonia	X	X	X	X			X [organized crime]	
Finland	X	X	X	X				
France	X	X	X					
Germany	X	X		X				
Greece	X	X	X					
Hungary	X	X	X	X				
Ireland	X	X						
Italy	X			X	X	X [gender based and migrants]	X [incl. organized crime in present or past]	
Latvia	X	X	X		X			
Lithuania	X	X						
Luxembourg	X	X	X	X				
Malta	X	X	X					Elderly
Netherlands	X	X	X		X			
Poland	X	X						
Portugal	X	X	X	X	X		X	Victims with health prob.
Romania	X	X	X					
Scotland	X	X	X	X				Stalking Immigrants
Slovakia	X	X	X				X [organized crime]	
Slovenia	X	X						Elderly pregnant women
Spain		X	X				X	Cross- border crimes
Sweden	X	X						

### Practices that map on to individual needs assessment

In addition to legislative provisions that may be linked to the purpose and contents of the needs assessment, experts were also asked whether there are currently any practices in place that are *not* included in national legislation but that do correspond with the Directive's call for an individual needs assessment. For example, in the Czech Republic, the law stipulates that police officers ought to treat victims of crime in a way that prevents secondary victimization. This is phrased as a very general obligation, however, and no concrete guidelines can be found in the law on how to achieve this. This means that in practice, in the Czech Republic as well as in several other countries, it is mainly up to police officers themselves to decide whether a victim should be granted special rights when these are requested by the victim. An example given for the Czech Republic is that when a victim asks for a person of the same sex to be interviewed by, this request can be denied by the police officer if there is no other person available to do the interview at that instant. Several other experts, from Finland, the Netherlands and Hungary, mentioned the role of the police officer when it comes to the identification of victims' specific needs. In Hungary, for example, a staff member of several services or organisations may make the assessment by him, or herself, as part of their job, but may not be adequately trained to recognize the victim's needs. In Finland as well, it is stated that in practice it comes down to police officers referring victims of serious crimes to special victim services or medical treatment or protection measures. In many police stations in Finland, the police have social workers or special programmes that include working groups with social workers and at times a psychiatric nurse. These types of services are not specific for the victim; they are also made available for perpetrators.

An expert from the Netherlands expanded on *how* it is decided that a victim belongs to a certain group considered vulnerable and in need of extra (protection) rights. This is to be done in the pre-phase of proceedings, meaning that in the Netherlands as well the police should be the one to realize this. In some cases, it may be rather obvious (e.g. for minors or victims of an offender who is a family member). Victims also have an influence here because as soon as a victim states that (s)he has been sexually abused, then several special rights need to be in effect, regardless of doubts of the authorities. However, it should be noted that these rights do not only have the function of protecting the assumed victim of sexual assault, but serve a second function of 'truth finding', i.e. filtering out false accusations.

A respondent from Germany pointed towards the benefits of not having a systematic assessment. The respondent states that in Germany, each authority has the competence to decide whether a victim should be considered vulnerable and/or in need of specific rights at any stage in the legal proceedings. As soon as some characteristic of the victim or his or her circumstances becomes relevant, authorities can immediately act upon it. It should be noted, however, that a systematic assessment does not necessarily exclude this type of approach. In fact, in the Directive it is stated that "The victim's needs and/or perception may change over time. Where there is a change in circumstance it may be necessary to review the assessment and the measures in accordance with national law".

### Plans of implementation and strategies

In many countries, working groups have been established with the aim of discussing and implementing the articles of the Victims' Directive, including article 22 on the individual needs assessment, before the transposition deadline of November 2015<sup>41</sup>. Both in the Netherlands and in Finland it was mentioned that the report of the working group was sent out for comments to different stakeholders, including victim support organisations.

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<sup>41</sup> Croatia, Greece, Latvia, the Netherlands, Finland, Lithuania and Portugal.

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### Working groups in Portugal

APAV formed an advisory group to help create a proposal of amendment of the Criminal Code and Criminal Procedural Code following the demands of the Directive 2012/29/EU. APAV developed supporting documents and guidelines for the group, lead the meetings and organised focus groups on specific key topics to enhance the holistic approach of the final proposal. A comparative law analysis followed to solve specific problems identified throughout.

The results of this process was integrated on a document entitled “For a victim’s statute in Portugal: minimum standards on the rights of all victims of crime”. It contains a set of proposals for decision-makers about the transposition of the Victims’ Directive in Portugal. It was based on APAV’s know-how in the support of victims of crime and on the contribution of more than 70 professionals of different fields about the situation of victims of crime in Portugal<sup>42</sup>.

Several other experts mentioned that their government intends to model the needs assessment in their country on an already existing assessment. In Austria, they have already collected a checklist that is currently used in England and the aim is to base their own assessment on it. In Lithuania, those involved have also translated the English version to their own language, and are planning to use a similar checklist.

However, in some countries it is unclear what the government’s intentions are regarding the contents and implementation of the assessment (e.g. Greece and Portugal). An expert from Malta stated that no governmental action is being taken with regards to the needs assessment. After pushing the issue for a long time, Victim Support Malta has started developing their own risk and needs assessment tools and are sharing these with other stakeholders, such as the police.

Several pilot projects have started in Austria. Attempts are being made to encourage the police to make use of the checklist. Currently, this is not happening and the police seems to be waiting until the assessment is implemented in the law. In Italy as well, a pilot project was run in Florence. In the Netherlands, one of the experts interviewed has been involved in the development of the individual needs assessment to a certain extent. The development of the individual assessment (*risico taxatie*) has started too late according to the respondent. Beforehand, two studies have been conducted by the Research and Documentation Centre in the Netherlands (WODC *Wetenschappelijk Onderzoek- en Documentatiecentrum*). Currently, mostly the police and the Ministry of Safety and Justice (Ministerie van Veiligheid en Justitie) are working on it. The pilot estimated begin was in November 2015; a few police officers will practice using the individual assessment form, which will be followed throughout the criminal proceedings.

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<sup>42</sup> The document is available here (only in Portuguese): [http://apav.pt/apav\\_v2/images/pdf/Para\\_um\\_Estatuto\\_da\\_Vitima\\_em\\_Portugal.pdf](http://apav.pt/apav_v2/images/pdf/Para_um_Estatuto_da_Vitima_em_Portugal.pdf)

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### Project EVVI in Poland and France

To help EU Member States in the transposition of Article 22 of the Directive, Project EVVI - Evaluation of Victims - was set up<sup>43</sup>. The partner Member States included were Spain, Poland, Portugal and the United Kingdom. One of the main activities was the establishment of a group of experts for the development of a questionnaire and a good practice guide for the individual assessment of the needs of victims of crime.

An expert from Poland reported that a pilot study using the EVVI questionnaire has been conducted among several NGOs that demonstrated a high demand for such a type of tool in dealing with crime victims. Feedback from experts of the participating Member States was received stating that the questionnaire required significant changes and further work. In addition, the necessity of using the questionnaire for individual assessments with a proper handbook providing guidance for specialists was pointed out. Since then, the Council in Poland has completed the work on two separate questionnaires with an intent of each being used separately - one by state authorities, such as the police or prosecutors, and another - by NGOs providing support to victims. The NGO version includes two parts, of which the first is dedicated to gathering basic information about the victim, while the second part focuses on the circumstances of the crime as well as on the perpetrator. The version for the police and prosecutors is similar, only much shorter, simplified and aimed at applying means of protection, such as special questioning conditions or provision of psychological and legal aid. Through the assessment, a given specialist will have a full insight into the situation of a crime victim, be able to identify the necessary form and extent of support as well as forward it to the proper state authorities if needed. After a recent session of the Council, both updated questionnaires are ready for a full scale pilotage that will be conducted with participation of both the NGOs that receive funds for helping crime victims, and state authorities, i.e. the police and prosecutors.

In France, the umbrella organisation for victim support and mediation, *Institut Aide aux Victimes et Médiation* (INAVEM), is now responsible for conducting the individual needs assessment. The police may refer a case to INAVEM, after which victim support officers do the individual assessment and send back the report to the procurator to ensure that the necessary protection measures will be put into force. The expert from France acknowledged that training or even 'new professions' are necessary to do the individual assessment, especially because the assessment should not turn into a type of police interrogation. It should include a set of questions that may be skipped or asked about in more depth, depending on the individual case.

In Portugal, the questionnaire has not been piloted yet but is considered by Portuguese Association for Victim Support (APAV), partners of the Project EVVI, as a possible useful starting point for further developments and implementation of the individual assessment.

In Austria, they are planning to create an application so that each actor involved in the criminal proceedings (e.g. police, judges, prosecutors) can use this during any stage of the proceedings. This is also the case in Finland. The

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<sup>43</sup> For more information and the questionnaire templates drafted under the Project EVVI, please refer to the full report [www.justice.gouv.fr/publication/evvi\\_guide\\_en.pdf](http://www.justice.gouv.fr/publication/evvi_guide_en.pdf).

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application would consist of a checklist, or set of questions, to assess the needs of victims. In the Netherlands as well, the individual assessment is planned to be a concrete tool, to be used by the police but also by other authorities in the subsequent stages of criminal proceedings. The assessment will start out as a form that is to be filled in, asking about the type of crime, whether the victim thinks there are reasons for special treatment (e.g. being threatened) and other factors that may indicate increased vulnerability. In the future, the Ministry of Justice would most like to have a computer system that automatically offers recommendations, based on the words that are typed in by the officer about the crime, the victim and on previous reports. In Germany, on the other hand, one of the respondents wondered whether the individual assessment will be as concrete as a checklist. Rather, the expert interpreted the plans for the implementation of the needs assessment as a decision that is based on relevant information the police will have at that point, and on the communication the police has with the victim.

According to an expert from the Czech Republic, the most important aspect to focus on considering the individual assessment, is to ensure that it will work in practice and not just on paper. An expert from the Netherlands also stated that the assessment needs to be practical and easy and efficient in its use. An expert from Greece mentioned the importance of training for professionals. An expert from Finland also stated that because the police is the first authority to come into contact with the victim, the police especially needs to be trained to be able to identify victims that have special protection needs. Training is crucial partly because it is needed to give a more specific notion of what is meant by ‘special protection needs’, a phrase in the Directive that can be interpreted rather broadly.

### **Authorities conducting the individual needs assessment**

According to the expert from Italy, the most problematic aspect of transposing this article is identifying who will be the responsible bodies carrying out the individual needs assessments (Table III-6). Should this be done by the police, the psychologists, the public prosecutor, or the victim support or another NGO? According to the Directive, needs assessments has to be carried out “at the earliest opportunity”, which in practice frequently translates to the first moment of contact between the victim and a competent authority. In Germany, a special provision is currently planned in the general part of the Code of Criminal Procedure that states that the first authority that deals with a case has to conduct the assessment and put it into the filing system. This first authority decides whether the victim should be considered vulnerable or not.

In most cases, the police are mentioned as the party that is most likely to come into contact with victims first, and are hence seen as the competent authority to be the first to make use of the individual needs assessment.<sup>44</sup>

A reason to let the police assess the needs of the victim and not a victim support organisation is, according to an expert from Austria, because not all victims will come into contact with victim support. A victim may want to start criminal proceedings but may have no interest in receiving professional victim support. However, there are also cases in which a victim may turn to victim support organisations but not report the crime to the police. This possibility needs to be taken into account when deciding to give only one organisation the duty to conduct the individual needs assessment.

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<sup>44</sup> Austria, Finland, Germany, the Netherlands, Poland and Sweden.

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Table III-6: Authorities responsible for conducting the individual needs assessments

Member State	Plans to let police do first assessment	Hesitations about letting police do first assessment/ other alternatives	No info
Austria	X		
Belgium			X
Bulgaria			X
Croatia			X
Cyprus			X
Czech Republic			X
			[currently police is first authority to come into contact with victim]
Denmark			X
England and Wales			X
Estonia			X
Finland	X		
France			X
Germany	X		
Greece			X
Hungary		X	
Ireland		X	
		[Victim Support]	
Italy		X	
Latvia		X	
Lithuania			X
Luxembourg		X	
Malta		X	
		[Victim Support has developed own tools]	
Netherlands	X		
Poland	X	X	
Portugal			X
Romania			X
Scotland		X	
		[defense agent or prosecutor]	
Slovakia			X
Slovenia			X
Spain			X
Sweden	X		

In Luxembourg, where they are also struggling with the question of who is the most competent to do the assessment, experts are inclined towards a different proposal. Although a police officer may need to check if a victim suffers from disabilities, what languages the victim speaks and if he/she needs a lawyer, a police officer is still not a psychologist. Thus, in Luxembourg, the Ministry of Justice thinks that once the victims are referred to the police, the victim support organisation (*Service d'Aide aux Victimes*) should make the assessment. In Latvia, according to one of the experts, the needs of the victim that are not accurately in focus do not so much concern language, communication or medical treatment, but particularly the psychological assistance or evaluations of victims. According to the expert, this is not a point for police or prosecutors to be involved with, but for NGOs. One of the experts from the Netherlands shared a similar perspective and pointed to the case of victims with slight mental/intellectual disabilities. If someone who is not specialised in the matter would carry out the individual assessment, then he or she may not be able to identify the handicap in the victim but, at the same

time, this victim would have trouble filling in the assessment to his or her benefit. It is written in the Directive that “Persons 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”. However, though training is mentioned several times by experts as an important factor in the successful practical implementation of the individual needs assessment, trainings have not yet been established and no expert mentioned what the contents of such a training should look like.

### **Attitudes towards and difficulties of article 22**

The Directive’s article on the individual needs assessment has been met with both doubts and criticism. An expert from Hungary wondered how feasible it is to make an instrument that takes all relevant factors into account; and also how efficient and practical it is. One of the experts from the Netherlands also stated that although some items may be easily offered on a checklist, and other rights (e.g. specific interviewing conditions) are very clear-cut because it is easy to spot with what type of vulnerable victim you are dealing (e.g. minors), several terms such as “gender-related crimes” or “hate crime” will be harder to integrate because these crimes are defined by the motivation of the offender and it is difficult to figure out the exact motivation behind a crime. An expert from Austria mentioned that it is unnecessary to have an individual needs assessment for all victims of crime. This would only cause an extra load of work for practitioners and, in some cases, may even increase the pressure of interrogation if the assessment is carried out in the wrong way.

One of the experts from the Netherlands, on the other hand, wondered precisely what the unforeseen consequences in practice may be of implementing an actual written individual assessment. The respondent worries that this very personal document about the victim is to become part of the criminal files, which would mean that the offender and his lawyer have access to this document as well. “Who should have access to the individual assessment?” Another respondent is distrustful of the individual assessment and worries that a risk of the assessment is that it is likely to lead to expectations on the side of the victim that may not be met by eventual proceedings.

In Scotland, where as described above the individual needs assessment is already (partly) in effect, some experts also have mixed feelings about the assessment. Although they believe that victims will benefit from the provisions in legislation on individual needs assessments, they have identified some limitations in the provisions, primarily regarding the procedure and timing of the assessments. They do not believe that these provisions follow the Directive’s statement that individual needs assessments should be ‘timely’. It may be questioned whether or not an assessment by the Crown Office & Procurator Fiscal Service (COPFS) is conducted early enough to be seen as timely and to be able to provide specific protection measures throughout the process. Threats, intimidation, secondary and repeat victimization can arise at any stage in the criminal justice proceedings, before the case has reached court. The Directive highlights that specific protective measures should be offered to vulnerable victims both during the investigative and the court stage, but if the assessment is not conducted until the case reaches the prosecution, vulnerable victims will not be identified and offered specific protection measures until the court stage, seemingly too late to fulfill the requirement of ‘timely’ in the sense of the Directive. The experts from Scotland are additionally concerned that, contrary to the Directive, assessments will be based on information provided from the police without any substantial engagement with the victim. Furthermore, there is no opportunity to update the assessment throughout the criminal proceedings.

### Conclusions

Although few countries have (fully) implemented article 22 into their national legislation, it is clear that the absence of a law relating to the individual needs assessment does not imply that certain vulnerable groups are not identified and granted specific (protection) rights. However, the aim of the individual assessment, that is that it should be made available for *all* victims, has been achieved in almost none of the Member States. On top of that, several experts reasonably mentioned that changes in legislation do not automatically imply changes in practice. Although this is the true for all other articles of the Victims' Directive, we suspect that the matter is all the more pressing for articles 22 and 23 because even with the individual assessment as guideline, much depends on the insight and good will of those interacting with the victim. Indeed, it is generally agreed that changing legislation is not enough and there is a lot of work to be done in the training of police officers, prosecutors and judges, as well as educating society: "Attitudes towards victims of crime have to be changed in the first place". Additionally, no previous legislation ever required this type of assessment and there are very few implementations of the assessment across the European Union that are known to function well and may serve as examples for the other Member States. The police and prosecutors in many of the Member States have a huge amount of cases and no time to scrutinize or evaluate every victim but instead (need to) use that time to investigate and prosecute the offender. Conducting the assessment will require more time and effort from police and prosecutors. Changing legislation to incorporate the individual needs assessment does not mean that suddenly more resources are available for conducting the assessment as well. Finally, for many respondents it is unclear what specific form the assessment should take, what authority should be responsible for conducting the assessment, and what should happen with the information that is attained by the assessment.

Despite doubts and the emphasis on implementation hazards, several experts mentioned procedural benefits of the Directive's needs assessment as well:

- Apart from the groups that are easily identified as vulnerable, lack of systematic assessment tools may prohibit the recognition of certain victims as in need of additional protection and support. After implementation of an individual needs' assessment, in some cases evaluation will happen more systematically and there will be one central decision at the beginning that can be followed up in later stages of the criminal proceedings.
- More attention may be given to the groups that are particularly vulnerable due to carrying multiple vulnerabilities, such as child victims of human trafficking, whose rights are protected under different laws and regulations, as the individual needs assessment may offer opportunities by giving a clear overview of all the vulnerabilities related to the victim, and the laws or available protection rights that may be relevant.
- Implementation of the individual needs assessment will likely mean that victims will be better informed about their options of protection. Currently, this is not done satisfactorily. An example mentioned is that victims do not always realize that when they report a crime to the police, this statement will be filed and the suspect will have access to this statement. In this case, victims should actually be able to decide whether they want their personal data to be shared or not. Conducting the individual needs assessment in a timely manner may create the realization in victims that they have certain rights and decisions to make from the beginning of the process.



### Training of practitioners (Art. 25)

#### Introduction

The Victims' Directive calls for general and specialist training for all professionals dealing with victims of crime, including police officers, court staff, judges, prosecutors, lawyers, victim support and restorative justice practitioners (Art. 25). Training should differ according to the level of contacts that professionals or lay people have with victims so that 'services are provided in an impartial, respectful and professional manner' (Art. 25, 4). The aims of these trainings are to recognize victims of crime and treat them according to their needs.

It is difficult to say if this is happening at the moment across Europe in terms of training people dealing with victims of crime. The information collected during the interviews was often fragmented, incomplete and confused<sup>45</sup>.

In general, most respondents shared frustrations on the lack of adequate training for professionals dealing with victims of crime. It appears clear that basic standards for training are not met yet in many Member States. In Bulgaria, even trainings for dealing with vulnerable groups of victims are part of future plans, but not a reality yet, having an impact especially on vulnerable groups, like victims of domestic violence and minors. Most respondents mentioned that efforts are made to improved general and specialised trainings at the national level, keeping an eye on international developments in the field. This leaves room for hope on more training and, especially, more sharing of information to happen in the near future.

We asked about the availability of trainings for different categories of professionals or lay people and we asked about contents and format of trainings, timing and frequency, compulsory or mandatory education. Still, despite the fact that we aimed at collecting concrete training models delivered in different Member States, most respondents seemed not to be at ease with these questions.

#### Training police officers and court staff

Several respondents clarified the efforts made in their own Member State in order to train police officers and court staff concerning victims' needs and issues. Special attention has been given to the police forces since these professionals may be the first ones establishing a contact with victims of crime. Training police officers has been considered a crucial step in order to avoid further victimization experienced by victims of crime. Still, in some Member States, no special training is foreseen for police officers yet (e.g. Lithuania, Malta<sup>46</sup>) or special efforts have been taken only recently (Ireland<sup>47</sup>, Latvia, Poland, Portugal) to recognize the important role of police officers in avoiding secondary victimization and to improve trainings provided to police officers having a first contact with victims of crime. For example, Poland had planned a series of trainings at the end of 2015 for professionals working with victims of crime, including police officers, judges, prosecutors, probation officers, victim support officers. About 840 professionals participated in twelve trainings across the country. Each training lasted three days and included theory and practical tips.

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<sup>45</sup> Often, the question on training received limited information or no information at all (e.g. Denmark, England and Wales, Greece, Ireland, Malta).

<sup>46</sup> According to the respondent from Malta, these provisions of the Victims' Directive are far from being implemented in reality: 'There is no training available. The police doesn't even know that the Victims Act came into force. So they cannot give information. They can, but they don't know that they have to. It is just a piece of paper.'

<sup>47</sup> According to an Irish respondent, the 'Victims Working Group' is still discussing how to make these provisions of the Victims' Directive effective in practice. Trainings already started for Irish police officers working in the Victim Service Offices.

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In many Member States, specific training on victims' needs and rights is provided to police officers as part of their general education to enter the police forces<sup>48</sup>. Some respondents stated that training for police officers is offered by their own 'police academy' (Croatia, Cyprus), by the 'state police' (Latvia), by 'police education centres' (Hungary), by 'police administrations' (Italy) or as part of the several initial trainings to become a police officer (Belgium, Estonia, Sweden). Experts in victims' needs and rights may belong to the police force itself (e.g. Slovenia), but they can also be invited from victim support services or other NGOs dealing with specific themes (Greece<sup>49</sup>, Hungary, Scotland<sup>50</sup>, Slovakia<sup>51</sup>). In small countries like Luxembourg, international cooperation is needed for training police forces: their police officers often travel to Belgium or Germany to receive training or other times colleagues from neighbour countries travel to Luxembourg for giving training.

In addition to a general educational programme, some Member States provide additional training for further professional development<sup>52</sup>. One respondent (Austria) stated that 'convincing' police officers to attend further training is easier because they are more used to 'comply with orders' compared to other professional bodies. In Hungary, for example, trainings on different themes are provided every 2/3 months to police officers. In Czech Republic, training is replaced by a monthly meeting where different topics are discussed (e.g. the practical implementation of the law supporting victims of crime). In Belgium, this further training is possible on voluntary basis, except for those police officers working in the special department providing victim services. In Bulgaria, this task is taken over by a victim support organisation, the Centre Nadja Foundation, which prepares training modules for police officers and developed minimum standards for training trainers and participants of trainings on victims' needs and rights ([www.centrenadja.org](http://www.centrenadja.org)). In Portugal, APAV does not provide training on victim issues to the police on a compulsory basis, although it is frequently invited to educate policemen on victims-related issues. Additionally, under the Project Infovictims II<sup>53</sup> (co-financed by the European Commission under the Criminal Justice Programme), it is foreseen 3 hours training on victims' rights for the police.

The contents of these trainings vary. Respondents listed several training topics which are important for police officers dealing with victims of crime, such as:

- good practices for implementing a victim-oriented approach in their daily work (Sweden) and what is victim support (Denmark);
- the contents of the Victims' Directive and other relevant legislation (Czech Republic);
- training for defining and explaining specific concepts or practices, like who is a victim of crime, what is victim support, what is victim-offender mediation (Hungary);
- the impact of crime on victims, the impact of giving evidence at court, what services are available to victims, and the police role in victim support (Scotland);
- good practices for informing victims about criminal proceedings (Sweden);
- training for dealing with special cases, like violence against women (Sweden), domestic violence (Bulgaria, Cyprus, Hungary), rape and sexual assault (Bulgaria, rape and sexual abuse of children (Bulgaria, Cyprus), human trafficking (Bulgaria, Cyprus, Hungary).

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<sup>48</sup> Belgium, Cyprus, Croatia, Hungary, Italy, Latvia, Portugal, Slovenia and Sweden.

<sup>49</sup> A Greek respondent mentioned that educational projects are run either by governmental organisations (e.g. the General Secretariat for Gender Equality) or by NGOs (e.g. Diotima's Project).

<sup>50</sup> Victim Support Scotland contributed to the design of part of the trainings for new recruits of Police Scotland, which is mandatory for all new recruits. It also gave training to raise awareness about victims to court officers of the Scottish Court Service, local magistrates (Peace Judges) and members of the Parole Board for Scotland. In this last case, the training includes only those officers interviewing victims of murder.

<sup>51</sup> The Slovakian respondent spoke about an organisation called 'Blue Angel' that provides trainings for criminal justice authorities in all the country. These are compulsory for policemen and prosecutors, but voluntary for people working in NGOs dealing with victims of crimes.

<sup>52</sup> Austria, Belgium, Cyprus, Czech Republic, Hungary and Portugal.

<sup>53</sup> More information can be found on the practice sheet on cooperation and awareness at [www.apav.pt/ivor](http://www.apav.pt/ivor) and/or on the project website: [www.infovictims.com/com/index.html](http://www.infovictims.com/com/index.html).

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### Police training in Estonia

A basic training for interacting with victims of crimes is provided to all police officers. Still, this training does not include specific information about dealing with certain categories of victims nor does it include practical advice on how to communicate with victims of crime. Still, thanks to the enforcement of the Victims' Directive, Estonia planned sensitivity trainings bringing together different groups of professionals (police, prosecutors, judges, victim support officers) and including practical tools for communicating with victims.

Other relevant topics for trainings in Estonia are, for example, communication strategies with victims of sexual abuse, or for interacting with and interviewing child victims. Trainings last 15 days and also include video materials on interviewing techniques. These are organized by the development and training centre of the Estonian Academy of Security Sciences ([www.sisekaitse.ee/atak/meist/](http://www.sisekaitse.ee/atak/meist/)).

At the moment of the study, the Estonian Ministry of Justice was conducting a research for mapping existing training programmes for law enforcement officials working with juveniles and children. The aim is to create an appropriate training programme for judges, prosecutors, lawyers, police officers working with juveniles and children in the criminal justice system. This might lead to further understanding for training professionals for dealing with adult victims of crime.

## Training judges and prosecutors

Similarly to police officers, judges and prosecutors across Europe receive some sort of training on victims' needs and rights as part of their general educational programme to become professionals in their field<sup>54</sup>. These training programmes are provided by the 'judicial academy' (Czech Republic<sup>55</sup>, Croatia<sup>56</sup>, Sweden) or the 'school of the judiciary' (France<sup>57</sup>, Italy<sup>58</sup>) or the 'national court administration' (Lithuania) or the 'judicial training centre' (Latvia). In Bulgaria, trainings for the judiciary are provided by experts from the team of Nadja Centre Foundation, a victim support organisation. Similarly, in Latvia trainings on specific themes (e.g. how to interrogate minors) are also provided by NGOs, such as Skalbes and Dardedze. This is not possible yet in Slovenia, where the judiciary keeps its independency by not allowing NGOs to provide training: according to the experts, this is problematic because the lack of practical expertise in victims' rights is reflected in Slovenian courts. In Luxembourg, there is no specific school of the judiciary, thus training is provided by the neighbour countries, such as France and Germany. A special collaboration exists between the Ministry of Justice in Luxembourg and the 'Ecole Nacional de la Magistrature' in France. In Sweden, the Swedish Crime Victim Compensation and Support Authority is also responsible for training the judiciary.

The timing and frequency of trainings differs across Europe. For example, in Austria, judges and prosecutors have 4-years mandatory training to become professionals, working in different courts and including an internship in victim support

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<sup>54</sup> Austria, Belgium, Czech Republic, Croatia, France, Italy, Lithuania, Latvia and Sweden.

<sup>55</sup> The Czech judicial academy is a special corporation under the Ministry of Justice focusing on education of professionals in the justice field (justice and public prosecutors).

<sup>56</sup> The Croatian judicial academy does not belong to the Ministry of Justice.

<sup>57</sup> The French school of the judiciary is the 'Ecole Nacional de la Magistrature'.

<sup>58</sup> The Italian school of the judiciary is the 'Scuola Superiore della Magistratura' ([www.scuolamagistratura.it](http://www.scuolamagistratura.it)).

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services. Once they become judges and prosecutors, they must undergo a training a year, but they choose the theme of interest. Also in Italy, professional judges and prosecutors must attend mandatory trainings on a yearly basis; still, it is up to participants to request trainings on specific themes or categories of crimes in their interest. In Czech Republic, special trainings were provided in 2014 as a consequence of the adoption of the new Act of Victims of Crime (45/2013) and the decree from the Ministry of Justice on the standard services provided to victims (119/2013). Indeed during this year, the judicial academy in Czech Republic put a lot of efforts in educating judges and prosecutors on the protection of the rights of aggrieved parties and victims of crime during criminal proceedings (trainings are not compulsory for judges in Czech Republic). In Belgium, the basic training is compulsory for judges and prosecutors, but continuing training is attended on voluntary basis. All 'justice assistants' (i.e. civil servants in the 'houses of Justice' under the Ministry of Justice) may receive a general training, followed by more specific training on different themes (e.g. training on mourning, on psychopathology, on domestic violence) given internally or outside the organisation. In Portugal, the judiciary is not obliged to attend training on victims' experiences and needs, but some completed an 'internship' in APAV (e.g. two days observations).

The contents of trainings for judges and prosecutors differs, sometimes being more theoretical, others more practical, keeping in mind the overall goal of protecting and supporting victims of crime. For example, trainings can include the following topics:

- contents, implementation and impact of existing legislation protecting and empowering victims of crime (Bulgaria, Czech Republic);
- the referral procedures for victims to have access to victim support services (Bulgaria);
- legal, psychological and medical conditions of victims (Austria, Bulgaria);
- the impact of crime and criminal procedures on victims of crime (Lithuania);
- the role of criminal justice authorities, such as judges and courts, in providing support and treatment for victims and witnesses of crimes (Lithuania, Sweden);
- ways for working together and cooperate with victim support services (Scotland);
- special needs of certain categories of victims, such as victims of human trafficking (Bulgaria), victims of sex crimes and crimes of violation of integrity, child victims who have suffered/witnessed violence, victims in close relationships in domestic violence (Sweden) or child victims during interrogation procedures (Latvia<sup>59</sup>);
- practice tools for handling people, including people from different backgrounds (Austria);
- practice tools for preventing secondary victimization (Austria);
- basics of restorative justice (Lithuania).

Austria also used trainings for raising awareness and increasing cooperation when mediation was first introduced as a diversion measure. In these mandatory trainings, prosecutors and mediators were put together in the same training. This was useful to create a relationship of trust that still exists between criminal justice authorities and restorative justice practitioners. Currently, such trainings are not compulsory, but regular meetings have been established between the authorities at the Ministry of Justice and the mediation services. Possibly for similar reasons (raising awareness and increasing cooperation), Lithuania offers trainings for different professional groups (judges, secretaries, NGOs) on the psychological support for victims and witnesses. Still, such trainings exclude police officers and prosecutors.

The format of trainings also varies depending on the aim of the trainings (e.g. increasing theoretical or practical expertise). In Czech Republic, for example, the one/two days trainings include frontal lectures (with presentations, pictures and videos including information about recent cases) and group discussions (with about 30/40 participants).

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<sup>59</sup> Prosecutors in Latvia have started an educative campaign about child rights, which is a big step, but was not generalized toward victims' rights. Possibly, after the amendments to criminal procedure law and other laws will come into force, prosecutors will be obliged to receive general training on victims' rights.

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### Training of lawyers

In general, lawyers across Europe receive trainings from their own bar association (e.g. Austria, Croatia, Italy). In Austria, these trainings (as well as round tables) are managed by the centre of the victim support service, which is the intermediary between the Ministry of Justice and victim support services.

In Bulgaria, the National Legal Aid Bureau organizes at least once a year regional trainings for sharing information with lawyers based on their needs and requests; additional efforts were made to qualify lawyers (subscribed in the National Legal Aid Register) who can provide high quality legal assistance to victims of crime. These trainings included specific practical skills for communicating with victims of crime, also with different ethnic or cultural background. Lawyers were also gathered together in regional centres to receive training and information; this was useful to increase cooperation and trust between the Bureau, the bar associations and lawyers themselves. Still, two main issues remain concerning training lawyers in Bulgaria: first of all, legislation is amended with such a speed that it is difficult for them to be constantly up to date; second, no standardized procedure is taught yet to lawyers for assisting victims of crime.

In Latvia, Portugal and Belgium, lawyers do not receive regular training for dealing with victims of crime. The Latvian respondent explained that this is because lawyers are seen as separate actors compared to the rest of the criminal justice system. A solution is under discussion by the working group occupied with the implementation of the Victims' Directive: law programmes at the universities should include, in the future, aspects of victims' needs and rights in their programmes. However, in Latvia there is still a predominant attitude to see victims only for proving the offenders' guilt, thus at the moment it is difficult to imagine mayor changes for educating lawyers.

### Training victim support practitioners (and volunteers)

As for other professionals in the field, it is necessary to distinguish the training received from the basic educational programme and the training given as an additional professional development in the field. While for police officers, judges, prosecutors and lawyers their educational career can be easily identified, this is not the case for victim support practitioners. Only few Member States may be able to provide a university degree in victimology and/or criminology<sup>60</sup>. In most cases, victim support practitioners have a background in law, psychology, social work and/or sociology. In Luxembourg<sup>61</sup>, these are 'old' educated and experienced psychologists or criminologists who are regularly trained in different psychological and psychotherapist techniques and methods.

Additional trainings for professional development may be organized at the national level<sup>62</sup>. For example, in Croatia this is under the responsibility of the 'Independent Service for Victim and Witness Support' of the Ministry of Justice, who is accountable for selecting, training, coordinating and even giving psychological support to practitioners and volunteers dealing with victims of crime in all offices located in the country. In Denmark, training is compulsory, focusing on legal issues and well as on crisis counselling, but also on specific types of victims (e.g. sexual violence, stalking). In Lithuania, where mostly psychologists and social workers deal with victims of crimes, there are no special trainings provided: all seminars on victims' needs and rights are given within their academic education. In Slovakia, training exists, but it is not compulsory, for people working in NGOs dealing with victims of

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<sup>60</sup> Belgium, Greece, the Netherlands, Portugal and England.

<sup>61</sup> In Luxembourg the 'Service d'Aide aux Victimes' is part of the prosecutor's office.

<sup>62</sup> Belgium, Bulgaria, Czech Republic, Denmark, Croatia, Hungary and Sweden.

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crimes. In Slovenia, training is compulsory for volunteers and staff working in a victim support NGO; additionally, once a year, an entire week of training is given with the NGO by internal experts in specific topics.

Concerning additional trainings for professional development, a respondent (Austria) explained that while professionals with a psychology background can be more easily obliged to attend trainings, lawyers are 'more conservative liberal professionals' and are more reluctant to attend trainings. A solution to indirectly 'force' them to get informed about the needs of victims of crime and the ways to deal with them is to make sure that victim support services only hire practitioners who have attended some basic trainings for protecting and supporting victims of crimes. This solution could be useful for other Member States (e.g. Bulgaria) which are skeptical about the level of qualification of practitioners working in their victim support services.

Some Member States already adopted this solution. In Czech Republic, every victim support officer working in a NGO must attend a 4-day mandatory initial basic training to learn how to contact with victims, what are their rights and how is legislation protecting them. Since a Law on Victims was enforced in Czech Republic, an additional 4-day training on this new legislation must be attended by all volunteers. In Scotland, victim support volunteers receive a basic training for learning to identify victims' needs and thus better support them (NA: the individual needs assessment). Advanced training is provided only to selected volunteers ready to work with more serious cases, such as sexual assault, domestic violence and/or murder. All trainings are provided internally by the victim support service.

### The structure of Victim Support in Hungary

In Hungary, victim support services mostly employ lawyers and in some cases also psychologists and social workers. All of these professionals receive further training for working with victims of crime. At the moment, about 40/50 staff members provide services across the country; they are supported by about 14 administrative officers and functional staff, who are all civil servants. In some districts, volunteer coordinators are employed and they work with approximately 200 volunteers. Through the cooperation between different actors, special assistance to victims can be provided even when the victim support service did not employ a specialist (e.g. in case of psychologists).

As for trainings for victim support professionals, between 2006 and 2011 there were regular trainings on different topics. However, in recent years, mainly due to the lack of financial resources, only one or two trainings have been organized per year. In 2013/2014 an e-learning training material was developed by experts of the Office of Justice (or respectively its predecessor called 'Office of Public Administration and Justice') for victim support professionals. This training material contains complex legal and psychological issues as well as practical (concrete case-solving) tasks.

It is also the duty of the Office of Justice to elaborate and issue methodological guidelines for victim support professionals. In the framework of this, a Handbook on Victim Support was issued in 2013 and every year two or three methodological guidelines have been published (e.g. on the tasks of victim support services if the victim has been victimized abroad or a child-friendly protocol).

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### Training victim support officers in Portugal

APAV created its Training Centre in 2003, coordinated centrally at the Head Office and with Training Offices spread across the country in Lisbon, Oporto, the Algarve and the Azores. APAV has the accreditation of the Directorate General of Employment and Work Relations, an entity responsible for defining and publicising the evaluation criteria for quality and the accreditation of training institutions in Portugal, which formally recognizes the technical and pedagogical capacity of APAV to provide professional training.

Among the training available, APAV Training Centre and its Training Offices are responsible for managing and providing a mandatory Training Course in Support of Victims of Crime to all the new victim support officers and volunteers. About 3 training courses are being delivered every year in each APAV Training Office. Each training includes 90 hours of theory (38 hours) and practice (52 hours, e.g. observations and practice under supervision). Details about the modules of the Training Course can be found online<sup>63</sup>. A certificate is given to all participants only after they have completed the 6-months internship in APAV. During their work, victim support officers are expected to collect information about the case and give practical and/or emotional support to victims and then decide either to proceed with the case (specialised support) or refer it to other services (e.g. psychiatry).

Concerning the contents of these trainings, respondents listed the following themes:

- basic expertise for providing legal aid to victims of crimes, including knowledge about victims' rights in the different stages of criminal proceedings and knowledge about restorative justice practices;
- basic skills for providing psychological assistance to victims of crime;
- practical skills for contacting, informing and speaking with victims;
- practical skills for dealing with people in a crisis situation (who suffered violence and experience trauma).

Some Member States (e.g. Bulgaria, Italy, Sweden) are concerned about the need for providing equal standards of quality services for victims of crime across all regions of the country. In Italy, for example, trainings are not compulsory and they differ in terms of frequency, timing and contents depending on the location in the country. Spain instead is concerned about the mayor difference of victim support services provided either by the State or by NGOs: while State-provided services are legally recognized and their practitioners must follow a series of regulations (e.g. on training<sup>64</sup>), NGOs services depend on the sensitivity of individual local practitioners, who may be interested or not in attending further training.

### Training restorative justice practitioners

While in the previous sections it was easier to identify training courses specifically for dealing with victims of crime, this is not the case when considering the educational background of restorative justice practitioners. Given

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<sup>63</sup> Find more details about this training course on the practice sheet on training at [www.apav.pt/ivor](http://www.apav.pt/ivor).

<sup>64</sup> In Spain, the staff from the victim support services receives specific training every year, often for several days. The content is about legislation, restorative justice, evaluation systems, treatments, etc. Volunteers working on the victim support NGOs are given training through the State grants.

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the fact that restorative justice values and principles put both parties on an equal level, the focus of these trainings should not be intended to give mere attention to victims of crime. This is also what resulted from the outcomes of these interviews: training for restorative justice practitioners must be provided in order to grant a safe and competent process to victims of crimes, but definitely also to offenders. As a respondent stated, 'since restorative justice puts two people in focus, it has a different perspective, which is difficult to understand', at least in terms of victims' needs.

As for victim support practitioners, also restorative justice practitioners come from different educational backgrounds, such as psychology, social pedagogy, social work and criminology. Once more, there is no 'European way' to provide additional training for the professional development of restorative justice practitioners. Differences exist in terms of timing, frequency and contents of trainings and no 'best practices' can be easily identified. For example, in Bulgaria, in order to be registered in the 'Unified Register for Mediators', practitioners must have attended a certified training course. This 60-hours course is provided by universities and NGOs and includes theory and practice. In Croatia, the certified course lasts one year, in total 170-hours of lectures, role-plays, exercises and supervision<sup>65</sup>. Contrarily, in Sweden a minimum of 4-day course is required (including discussions, exercises and role plays) and in some cases participants wonder if it would not be sufficient enough to read the manual and watch the films suggested for this training.

The contents of trainings for restorative justice practitioners include:

- theories, values and principles of restorative justice and conflict management;
- restorative justice in practice models (e.g. mediation);
- national legislation about mediation or other restorative justice models.

### Good practices for training

Even if respondents had difficulties to provide concrete tips for best practices in giving training to professionals and volunteers working with victims of crime, it was possible to identify some ideas that could encourage trainings to be better provided in other Member States.

An effective example comes from Bulgaria, where the victim support centre 'Nadja Centre Foundation' provides training for criminal justice authorities on more general and specific themes (e.g. domestic violence, children's rights). This model is particularly interesting since it encourages the cooperation between victim support and criminal justice officers, but it also has the additional value of providing practical trainings where real-life practical experiences can be shared by the victim support services. Still, it is important to keep in mind that providing training is not the main activity of the victim support centre and it may create an extra burden on the tasks and responsibilities of victim support officers. It is also important to realize that supporting victims of crime and training on how to support victims of crime require different capabilities and probably different professionals fulfilling these diverse duties.

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<sup>65</sup> In Croatia, mediators receive a certificate by the Prosecutor's Office, the Ministry of Social Policy and Youth, the Association for Out-of-Court Settlements and UNICEF. These mediators are the only professionals authorized to mediate criminal cases in Croatia, but they also provide expert advice to public prosecutors dealing with juvenile cases. Trainings are provided by NGOs ('Forum za slobodu odgoja'- Forum for freedom; 'Centar za mir, nenasilje i ljudska prava Osijek'- Center for peace, non-violence and human rights) or some private companies ('Centar za mirenje').

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A second example comes from Croatia, where trainings are provided to all different professional groups dealing with victims of crime. What is interesting about this model is that sometimes these professional groups (i.e. police officers, court staff, judges, prosecutors, victim support/NGOs, restorative justice practitioners and volunteers) are brought together in trainings organized by the Ministry of Justice, the Judicial Academy, the Ministry of Interiors and NGOs. It is obvious that having participants with different backgrounds and experiences is an added value for raising awareness and educate about victims' needs and values and for increasing cooperation between these professional groups.

Other good practices are to make sure that these interdisciplinary groups of professionals meet in trainings organized at the local, regional, national and/or international level<sup>66</sup> and that trainings include theoretical information (e.g. about national and international legislation, about victimology theories, etc.) and practical exercises in small group works to learn the skills for dealing with victims of crime (e.g. what to say or not to say in case of severe trauma, how to deal with vulnerable victims, etc.).

In many Member States these trainings are not mandatory or implementation is difficult because of financial reasons. This is the case in Slovenia, where non-compulsory training for health care officers is given, but only few participants attend, and where compulsory training is given to social workers, but the lack of financial resources is limiting these practices. It would be a good practice to make sure that some basic training on victims' needs is given during the education programme (e.g. of psychology, social work, law, health care) and that compulsory training is provided on a regular basis to all those professionals and volunteers dealing with victims of crime.

### Conclusions

Despite the fact there is little information on the national trainings, there is no standardized, well-known 'best' practice occurring across Europe. Still, in some Member States legislation in terms of training has been adopted or it is planned to be adopted soon for making sure that appropriate training is provided to practitioners dealing with victims of crime. As explained by one respondent, mentioning trainings in legislation is crucial for raising awareness on the needs of victims of crime among authorities and possibly influence the allocation of financial resources for training purposes.

Still, legislation must be accompanied by practices and services. In terms of training contents, we can identify already a need for training in the individual needs assessment tool: as mentioned by one respondent, are we creating a new job position here, in need of specialization in this specific issue? Among the contents, we also missed some information about the possible 'post-traumatic growth' of victims: even in trainings, the victim is merely seen as in need for protection and never as in need for empowerment. In addition, experts did not mention the well-being of people working with victims of crime, in order to avoid their own 'vicarious traumatization' and burnout.

There is a general need to share training practices across Europe, but also to revise the current ones, identifying contents, formats and schedules to be adopted for each professional (or volunteer) group working with victims of crime.

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<sup>66</sup> Belgium, Croatia, Hungary, the Netherlands and Poland.



### Cooperation and coordination of services (Art. 26)

#### Introduction

The Directive calls for increasing cooperation between the EU Member States and for raising awareness on victims' rights (Art. 26). Not much information has been found on how this article is implemented in practice, thus the interviews conducted included questions related to the practical implementation of Art. 26: How does each country cooperate with other EU Member States in order to increase access to victims' rights? How is each country keeping track of its best practices to improve access to victims' rights? How is awareness on victims' rights raised in each country?

It has been difficult to draw the attention to the importance of Art. 26; often respondents could not really think about practical instruments for increasing cooperation between services and authorities at the international and national level and for raising awareness on victims' rights at the national level. One respondent (Austria) explained this lack of interest in cooperation and awareness strategies stating that 'Art. 26 is rather soft law, it will not be taken into consideration so much, it is not a priority'.

This section includes respondents' views on three main aspects: cooperation practices between EU Member States, cooperation practices at the national level between different bodies dealing with victim of crime (mostly criminal justice authorities and victim support services) and finally practices for raising awareness on victims' rights at the national level. A series of good practices on concrete cooperation and awareness strategies adopted in the different Member States has been identified by respondents.

#### Cooperation between EU Member States

Many respondents mentioned the *participation in European projects* as the main strategy for increasing cooperation between EU Member States<sup>67</sup>. One respondent (Hungary) further elaborated on the relevance of these international projects: it is not only about the project as such, but also other related activities (e.g. participating in international conferences, getting to know other organisations) that has a crucial impact in enhancing cooperation between Member States. Another respondent (Germany) spoke about the EU-funded Project 'InfoVictims'<sup>68</sup> (co-financed by the European Commission under the Criminal Justice Programme) aiming at informing victims and fulfilling their expectations regarding the criminal process by using different communications means to reach them (e.g. brochures, posters, website [www.infovictims.com](http://www.infovictims.com)): European projects contribute then in sharing good practices for informing victims of crimes, for example. The Lithuanian and Polish respondents added that, thanks to Norwegian funding, Lithuania and Poland have been able to improve the quality of services provided for victims and witnesses in court<sup>69</sup>: bilateral cooperation between countries

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<sup>67</sup> Austria, Germany, Greece, Hungary, Lithuania, the Netherlands, Slovenia, Spain and Poland.

<sup>68</sup> More information can be found on the practice sheet on cooperation and awareness at [www.apav.pt/ivor](http://www.apav.pt/ivor) and/or on the project website: [www.infovictims.com/com/index.html](http://www.infovictims.com/com/index.html).

<sup>69</sup> More information about the projects here: [www.teismai.lt/en/national-courts-administration/projects/norway-grants/691](http://www.teismai.lt/en/national-courts-administration/projects/norway-grants/691) (Lithuania) and [eeagrants.org/project-portal/project/PL16-0004](http://eeagrants.org/project-portal/project/PL16-0004) (Poland)

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participating in a common project is also necessary.

*Membership to international organisations* concerned about victims' rights seem to be also important for establishing good cooperation between Member States. For example, respondents from several countries mentioned the membership to Victim Support Europe has an important step for increasing European cooperation<sup>70</sup>. Some respondents also mentioned the membership to the World Society of Victimology (Hungary), the European Judicial Network (Luxembourg<sup>71</sup>), the European Crime Prevention Network (Latvia<sup>72</sup>), Eurojust (Scotland) and the Academy of European Law (Germany). As explained by one respondent (Hungary), the membership to international organisations such as Victim Support Europe 'enables [national] organisations to cooperate with other Member States, mainly by participating in conferences, workshops, seminars and in other professional occasions which aim at sharing good practices and knowledge [...] on victims' rights'. The Latvian respondent explained that his country is not a member of Victim Support Europe 'because Latvia has no general victim support organisation'.

*Other practical tools* for increasing cooperation are:

- The implementation of e-tools within criminal justice systems across Europe to increase the interactions between criminal justice authorities (Bulgaria<sup>73</sup>);
- The establishment of a working group appointed by the Ministry of Justice to share good practices, develop training and improve communication between authorities and victims of crime (forthcoming in Finland, the 'Committee for the Monitoring and Improvement of the Victim and Witness Support System' in Croatia, forthcoming in Ireland);
- The existence of national teams focusing on specific categories of (victims of) crimes (Croatia<sup>74</sup>);
- The sharing of good practices and experiences at the international level, participating in conferences, seminars, trainings, workshops and organizing an annual conference where experts on victim's rights discuss different themes (Greece, Hungary);
- The celebration of international days commemorating victims of crime, such as the European Day for Victims of Crime (mentioned by the experts in Germany, Hungary<sup>75</sup>);
- The existence of international conventions encouraging cooperation between different countries (Luxembourg<sup>76</sup>);
- The possibility of cross-border judicial cooperation between competent authorities focusing on victims' rights (Finland).

A respondent (Austria) mentioned that cooperation with other EU Member States 'is not a priority because victims' rights differ in each Member State', but cooperation is interesting only under certain specific conditions.

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<sup>70</sup> Belgium, Finland, Germany, Croatia, Czech Republic, Hungary and Portugal.

<sup>71</sup> The respondent from Luxembourg mentioned the EJM in terms of searching information about practices in other EU Member States.

<sup>72</sup> The respondent from Latvia stated that the European Crime Prevention Network focused on preventing secondary victimization in 2015.

<sup>73</sup> The possibility to report the crime and inform the victim using e-tools was proposed to be implemented in the criminal justice system in order to facilitate criminal proceedings and better support the parties involved, but also to enhance cooperation between different services.

<sup>74</sup> In Croatia, there is a national team for the prevention and suppression of domestic violence and violence against women, as well as other types of violence, and a national team for dealing with human trafficking.

<sup>75</sup> As explained by a Hungarian respondent, since 1993 Hungary commemorates the EU Day for the Victims of Crime every 22 February of the year. This day was established on 22 February 1990 by the Council of Europe with the EU Convention on the Compensation for Victims of Violent Crimes.

<sup>76</sup> The respondent from Luxembourg referred to the website of the Ministry of Justice ([www.justice.public.lu/fr/cooperation-internationale/index.html](http://www.justice.public.lu/fr/cooperation-internationale/index.html)) where the existence of international conventions, as well as international networks of specialists in the field, are mentioned as useful tools for encouraging cooperation between countries. Additionally, this respondent stated that 'before the Directive, there was already a Framework Decision for victims and cooperation was set up regarding the claims of victims, e.g. if a German victim of crime in Luxembourg wants to make a claim to get compensation in Luxembourg there are specific proceedings and cooperation practices'.

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First, cooperation may be useful only in terms of exchanging best practices, but ‘from a legislation’s point of view, cooperation is useless’ since there are still mayor differences in legislation across Europe. Second, cooperation is easier with countries sharing the same language (e.g. Austria and Germany): language barriers may be still an obstacle for sharing experiences across Europe. Third, cooperation is convenient only with Member States that have already integrated best practices in their systems and procedures: arguably, there is a sort of ‘discrimination’ among Member States in cooperating and sharing experiences whenever this is not beneficial for both of them.

Instead, cooperation between EU Member States is interesting for small countries (e.g. Luxembourg) or countries which are less advanced in the field of victims’ rights and support. One respondent (Luxembourg) explained that cooperation takes place more easily with the neighbour countries (Belgium and France); still, given the multicultural composition of this country, international cooperation is further expanded to other EU Member States.

### Cooperation between national bodies dealing with victims of crime

Although the Directive specifically refers to cooperation between EU Member States in order to improve access to victims’ rights, the Project IVOR questioned also what has been done at the national level in terms of cooperation between different authorities and services dealing with victims of crime. The aim was to identify some good cooperation practices that could be useful for Member States where such cooperation has not been well-established yet.

Several practices have been identified across Europe<sup>77</sup>:

- Regular contacts with criminal justice authorities in order to exchange information about individual cases and victims (Croatia) and the creation of case-based interdisciplinary teams to deal with specific cases (Czech Republic);
- The establishment of a help-desk for victims where police, public prosecutor and victim support officers work ‘under the same roof’ (the Netherlands<sup>78</sup>);
- Structured procedures to inform victims of crimes about the existence of victim support services, as well as procedures for referring cases to them (Denmark, Finland);
- Cross-referrals, meaning that different services refer cases to victim support services (Hungary);
- Regional (voluntary) cooperation groups between police, social services, women shelters that meet when there are concerns on specific issues (Sweden);
- Organisation of trainings and events in cooperation with relevant offices (Cyprus);
- Round tables bringing together different criminal justice authorities and victim support services (Austria);
- National networks for sharing information about victims-related issues (Sweden, Hungary);
- A national council with participants from the mayor bodies dealing with victims of crime (Sweden);
- The existence of protocols and official documents regulating procedures to deal with victims of crime, including cooperation practices between the different bodies involved (Croatia);
- Meetings for making changes and/or monitoring the implementation of national and international regulations (Bulgaria, Spain).

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<sup>77</sup> More examples in the practice sheets at [www.apav.pt/ivor](http://www.apav.pt/ivor).

<sup>78</sup> More info in the explanatory box below ‘Cooperation practices within the Netherlands’.

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### Cooperation practices within the Netherlands

There are about ten ‘Slachtofferloketten’ in the Netherlands (one per district), enhancing proper cooperation between different bodies involved in the assistance of victims of crimes. Slachtofferloketten are help-desks where victims can ask questions about their case (information about the criminal proceedings, advise, guidance, referral to other services). In each Slachtofferloket, police, victim support officers and public prosecutors *work together ‘under the same roof’*. In this way, cooperation between services is better organized, although this still depends on the individuals working in each office in the district.

Additionally, the Netherlands has developed an online portal for providing victims services. This includes a navigation bar for gathering *information* (e.g. about rights and procedures), for providing *services* (e.g. online forms for compensation or victim impact statements), for encouraging *communication* (e.g. feedback, chats, FAQ) and extra *tools* (e.g. for support or psychological education). What’s particularly interesting about this portal, in terms of cooperation between different stakeholders, is that this is a shared ownership and each partner can contribute to it with relevant contents. This is an example of a solid structure of multi-agency collaboration.<sup>79</sup>

In smaller Member States, like Luxemburg, cooperation does not need the establishment of formal and regular practices: ‘cooperation is excellent’, according to a respondent, merely because ‘the secret is that we are a small country’. About twenty people work at the Ministry of Justice and another twenty at the victim support service, the ‘Service d’Aide aux Victimes’, thus ‘it is easy to be in touch: we call each other, we see each other, we try to solve problems in a more informal way’. Despite this response, another respondent from Luxemburg stated to be dissatisfied with the cooperation between different bodies dealing with victims of crime: he called for a more structured way of referring cases, establishing automatic systems for keeping track of victims of crimes and their cases.

Some respondents also listed the relevant bodies with whom victim support services cooperate:

- Government and police, in cases of human trafficking (Latvia), or more in general for exchanging information about specific cases (Portugal);
- The Ministry of Justice, which established the National Call Centre for Victims and the Victims and Witnesses Support Offices, and other ministries (Croatia);
- The police, both on national and local level (Finland, Hungary) for promoting safety for victims of crimes (Portugal);
- The victim protection network of the police, the investigating authorities, prosecutors and judges, the immigration office, consular services, municipal authorities, health institutions, social institutions, auxiliary police, civil society, NGOs and churches (Hungary);
- Police and judiciary schools in order to deliver trainings (Portugal).

Some respondents also identified challenges for cooperation practices to be properly in place in their country:

- The size of the national territory plays a role in the uneven distribution of services across the country, but also in the establishment of good and efficient cooperation strategies between different bodies (Sweden, Italy);

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<sup>79</sup> For more information see the Presentations (IVOR policy seminar) at [www.apav.pt/ivor](http://www.apav.pt/ivor)

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- An overall lack of coordination between different bodies influences specific practices (Bulgaria, Latvia, England and Wales) or the more general implementation of the Victims' Directive (Croatia, Italy);
- The 'exclusivity' of some cooperation strategies, established either among specific bodies (Germany) or between services dealing with specific victims of crime (Italy, Slovenia), influence the equal access to victims' rights at all stages of criminal proceedings;
- The lack of an automatic system for keeping victims informed about their case and referring cases to victim support services limits further cooperation between different bodies (Luxembourg, Latvia);
- The overall lack of structures, procedures and systems for dealing with victims of crimes limits cooperation which occurs only depending 'on the willingness of individuals' and on 'personal relationships' (Latvia, Malta).

### Cooperation practices within Italy

In Italy, the implementation of the Victims' Directive is problematic. Among other issues, respondents could not easily identify the cooperation practices established between criminal justice authorities and victim support services in order to better assist victims of crime. Several reasons lay behind this lack of cooperation:

- The *territorial division of Italy* plays a crucial role in limiting equal access to services to victims of crime all over the country. Nowadays, mayor differences exist between regions: while some territories are really well-developed in terms of victims assistance, others are not. Respondents explained that these differences depend on the *political interests* of local governments.
- Cooperation in Italy is often well-established *only for assisting specific categories of victims of crimes*, such as victims of gender-based violence. Respondents explained that these specific services have been established since a longer period of time compared to the services dealing with generic victims and thus cooperation is nowadays better established and more efficient for these specific cases.

The current situation, with a fragmented and exclusive distribution of victim support services across the country, seems to be the main challenge for the implementation of the Victims' Directive. As suggested by the respondents, the first step to be taken in Italy is to make an overview and evaluation of all services provided by the State, regions and provinces across the country and establish a proper coordination at the national level.

## Raising awareness about victims' rights

The last part of Art. 26 refers to raising awareness about victims' rights. Most Member States showed some sort of commitment concerning the need for increasing awareness on victims' rights and needs. Different bodies take responsibility for raising awareness on this topic, mostly these are victim support services<sup>80</sup> and other NGOs<sup>81</sup>) and local social services (Italy), but also the State if the campaign needs to reach the national level<sup>82</sup>. The audience is the

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<sup>80</sup> Bulgaria, Germany, Hungary, Portugal and Sweden.

<sup>81</sup> Croatia, Latvia and Lithuania. More in detail, the Lithuanian respondent shared a series of links from the 'Children Support Centre' ([www.vaikystebesmurto.lt/](http://www.vaikystebesmurto.lt/)).

<sup>82</sup> Belgium, Italy, Luxembourg and Sweden.

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general public (Austria, Germany, Italy), but also criminal justice authorities (Bulgaria) and other professional groups (e.g. health care workers in the Netherlands) and more specifically victims of crime (Czech Republic, Croatia).

In general, the most common communication tools used for raising public awareness across Europe are:

- Information in national newspapers (Austria, Italy, Spain);
- Advertisements on television, public transports and cinemas (Belgium, Italy);
- Information on websites and social media (Belgium, Croatia, Spain, Slovenia, Portugal, forthcoming in Scotland);
- Informative flyers, leaflets, posters, brochures explaining victims' rights in an easy language<sup>83</sup>, also in a digital version (Hungary, Lithuania);
- Promotional video material (Belgium, Czech Republic, Portugal);
- Activities in occasion of (inter)national events, such as the European Day for Victims of Crime (Germany, Hungary, Portugal);
- Promotional activities organised by volunteers (Croatia);
- Awareness campaigns in senior clubs, at public events, festivals or in local and national media (Hungary).

The German respondent also mentioned public advertisements for raising awareness on victims' rights. Despite that these can reach a large number of people, the respondent is concerned about the way victims are sometimes portrayed in the media, usually as the 'weak' and 'innocent person'<sup>84</sup>. This also reflects the public attitudes towards ideal victims, but it does not always reflect the legislation and reality. He gave the example of prisoners who become victims of crime, or victims who have been offending before, stating that these may be excluded from exercising their rights and in reality they may not be considered as victims. In this context, a Dutch respondent stated that more education (e.g. conversations between citizens and victims) and evidence-based research are needed in order to focus more on victims' needs, instead of focusing on the 'ideal victim' in need of protection<sup>85</sup>. An additional problem has been mentioned by the Slovenian experts, who stated that in their country awareness exists only for specific categories of victims (i.e. domestic violence and human trafficking) and little is known about the victims' experiences of other categories of victims.

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<sup>83</sup> Austria, Belgium, Czech Republic, Croatia, Hungary, the Netherlands, Portugal, Scotland and Slovenia.

<sup>84</sup> The German respondent is concerned about the term 'victim' as such: 'it is a very distorted word in youth language; in school it is used as a bad word, as a way of ridiculing another; it is meant to say that someone is a weak'.

<sup>85</sup> A Dutch respondent spoke about victimhood as a social construction.

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### Awareness campaigns in Portugal

Most efforts in terms of raising awareness of the population about victims' issues are made by NGOs, like victim support services. APAV has been very active on this issue, developing projects to inform victims of crimes. On another note, the Portuguese 'State and the criminal justice authorities have been very passive in its awareness raising efforts', where information is not provided on a regular basis.

Find below some of the awareness campaigns initiated by APAV for the general victims' population, for particularly vulnerable groups and for different types of victimization:

- on domestic violence and gender-based violence, with campaigns such as *Until death do us part*.



- on sexual violence, with the awareness raising campaign *No means stop*. Additional information at [www.apav.pt/unisexo](http://www.apav.pt/unisexo)

- on violence against children, with campaigns such as *Cut With Violence*. Additional information at [www.apavparajovens.pt](http://www.apavparajovens.pt)



- on *violence against elderly people*



- on crime against property, with the campaign *Why Make It Easy?*

More information at [http://www.apav.pt/apav\\_v3/index.php/en/apav-media/media](http://www.apav.pt/apav_v3/index.php/en/apav-media/media)

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Other informative strategies are used instead for raising awareness on victims' rights among professionals (or lay people) dealing with victims of crime (e.g. criminal justice authorities, but also health care workers, social workers):

- Training of practitioners (Bulgaria);
- Public relations (Germany, Latvia);
- Victimology courses at the university (Greece, the Netherlands);
- Discussions for the implementation of new legislation (the Netherlands);
- Research (Greece, the Netherlands<sup>86</sup>).

The fact that national legislation includes victims' rights and other regulations for supporting and protecting victims of crime (e.g. on training of practitioners) has been mentioned as an important step for raising awareness on this topic, for stimulating attitudes' changes among criminal justice authorities and even for the (re)allocation of financial resources to victim support services (Bulgaria). Still, as stated by the Finnish and Lithuanian respondents, legislation is not sufficient and changes must be done in daily practice too (e.g. with training and awareness campaigns). In addition, according to the Italian and Lithuanian respondents, legislation may be interpreted in different ways according to the different situations permitting the implementation of victims' rights.

Finally, at the individual level, concrete and practical information is given to victims of crime, orally and/or in a written form (e.g. informative flyers). It helps to have *national legislation* mentioning the victim's right to be informed, as in Czech Republic where the Law on Victims of Crimes and the Criminal Procedure Code explicitly state that every victim must be informed about their rights (in a written and/or oral form) and the responsibility lays with victim support services, police authorities and medical health professionals. It also helps having different bodies informing victims about their rights to avoid an issue mentioned by the Swedish respondent: often victims are merely explained what they can expect from authorities and proceedings, but only little information is given about their rights.

In Hungary, the existence of a 24/7 free of charge *phone helpline* run by the Victim Support Unit (as well as other helplines for specific victims of crimes) ensures that victims receive enough information to proceed. A similar service will be provided in Latvia. The project for establishing a phone helpline for victims of crime in Latvia has been approved already, but, according to the respondent, administrative effectiveness may delay the actual practical implementation. Currently, victims of crime in Latvia receive information only from the police, but it may not be clear for them where and how to get support. By the end of 2016 there will be some amendments in the law, including regulations for providing victims with an info-package listing all centres where victims can receive help.

In Italy, instead, phone helplines are reserved to specific categories of victims of crime (e.g. child or female victims) and other victims cannot have access to these services. The Croatian respondent also mentioned the phone helplines and explained the importance of having contacts and supporting victims of crime besides criminal procedures because this has an impact on the overall awareness in society.

Some respondents claimed that the lack of awareness on victims' rights is one of the mayor obstacles for improving victim assistance in their countries (Finland). The Finnish respondent explained this problem as a *matter of timing*: 'victim support services are not very old'. Only in 1993 the first 'rape crisis centre' was established in Finland and in 1994 Victim Support Finland was initiated as a project. Despite the fact that a

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<sup>86</sup> A Dutch respondent mentioned the importance of research, for example on best practices for implementing victims' rights. In the Netherlands, Intervict is one of these research institutes conducting research on these topics.

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lot has happened in the last twenty years, developments are rather new. The Latvian respondent instead made the link between the lack of awareness on victims' rights and the *lack of central coordination* of the services: in these cases, there is a risk of spreading information only in the areas of the country where services are provided, leaving out more remote areas where there may be also victims in need. Other obstacles for raising awareness on victims' rights may be the *limited financial resources*. The Polish respondent revealed that *'At this moment there is the possibility to use about 20% of money from the Crime Victims Support Fund and Post penitentiary Fund for informational and promotional campaigns. That is good way to strengthen the awareness of crime victims in area of their rights and obligations.'* Finally, as it occurs in Slovakia, promotional campaigns may be *limited to certain categories* of victims of crime (e.g. child victims, or victims of human trafficking), discouraging victims of other forms of victimization to have access to their rights and services.

### Conclusions

It is difficult to draw concrete conclusions about the practical implementation of art. 26 of the Victims' Directive. As mentioned above, this is considered rather soft law and it has not been given much attention. Still, at least in terms of good practices, respondents could identify concrete steps taken, more or less recently, in order to encourage cooperation within and beyond their Member States and raise awareness about victims' rights for victims themselves, but also for professional groups working with them and the public in general.

It was interesting to see the links between art. 25 and 26 of the Victims' Directive. Training is one of the tools used to bring different professional groups together, stimulating their cooperation and raising awareness about victims' issues. Also, the idea to integrate victim-oriented programmes in all educational programmes linked with victims (e.g. police and judiciary schools, psychology, health care, etc.) seems to be an interesting step to bring together different people working in the field.

Questions might be raised about the way victims are commonly portrayed in campaigns. Victims are stereotyped or framed in a manner that confirms their vulnerability and emphasizes the large impact of victimization. This might have the effect of instilling expectations of vulnerability and weakness in victims, as well as presenting an image of victim services that is unpalatable to a large group of victims.



### Legal and practical implementation of the Victims' Directive

#### Introduction

As described earlier, a significant part of the Project IVOR intended to obtain more information on the transposition of the Victims' Directive in national legislation, but also on the implementation of these rights *in practice*. Experts were asked how they regarded the relation between victim rights in national legislation and victim rights in practice in their countries. General difficulties inherent to this relationship were discussed, as well as any specific problems countries faced in the timely implementation of (certain articles of) the Victims' Directive.

#### Legal implementation

Many experts agreed that the rights of the victims are by now strongly embedded in the national legislation of their respective Member States.<sup>87</sup> In England, according to an expert, the government is very good in complying with the obligations of implementing the provisions that needs to be implemented, but they are not good at monitoring them. So, there is a lot of policy on procedures, but they are not always complied in the way they want them to be. According to an expert in Belgium victim rights are not only written down in legislative and other texts, but that a lot of efforts are done to really implement these rights in practice and to make them *in concreto* available for the victims. The legislator, the policymakers and the field organisations are also very open to new evolutions in the field of victimology. The existence of the judicial victim support services is also quite unique and offers not only a specialised and 'custom-made' approach of the victims' needs during the judicial procedures, but it has also contributed to a unique collaboration with the magistrates and to an increased awareness of the magistrates for those needs. In Poland, the relation between victims' rights in national legislation and victims' rights in practice develops generally well, but some newly introduced solutions will need some more time to be fully absorbed in practice. When drafting the law implementing the Victims' Directive, it was decided to extend some of the regulations regarding victims to the witnesses in criminal proceedings as well. These regulations concern physical protection, psychological and financial support and the right to give evidence via videoconferencing. According to the expert, the Directive has been fully implemented in Poland. In Spain, the '*Estatuto de la víctima del delito*' (the legal statute of the victim of crime) had been adopted on 27 April 2015: this is an exact transposition of the Victims' Directive, but it does not grant yet its implementation in practice.

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<sup>87</sup> England, Belgium, Finland, Germany, Poland, Scotland, Croatia, the Netherlands, Hungary, Luxembourg and Sweden.

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### Legislative changes in Bulgaria

The efforts to protect and assist victims of crime in Bulgaria initiated less than 10 years ago, when the Bulgarian Criminal Procedure Code (2006) and the Law on Assistance and Financial Compensation to Victims of Crime (2007) entered into force. The Law attempts to follow EU standards more in detail than the Criminal procedure Code, but it gives also strict rules (e.g. on the definition of victim) for financial reasons. In 2014, the Bulgarian Ministry of Justice initiated a legislative effort to amend the Law on Victims' Assistance. This included the 'lessons learned' since its entry into force and the transposition of the Victims' Directive. Amendments in the Law will regard the following rights: right of victims to understand and be understood and right to receive information from the first contact with a competent authority (Articles 3-4 of the Directive); right of victims to access victim support services and the support they provide (Article 8-9 of the Directive); training of practitioners and provision of data and statistics (Articles 25, 28 of the Directive). Additional efforts were made by the National Legal Aid Bureau to ensure a qualified pool of attorneys with proper specialisation, to the extent possible, who are part of the National Legal Aid Register and as such are able to provide high quality legal aid to victims. Additionally, in 2014 it was launched a national hotline for primary legal aid and pilot consulting centres in two of Bulgaria's most vulnerable regions - Sliven and Vidin. Ideally, after a proper analysis of these pilots, these experiences will be replicated in other areas.

For Finland, it can be said that the rights and the position of victims of crime in the criminal proceedings are strong when observed in the light of legislation. Research on victim's perceptions have shown quite high satisfaction on authorities during criminal proceedings but also identified some areas for further development. Also the Swedish legislation covers most rights mentioned in the Victims' Directive as stated by the respondent. It is also well known in the legal system and among the public. The Hungarian respondent started that they have quite proper legislation on victims' rights comparing to other Member States of the EU, however the enforcement and implementation of these rights in practice should be deepened and strengthened in the future.

In Ireland, the general scheme of a Bill has been published and is being scrutinised by the Justice, Defence and Equality committee of the Irish Parliament. The Committee has sought the views of the community and voluntary sector which represent victims of crime. The Minister for Justice and Equality held a special roundtable to discuss the legislation with this sector prior to publication of the draft heads and the final document took account of their initial views. During this time the Department has worked to increase the capacity of the main victims' helpline and the primary support service at court for victims of crime by securing additional funding for development of additional or improved services.

The Scottish Government are keen to ensure legislation is effectively implemented through best practice and to this extent have several working groups established to look at the area of practice of legislation. Many things can be brought into action through guidance and other provisions that have not been enacted yet through the legislation. Austrian experts are also satisfied with the implementation of the Victims' Directive so far. In the beginning it was problematic to make practitioners aware of victims' rights, but now it this awareness has become integrated. Since the 1970s already, attention on victims' rights has increased in Austria.

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Legal rights in Lithuania were stated by an expert to be really insecure and they leave room for interpretation: criminal authorities interpret them and act towards victims in different ways. Concerning the Victims' Directive, the respondent believes that it would be very difficult to implement changes in a timely manner. All parts of Directive were considered equally difficult to implement.

### Practical implementation

Although rights may be transposed in national legislation in accordance with the Victims' Directive, this does not guarantee implementation in practice<sup>88</sup>. A list of difficulties has been mentioned by experts concerning the implementation of the Directive in practice. Often, this still relates to factors internally connected to the criminal justice system (e.g. awareness, training, individual needs assessment), other times to factors externally related to the social, economic, geographical structures of the country (see Chapter II).

In the Czech Republic, for example, practitioners acknowledged that some of the rights in the law are not mentioned well in practice (e.g. the new Law on Victims mentioned protection orders for victims of crime, but they are used based on the individual judges' decisions). There is still a lot of work to do to implement the Victims' Directive, despite the fact that the Law on Victims was out few years ago already. Still, there is a tendency already from victims willing to use these rights and this helps the implementation. In Malta, according to the expert, there is a massive gap between victims' rights on paper and victims' rights in practice. For instance, there is a right to compensation by the State but a lot of people do not know that it exists. Also, protection orders are included in legislation but they are hardly imposed by the courts. A part of the Victims' Directive has been put in place, but some articles are left out completely, such as the protection of children. The authorities in Malta are starting from scratch. A Slovakian expert also agreed that in practice there are fewer rights than in the legislation. The corruption in this country is a problem relating to the implementation of the Directive. Also the human rights of victims are sometimes not clear to either criminal justice actors or to the victims themselves.

Spain transposed the Victims' Directive into the '*Estatuto de la víctima del delito*' in 2015. According to one interviewee, this has been done without considering the practical implications of this law: the *Estatuto* will not make sure that the Victims' Directive will be implemented in practice too by November 2015. In addition, this law is considered to be a mere 'appendix' to the current criminal procedure code which would have needed bigger changes. A draft version of a new code was written in 2012 by the previous government: this included a detailed explanation of victim assistance and mediation processes. It was not approved because of the change of government and the new one gave little attention to these topics.

An expert from Latvia mentioned that, although there was reason to be happy with the progress made so far, administrative effectiveness could be better. In other words, some changes could be implemented in two years instead of five for example. Croatian experts were also not sure whether Croatia would be able by the 16th November 2015<sup>89</sup> to implement the Victims' Directive in practice, considering that the system of help and support is still being developed and, at this point, there are no mechanisms to define roles, scope of work and ways of cooperation of all stakeholders of the system. A working group is working on drafting the law transposing the Victims' Directive. According to the expert, the relation between law and practice in Croatia in terms of victims' rights is very good and their national legislation satisfactory because victims' rights in practice are completely enforced.

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<sup>88</sup> As mentioned explicitly by experts from the Czech Republic, Malta, the Netherlands, Portugal, Spain and Lithuania.

<sup>89</sup> Most experts were interviewed between April and September 2015 (with few exceptions, e.g. Slovakia and France).

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### Implementation of the Victims' Directive in Italy

The implementation of the Victims' Directive in Italy will face mayor difficulties mostly because of the 'territorial culture' of the country: victim support services are provided in some regions and provinces, mostly for victims of specific categories of crime, but it will be a challenge now to review and coordinate these services in order to grant equal access to all victims of crime. Interestingly, the Mafia presence in the territory acts as a 'pushing factor' towards the current legislations protecting victims' rights in the country. The gap between law and practice is not too big because in the law there is not much yet. Across the country, only 8/9 services work in favor of all victims of crime, which is too little for a big country; many more associations focus on specific problems. The Ministry of Justice is currently working on the implementation of the Victims' Directive, but some experts suggested that also the criminal code should be changed to work in favor of victims of crime. At the moment, the damage of crimes in Italy is still against the State not against the person: this vision should be changed.

### Information, communication and awareness

In England, although the provisions in legislation are mostly carried out, there are rights that do not work optimally in practice. An example is the right to information. Victims have got very good rights to information, but in practice victims do not always get information the way they are entitled to. The police does not always deliver what they should. They are obligated to do it, but they do not always do it. For Portugal, the respondent mentioned the gap between this victim right in the legislation and in practice. On the one hand we find what the law states, and although there are amendments, previously victims of crime in Portugal also had a variety of rights, but when looking at what happened in the field, victims usually do not exercise their rights and one of the main reasons for this is the lack of information. The lack of information and of awareness of the criminal justice system authorities are the main responsible for this gap between law and practice.

### Victim satisfaction in Sweden

The Swedish National Council for Crime Prevention evaluates every year the exposure of crime, fear of crime and satisfaction of the public with the criminal justice system. This survey includes questions about the satisfaction of victims. In general these surveys have demonstrated that victims are quite positive about their experiences in the criminal justice system although the satisfaction differs with regard to various groups in the criminal justice system. Victims are generally more satisfied with the treatment and information than with the investigation of the crime. In 2014, 40 % of the respondents had great confidence that the criminal justice system treats victims of crime satisfactorily.

The Finnish government is working on a plan on how to improve the communication both among authorities and to victims of crime. The main issues are: awareness raising, making justice system realize the point of view of

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the victim. This is being done but needs to be developed further (many years to go before victims' rights will be fully implemented in the Finnish system, according to respondent). In general, legislation is rather good, changes are on their way, and the biggest challenges are in practice: meaning training and awareness raising.

In the Netherlands, some research indicates that there is still improvement to be made regarding implementation in practice (e.g. *Zwartboek* published by lawyer Richard Korver about victims of sexual violence), such as granting of information about when the case is and offering victims to have a conversation with the public prosecutor. Intentions are good, according to the expert, but mistakes are still likely to be made: a focus on truth finding and the offender can still be seen in court.

### Need for attitude changes in Latvia and Portugal

In Latvia, the education system in general is mentioned as an obstacle to the implementation of victims' rights in practice. In law schools more information and courses should be given on the purpose of criminal proceedings and there should be an emphasis on the fact that you are talking about human beings and not just cases. The mindset is important, the question 'Why?' should be asked about formal proceedings more frequently.

In Portugal, the implementation of the individual needs assessment is regarded as problematic, not only because the law does not establish clear rules on how this is going to happen or who is responsible for this, but also because these demands a shift in police mentality who are not very open to start doing this on a regular basis. This will add a burden in work to which they do not feel equipped.

### Monitoring/evaluating existing practices

The specific challenges for Belgium are evaluating on how the existing measures are sufficient to meet the individual needs assessment, funding, meet the needs of victims resident in other Member States, and translation and interpretation. The implementations of some rights are more difficult to evaluate than others, however. For example, in the Netherlands the victim has the right to look into the criminal files, but in practice this does not happen regularly. It is unclear whether practical obstacles are of main concern, or whether victims may generally be less interested in using this right than others.

Related to the previous, for some experts another problematic issue is the question of what a victim can do when his or her rights have not been offered to him/her in a timely manner. For example, there are no means to do something about this as a victim in the Netherlands. Private prosecution is not possible in the Netherlands, and the only means to take matters in own hands is Article 12 Dutch Criminal Procedural Code: to request the judge to oblige the prosecution to prosecute. Participation of the victim in decisions about offender after sentencing is also minimal.

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### Training

According to the Finish expert, authorities' ability to identify victims and their needs and to meet the victims' needs in a sensitive manner could be further strengthened through training. Work has been done to tackle these problems over the years, and the Ministry of Justice is currently appointing a working group whose task will be to give instructions on good practices to authorities and develop training.

#### **Distrust of authorities in Croatia**

The Croatian legislation is largely in line with EU regarding the protection of the rights of victims, but the implementation is not yet fully operational in practice. Victims rarely decide to report the crime to the police or to the State's Attorney's Office, especially when it comes to domestic violence, bullying or mobbing because there is still a lot of distrust towards institutions and their way of protecting and instructing victims about their rights guaranteed by the law.

### Funding

An expert from Portugal mentioned that funding of victim support organisations is also a problem. Victims of crime are definitely not a political priority in Portugal, so funding is very scarce and due also to the country economic situation the respondent is not sure this is going to change in the near future. Concerning the Victims' Directive implementation by November 2015 in Croatia, respondents think that the main point is that they could have financial problems that obstruct the implementation of all provisions, but with the support of EU it could be done.

### Individual needs assessment

Several experts, including those from Portugal, Sweden, Luxembourg, Hungary, the Netherlands Austria, mentioned a specific article that they expect will be most difficult to implement: the article on the individual needs assessment. As was stated by a Hungarian expert, it will be very difficult to regulate in legislation in a proper, efficient and feasible/practicable way how to take into account all relevant factors, for example, the personal characteristics of the victim, the type, nature, severity and circumstances of the crime and the degree of harm caused by the crime and suffered by the victim.

### Conclusions

Whereas many experts believed their countries to be complying with the legal transposal of many of the articles of the Victims' Directive, a significant number of them brought up hesitations regarding the relation to practical implementation. Though sometimes, unwillingness or a non-victim oriented mindset were mentioned as obstacles, more often respondents referred to practical difficulties. Among them were a dearth of research into

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what works, lack of funding and other resources, and simply a lack of know-how, concerning article 22 on the individual needs assessment, for example.

Other factors that were found to be problematic in many of the Member States, and that hinder or prevent successful implementation of rights in general, were a lack of evaluation/monitoring mechanisms, inconsistent dissemination of information to victims or the broader public (including awareness raising) and an absence of appropriate training for those authorities who come into contact with victims.



## **Chapter IV**

# **Conclusions and discussion**



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## Chapter IV: Conclusions and discussion

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### Improving the plight of victims of crime: the promise of the EU Victims' Directive

It has become a staple notion in research into the development of victim's rights in and around criminal justice to note that, the victim is no longer "the forgotten party". And it is true that in comparison to the 1970s victims of crime and abuse of power are afforded a good deal more attention in both national legislation and international legal instruments. Increasingly within Europe, the European Union has become a key actor in the efforts to improve the position of victims of crime.

The European Union's work from the Framework Decision on the standing of victims in criminal proceedings, of the 15th of March 2001, and the Council Directive 2004/80/EC relating to compensation to crime victims culminated in the Directive 2012/29/EU of the European Parliament and of the Council, of 25 October 2012. A milestone of sorts, it is similar to previous instruments in including the following basic rights for victims of crime:

- A right to respect and recognition at all stages of the criminal proceedings;
- A right to receive information and information about the progress of the case;
- A right to provide information to officials responsible for decisions relating to the offender;
- A right to protection, for victims' privacy and their physical safety;
- A right to compensation, from the offender and the State;
- A right to receive victim support;
- The duty for governments to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.

But it is also a considerably more elaborate and strongly worded document; as a Directive, it has more legislative force than a Framework Decision. In addition, the European Commission has become increasingly active in attempting to support the Member States in navigating the hurdles in the implementation, as is evidenced by the recent publication of an extensive DG Justice Guidance document with the specific aim of securing implementation of the Directive. This correctly targets one of the elements that was found to be problematic concerning the Directive's main precursor, the Framework Decision. The extent to and the speed with which Member States correctly transposed the Framework Decision's articles did not live up to expectations, but even where this was the case, implementation in practice was poor.

Indeed the Victims' Directive specifically aims to provide an improved experience of victims of crime in terms of their needs for support, protection and involvement in criminal justice procedure. As the Guidance document summarizes "The goal is to improve the real, day-to-day situation of millions of victims of crime across Europe to the greatest extent possible". The core of the perspective underlying the Directive is that the current lived situation of victims of crime in many jurisdictions can and should be improved, with millions of victims of crime not receiving the support, protection and assistance that they should be able to expect in the aftermath of falling victim to crime. That this is the case is not seriously in dispute. Victimization by crime is a widespread phenomenon, and the deleterious consequences of victimization have been well documented. Nor is there much room for doubt that practice within many Member States in and around criminal justice procedures does much to serve the interests of many victims.

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## Chapter IV: Conclusions and discussion

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The EU Victims' Directive is therefore a timely and important piece of legislation that, if indeed lived up to the goal it sets itself, is tackling a real and substantial social problem. And as the results of chapter 3 help showing, the Directive is contributing to improving the position of victims of crime in Member States, at least in legislation.

However the results also suggest that there is still much to be done. This is due to the implicit assumptions about the possible effects of the Directive in setting the aforementioned goal, that do not pass muster when empirically scrutinized. The following matters are pertinent:

- The Directive assumes that we know how victims' rights impact victims experience, whether offering individual rights to victims of crime is an effective means of seeing to their needs and how we should adequately gauge the improvement of victim experience that might be the outcome of these rights.
- The Directive assumes that we fully understand the role of context in victim assistance, the way context moderates and mediates victim experience, interacts with victim's needs, influences the organization of victim assistance and determines the possible roles of various criminal justice actors.
- The Directive assumes that we have sufficient understanding of the working of EU legislation in general and in the specific area of victim assistance to expect policy at the EU level to be effective to truly change the lived experience of victims of crime across the EU. In doing so it supposes that each of the steps - from the Directive to correct transposal into national legislation, to compliance in policy, to effective implementation in practice, to felt impact by victims - can be navigated with the current policy arsenal that are at the disposal of those seeking to advance the Directive's reach in practice.

However none of these assumptions has much empirical merit. The base finding of Project IVOR is that the Directive is contributing to an improved standing of the position of victims of crime, but that the extent to which this is felt by victims in practice is still up for debate. Evaluation of each of the three assumptions can enlighten us to the complexities of our attempts to improve the position of victims of crime.

### **The reality of the Directive**

In chapter 3 the results of the current state of affairs across the Member States of the European Union was explored. It is perhaps to early to tell, but the experience so far with the Victims' Directive does not seem qualitatively different from its main predecessor, the Framework Decision. At the moment of writing there are already signs that transposal in many Member States has not occurred on time, and the failure of most Member States to even inform the European Commission of their progress is telling in this regard.

The main issues in transposal into national legislation concern differences in interpretation of key terms and concepts, for instance the manner in which the individual needs assessment is conducted, the meaning of the term restorative justice, the duty bestowed on Member States to offer additional possibilities to those victimized abroad. Beyond this even similar legislation does not result in similar lived realities, as the organisational structures, the policy priorities and financial support for victim legislation differs widely. In policy and practice the differences therefore will be deepened.

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The different vanguard from which the interviewed country experts approach their subject also remains. The extent to which experts in different countries are discussing the same things when they are debating victim assistance is open to question. Criticism of the relatively well-funded and well-researched Dutch institutions is based upon different rationales and different expectations than in many other areas of the European Union.

As was already apparent from the evaluation of the Framework Decision, the starting point for different Member States concerning the position of victims varies. The North and West of Europe countries have a relatively strong position for victims of crime, often also because of the relatively large welfare net in these areas, as well as the longer history of victim.

As become apparent from chapter 2 the societal ecology of victim assistance differs from one Member States to the next. It does so in a way that can accentuate the differences in organisation, policy priority and financial support. Available research and monitoring of the lived reality of victims of crime is concentrated in the same geographical areas of the EU, while it neither offers the possibility of viewing the micro-level experiences of victims against the backdrop of macro-level features of societies, nor provides convincing evidence for the portability of findings and experience from one societal ecology to the next. This limits the extent to which it is possible to ascertain, that the limited resources that are available in the Member States with a combination of a relatively poorly developed position of victims of crime similarly unwelcoming societal ecology are put to the best use.

### **The lack of a victimological evidence base**

As stated throughout this report, victimological research in much of Europe is an inch deep and a mile wide, if it is available at all. Even basic understanding of the empirical state of affairs in many EU Member States is largely non-existent. The desire to use victim support, an overall understanding of the experience with criminal justice agencies in the aftermath of victimization, the impact of interaction with the criminal justice process on victims' emotional well-being, the importance of different aspects of victim assistance, there is no good grounds for comparison across EU Member States, given that for most of the European Union there is no empirical research available that would offer an answer.

Even for the instances where this is so in principle, for example the possibility of ascertaining the need for victim support through the International Crime Victim Survey, close scrutiny of the available data begs the question whether or not any conclusions can be drawn. Research using single-item questions concerning satisfaction is not a viable base for drawing conclusions on many victims' issues. Chapter 1 notes that there needs to be move from research into satisfaction to research into quality and impact of services. But even satisfaction research would be an advance on the evidence base in most countries, for most victims issues.

Many assumptions underlying victims' rights are not based on any substantial empirical evidence base. Does training police officers improve victim experience and if so, under which conditions? How should victims' needs be assessed and how should such an assessment be linked to different available means of assistance? Do available modes of participation in criminal justice offer victims a welcome right 'to be heard' or do they just add to the conundrum victims find themselves in the aftermath of crime? And in particular how do any general findings translate to particular contexts and situations, and transport from one area to another? The honest answer at this point in time is that we do not really know. We have some anecdotes, a smattering of evidence and some

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theoretical tools that can contribute to the answer, but we are still a far cry from emerging with anything approaching comprehensive responses. Even for long-standing and widely touted elements of victim assistance, such as victim support, compensation schemes and information provision, empirical research is hard to come by and where available is almost invariably concentrated in certain areas of Europe.

This makes any evaluation of the impact of policy efforts on the lived experience of victims of crime a hazardous undertaking. First we have no real base-line to measure success or failure against. How can we know whether victim experience has improved if we do not have any real measures of what victim experience is like today? But second and perhaps more fundamentally, we have yet to fully grasp what we should be measuring in the first place. We noted that satisfaction research is widely used in much research in evaluation of public services, even though it has evident drawbacks in doing so. This also applies with additional force to the situation of victims of crime. However much of the shallow evidence base for victims' experience in criminal justice relies on satisfaction measures, with other, perhaps more promising approaches, having yet to be applied widely.

Again this also speaks to the understanding of the extent to which the Directive is living up to its goal. Without evidence of the impact of most victim assistance measures on victim experience, and a near dearth of research in a large part of the European Union, we would be at a loss to ascertain whether the Victims' Directive contributed to this end, even if it was transposed correctly into Member States legislation, into policy and practice on the ground, because we continue to lack a clear understanding of the influence of practice on victim experience. Given that none of these caveats apply fully, any hard conclusion about the impact of the Directive on victim experience is suspect.

### **The varied societal ecology of victim assistance**

Victim assistance does not exist in a vacuum, but instead exists in a societal 'ecology'. Other actors, for instance mental health services, insurance providers or social welfare organizations, have more or less overlapping goals in relation to victims of crime. This societal ecology concerns more generally the historical, cultural and current political reality in Member States. Understanding the role that different actors in victim assistance necessitates understanding the views of the inhabitants of Member States across Europe have of these actors. For instance the trust in and perception of the police and the judiciary varies widely from one country to the next.

If we drew a map of each of the factors (auxiliary indicators) contained in the set examined within the framework of the societal ecology (for instance incl. rule of law, trust in justice, tradition of volunteering, penal climate) the results would be remarkably similar from one set of indicators to the next. The countries with the relatively accommodating climate for the position of victims are those to the North and West of the EU, while the Member States in the South and East of Europe, in contrast, have a more hostile societal ecology.

The typology of EU Member States comprises the following five 'Worlds' of the societal ecology of victim assistance:

- Eastern: Civil law systems, with a very high, but moderately increasing incarceration rate. Relatively high worry about crime, relatively high levels of perceived corruption, and lower levels of experience of rule of law. Relatively low levels of expenditure on social security, health care and insurance coverage. Lower levels of

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- volunteering. Transposal of EU policy: world of dead letters. Lagging state and civil society effectiveness.
- Southern: Civil law systems, with a moderate, but increasing incarceration rate. Relatively high worry about crime. Level of perceived corruption and experience of rule of law higher than in Eastern Europe, but lower than North-Western and Nordic Europe. Expenditure on social security, health care and insurance coverage higher than in Eastern Europe, but lower than in the rest of Europe. Relatively poor access to mental health care. Lower levels of volunteering. Transposal of EU policy: world of transposal neglect. State and civil society effectiveness better than in the Eastern European Union, but poorer than the North and West of the EU.
- Anglo-Saxon: Common law/adversarial systems, with a relatively high and rapidly increasing incarceration rate. Concerning worry about crime, the rule of law, corruption and trust in justice the Anglo-Saxon countries are similar to those in North-Western Europe. Higher levels of expenditure on social security, health care and insurance coverage. Higher levels of volunteering, similar to the North-Western and Nordic areas of Europe. Transposal of EU policy: world of domestic concerns. Highly effective state and civil society institutions, similar to North-Western Europe.
- North Western: Civil law systems, with a moderate, but increasing incarceration rate. Low worry about crime. High trust in justice and experience of rule of law. Low levels of perceived corruption. Higher levels of expenditure on social security, health care and insurance coverage. Higher levels of volunteering, similar to the Anglo-Saxon and Nordic areas of Europe. Transposal of EU policy: world of domestic concerns. Highly effective state and civil society institutions, similar to the Anglo-Saxon area of Europe.
- Nordic: Civil law systems, with a low, and only moderately increasing incarceration rate. Lowest worry about crime. High trust in justice and experience of rule of law. Low levels of perceived corruption. Higher levels of expenditure on social security, health care and insurance coverage, similar to the Anglo-Saxon and North-Western areas of Europe. Higher levels of volunteering. Transposal of EU policy: world of law observance. Highest level of state and civil society effectiveness.

This coincides with and is undoubtedly part of the reason that the countries to the North and the West of the EU have a longer history of the development of the position of victims of crime. Other institutional structures within the Member States are in a better position to see to victims' needs. This means that the likelihood of legislation, policy and practice receiving a warm welcome is likely to be greater in the North/ West, than in the South/ East and is more likely to achieve its purpose there. The results gathered from the experts (see chapter 3) lead us in the same direction. However even this notion has yet to be confirmed by empirical research into victim experience, which, as has been noted, is also less likely to be conducted in the South and East of Europe.

### The EU as a policy actor in victim assistance

The Directive was conceived as a legislative framework that would ensure *minimum standards* in the assistance to victims across Europe. Public administration scholars have already raised a number of relevant questions about the extent to which the current approach to EU legislation is in fact up to this task. Does the acquired wisdom about the impact of EU Directives translate to the area of Justice and Home Affairs in general? Are expectations of harmonization derived from the idea of the single market truly applicable in areas where harmonization involves expanding government powers and/or requires government action? And to what extent is the evidence base of the impact of EU Directives on compliance in practice, and on the lived experience of end users, far too shallow to be able to posit this claim?

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The experience with victim policy in the EU therefore not only serves to help us understand the development of victim assistance, but can also illuminate the working of the EU as a policy actor. The results of the work in this area so far suggest that the influence of the EU on practice across the Member States has to reckon with the context in which it operates. Rather than assuming that EU policy leads to national legislation, which will lead to institutional policy and action, which in turn will lead to practice of a certain level and will influence end user experience, and moreover does so in a manner that is sufficiently similar across Member States (and in particular those showing poorer practice) - the experience with victim assistance suggests that each of these assumptions is moderated by contextual factors. The difference between the different 'Worlds' across the European Union is a particularly relevant contextual factor, particularly if the goal is to achieve *minimum standards*. The latter logically requires a focus on the areas where practice is poorest. But the current mode of legislation in the EU seems to lack impact in precisely those areas of the EU.

Understanding and including the role of context in policy making requires a different approach to policy development and implementation. In victim assistance this necessity is felt more keenly, given that context is also an important factor with victim experience itself, in the interaction between victims and victim assistance providers, in the manner in which victim assistance is situated within its network and the nature of victim assistance as government enhanced empowerment of individual citizens. The experience with improving the position of victims at the national level in a variety of nations speaks to the complexities and difficulty of doing so in one country: these issues are only compounded by the fact that the EU contains 28 Member States.

### **To the future: research and rethinking the EU Victims' Directive as a mega-project**

Based on the findings of Project IVOR it is clear that the most important part of improving the position is establishing a sufficient evidence base. The authors of this report see the lack of a sufficient evidence base for much of the views contained in the Directive and similar victims instruments as a serious impediment for our ability to provide victims with effective care, support, protection and rights that contribute to their well-being and interests. A full-fledged effort to secure this evidence base for all of the provisions contained, in particular in those areas where it is non-existent, should be undertaken as a priority. Without this any claims on the impact of EU policy on the lived experience of victims are spurious.

This is not to deny the importance of practical understanding that often is invoked to support the provisions of such legislation. Practical wisdom by and large always trumps generalized and abstract findings in the type of practice to which victim support belongs. Nevertheless this does not mean the current academic lacuna is not a cause for concern. There is as yet no way to distinguish acquired practical wisdom from only superficial common sense. In addition unlocking the practical wisdom of those involved in victim assistance across Europe could help practitioners and policy makers elsewhere, while offering insight into the underlying mechanisms and theories will support further development of victimological understanding. Indeed inclusion of practical experts at each step, from research to policy development and implantation is vital to its success.

The involvement of practical experts is a key element of the way that Oxford professor Bent Flyvbjerg suggests

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that mega-projects can be saved from the failure they now often turn out to be. His work primarily focuses on large infra-structural projects, but an undertaking like the EU Victims' Directive that foresees to change the experience of 90 million Europeans on an annual base can also be seen as such. Flyvbjerg's approach has the particular advantage of taking context more seriously, both in the management and planning of projects, but also in the approach to social science itself. Rather than attempt to uncover invariable laws of victim assistance, which can shape policy, practice and legislation, his phronetic approach to social science suggests that we would be better off in attempting to understand what works in victim assistance under what conditions, and how practitioners can be involved in this process. This might mean that victim assistance varies in nature from one area of the European Union to the next. But if this is in the interest of victims of crime, than surely this variation is to be embraced? The extent to which the EU will prove capable of finding more flexible means to influence policy and practice in Member States, will largely determine the extent to which it will be able to achieve a better lived experience for victims of crime across Europe, and the extent to which it will be able to raise the minimum standards in victim assistance.



## **Chapter V**

# **Recommendations**



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## Chapter V: Recommendations

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Victim Support Europe (VSE) is the leading European umbrella organisation advocating on behalf of all victims of crime, without exceptions. VSE represents 40 national member organizations, providing support and information services to more than 2 million people affected by crime every year in 26 countries. Founded in 1990, VSE has been working for over 25 years in the strengthening of the rights and services for all victims of crime in Europe. Engrained in its mission, VSE aims to ensure that every victim in Europe is able to access information and support services in the aftermath of crime, regardless of where the victim lives or where the crime took place. The organization also works to ensure that victims are respected, have access to strong rights and are able to make their voice heard throughout the criminal justice process.

In line with its mission and vision, VSE formulated the following recommendations:

### Article 2 - Definitions

#### Definition on victims

The definition of victim in some countries is still related to the civil party or injured party. In other countries, there is no definition in law. This creates risks that victims, as defined by the Directive, may not have access to all their rights and lacks clarity and transparency. Even where it may not on paper limit rights, a legal definition of victim can improve access to support and wider rights.

It is therefore recommended that, a definition of victims, compliant with the EU Directive, is provided for in national law or, as a minimum, it should be ensured that in practice all victims, as defined by the Directive, are able to access their rights.

### Article 3 – Right to understand and be understood

#### 3.2 – simple and accessible language

Research consistently shows that information is often provided using complex language.

The European Commission should closely monitor and develop empirical evidence to assess the extent of this problem, and its impact on victims. It should provide support for the development of accessible information, including developing an understanding of how to produce such information.

Member States should fully assess whether their written and oral communications comply with simple language standards. Where they don't comply, measures should be put in place to simplify language and use a variety of media to inform victims.

#### 3.3. – victim may be accompanied

Nevertheless, VSE is aware of some concerns being raised where a victim is accompanied by a person to assist

with understanding. Here, authorities need to be aware of risks that the accompanying person may influence or prejudice the proceedings. This is known to have occurred for example, where an interpreter knows the victim and does not provide correct interpretation. Member States should be aware of these risks and ensure their authorities take them into account when agreeing to interpretation and translation by a non-accredited translator.

### Article 4 – Right to Information

Evidence indicates that information is not being provided to victims even where this is enshrined in law. Moreover, there is a lack of consistency in the provision of information depending on where the victim is located and which authority is providing the information.

It is recommended that the way that information is provided is institutionalised and clear protocols and training are provided to ensure quality and consistency of information.

The provision of information through a variety of media, including in a form where anyone can access the information independently, will improve general knowledge and reduce risks of gaps. Establishing a one stop shop website with information for victims is one such example. Such sites can provide information in written form, through videos and even through interactive pages which allow a person, for example, to explore the justice system. In addition, some research has shown that victims may be informed about services on one occasion but do not remember. This supports the importance of providing information on repeat occasions and making the information available more generally.

Concerns have been raised that authorities are required to provide information for rights which are not available – e.g. where restorative justice does not exist or support services are not in place.

Where a service is required under the Directive, correctly establishing those services will of course avoid this information problem.

However, in the interim period, authorities should inform victims of alternative services e.g. where specific victim support is not available, victims could be informed of relevant welfare services, health care services, helplines, etc.

### Article 5 – Right of victim when making a complaint

There is evidence that still in some countries, victims are informed that the copy of the complaint is not available, or victims are charged per page of the crime report. Thus whilst from a strict interpretation the acknowledgment of the complaint is available these practices may inhibit certain victims from accessing that report.

If a victim cannot obtain a copy of the complaint, there is the risk that the report will not be properly pursued, the victim may have a problem with any follow up, or the victim cannot check again the accuracy of the statement that has been taken.

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## Chapter V: Recommendations

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There are examples of problem arising when reporting a crime online, due to the need to indicate what crime has been suffered. This assumes the victim has a legal knowledge of the crime they have suffered and can correctly choose the crime. Alternatively, it may mean that a type of crime is not covered within the categories.

It is recommended that Member States address measures which directly or indirectly impede a victim's ability to make a complaint and obtain a copy of that complaint. This could be achieved for example by removing charges or making an electronic version of the complaint available.

### **Article 6 – Information about the case**

There is a lack of consistent research and evidence on what problems that are occurring in the provision of information about a victims' case. Further research is therefore needed.

Nevertheless, based on information provided by members of VSE, the following concerns have been raised:

Some have noted difficulties in recording the wishes of the victim where they want to be informed of the release of the offender or difficulties in ensuring the request is not lost where the offender is transferred (particularly across borders).

Others have noted that victims still become aware of an offenders release unexpectedly or through the media. It is unclear whether this is because victims are unaware of their right to be informed of the release, whether their request hasn't been followed through, or whether the victim did not request to be informed.

Given the harm and secondary victimization that can occur in these circumstances, it will be important to better understand the extent to which victims are not informed and the reasons for this in order to develop solutions.

### **Article 7 – Interpretation and translation**

More research is needed on the extent to which interpretation and translation is available to victims in practice. This research should examine the provision of this service to victims where they have a formal standing in proceedings and where they don't. This will be important to evaluate since the EU Victims' Directive clearly allows Member States to distinguish between those victims, creating the risk that some victims will not be able to understand their rights nor the proceedings.

### **Article 8 – Access to Victim Support**

Despite different research to map which organizations provide support to victims, the picture remains very unclear and knowledge highly variable between countries. This is equally true of how many victims are accessing services and what the quality of those services is.

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In order to determine if Member States are compliant with EU laws and if victims genuinely have access to high quality, professional victims support, further research across all 28 participating Member States (and preferably Denmark) must be carried out to understand what services are available to victims.

There are a number of factors which are reducing access to services. In particular, the lack of national services in a country, the lack of funding for services, the lack of referral systems and a lack of co-ordination between organizations.

The EU Fundamental Rights Agency has identified eight Member States as not having national generic victim support organizations in place. Other countries have weak systems of support. For many countries, there are strong indications that a lack of funding is preventing the provision of services.

We call on all Member States to establish national systems of victim support and ensure that sufficient funding is available to allow organizations to deliver services for victims.

Formal arrangements for the referral of victims from justice agencies to victim support organizations, can make a significant difference to the take up of services. Yet in many countries no formal, national procedures for referral exist.

It is therefore recommended that countries which don't currently have referral procedures in place should establish formal arrangements for referrals.

Co-ordination between organizations can greatly increase accessibility and coherence of services, and improve a victims' experience of the system. It is recommended that organizations look at different ways of improving co-operation, including through formalised agreements. Governments can also facilitate co-operation and co-ordination between different organizations and with state entities.

### Article 10 – Right to be heard

This is an area where there is most clearly a lack of research and evidence. There is a lack of knowledge as to the extent to which victims are able to be heard under national laws. Research is needed to be able to properly assess its implementation.

### Article 12 – Restorative Justice

In some countries, there are difficulties in understanding the meaning of restorative justice services, which effects the provision of information about such services. Moreover, some difficulties in understanding of safeguards risk their correct implementation.

Member States should provide greater clarity to practitioners who inform victims of their rights, about which services are considered restorative justice, how victims are informed of these rights and the safeguards that are in place.

### **Article 17 – Rights of victims resident in another Member State**

The needs and rights of foreign victims have received little attention. Many view the issues as being simply about equality – ensuring foreign victims are treated in the same way as national victims. Alternatively they rely on the common sense of officials or assume that measures are in place when in fact funds or a lack of technology are limiting practical access to the measures.

In some ways this may work. However, this approach fails to recognise that foreign victims face their own set of unique problems by virtue of the fact that they are abroad when they are victimised, and they are often abroad (having returned home) when criminal proceedings take place. It also risks inconsistent responses depending on which practitioner deals with a case. A victim may get an excellent service in one town, and a terrible service in another. Finally it can mean that whilst in a law a person may have the possibility of e.g. videoconferencing, in reality the video system is not in place in one country or the other, or the victim has to travel many kilometres to use it.

This means that it is not enough to ensure that the same rights exist for nationals and foreigners, or to leave action solely to the discretion of individuals. Policy makers must actively identify the specific problems arising in this context and ensure adequate methods and funding are established – whether through legislation, guidelines or practice statements.

Potential problems have also been raised with the right to report a crime in the victim's home country. The Directive itself has left room for flexibility and interpretation which can result in each country taking a different approach. This can be highly confusing, leaving victims unsure of their rights. It could affectively mean that a victim returns home to report a crime, but this is not accepted either by the home country or by the country of the crime.

Moreover, there is evidence of a lack of knowledge of the national legal system amongst practitioners which could result in victims being denied rights which should be available to them.

It is recommended therefore that the EU carried out research on how this right is being implemented and whether the extent of flexibility allowed is limiting the effect of the Directive. At the national level, it is recommended that governments ensure their officers are provided with full guidance and training on these issues.

### **Article 22 – Individual Assessment**

The requirement to carry out individual assessments has created much concern and confusion amongst policy makers and practitioners alike.

There are fears over the complexity of the requirement, over its potential costs and administrative burdens. The difficulties and concerns reflect also a wider issue. This obligation requires States and practitioners, for the first time, to think about victims needs in a new way. It is no longer sufficient to make assumptions that only certain groups – usual based on the type of crime suffered – are in need of protection measures.

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This requires a fundamental shift in cultures and attitudes. The evidence from this project suggests that States are still struggling to recognise that determining vulnerability solely on the basis of crime type, fails many victims. A number for example, will rely on existing laws despite their limitations along these lines.

As a starting point, all Member States must ensure that protection measures are not limited to certain groups of victims. Protection must be available based on a victims need for protection.

Legislation must, however, also be translated into practice. Practitioners must be trained and must understand the objectives of an assessment, the reasons such an assessment is needed, and must be trained to avoid assumptions that certain victims never need protection measures.

Concerns about costs and excessive burdens must be addressed. Different approaches could quickly reduce the number of assessments necessary. For example, by establishing assumptions that certain groups/ victims are vulnerable, this will avoid the need for the initial assessment. The only assessment that will be needed is what is the appropriate protection measure for the victim.

Similarly, not all protection measures are available immediately upon reporting a crime. Assessment content, who carries out an assessment, and when it is carried out could all be adjusted having in mind when a protection measure will be needed.

In some instances, confusion has also arisen as to the purposes of the assessment. The Directive establishes an assessment solely for the purposes of determining protection needs. It is not aimed at determining support needs. This understanding can have an important influence on who may be determined competent to carry out an assessment. It is also important to ensure that police or other justice practitioners are not making assessments on whether a victim needs support. All victims should have access to victim support services and such services should discuss with victims directly what their support needs are. Nevertheless, co-operation mechanisms should be in place to ensure that, with the consent of the victim, information relevant to protection needs is passed on to relevant authorities by victim support organisations.

Some concerns have also been raised that information from the individual assessment will be contained in the criminal file and therefore accessible to the defence. This could have negative impacts on the victim. As such, it should be ensured that information from the needs assessment should not be accessible to the defence.

Finally, whilst there is limited information on the matter, some concerns have been raised that whilst an assessment may determine that a victim is vulnerable and in need of certain protection measures, the victim may be denied such measures by the decision maker – e.g. a judge. It is essential to ensure that those who make decisions about protection measures, must at the least take into account the assessment and provide reasons should a measure be refused.

### Article 25 –Training of Practitioners

The situation with respect to training is highly variable. In short, whilst there are examples of good practices, victims are not guaranteed to be dealt by practitioners who have been properly trained to deal with victims in a professional and respectful manner.

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This variability exists between different states, between different areas in a State and exist between the different professions. Moreover, there is no consistency, or even standards for the content of training.

Given that training can be such an important element of delivering victims rights and ensuring genuine change in a State, there must be much greater focus at the national and EU level to ensure that legislation is in place requiring that practitioners have received training, and that policies, guidelines, and research are carried out to ensure consistent approaches and standards.

It is important that efforts to support and fund training projects are not just focused on delivering training but also determine the most appropriate content and standards for training –including on frequency, length and timing of training. Such efforts should also help expand the methods of training used, to move beyond presentations and explore for example, role playing, group discussions etc.

Mechanisms should also be established to increase co-ordination and co-operation on a geographical basis and also between different practitioner groups. Cross-fertilisation of knowledge through multi-disciplinary training groups can be an especially effective way of improving practices.

Beyond training of qualified practitioners, it is essential that courses and qualification programmes established to become a particular professional include victims issues. For example, law degrees and criminal law modules should include education on victims' rights, needs and the impact of victimization. Such an approach can help ensure that a wide group of future practitioners already have some understanding of the issues at stake and are more open to future training once qualified.

### Article 26 – Cooperation and coordination

It is evident that there is a lack of focus and prioritisation on improving cooperation mechanisms. In part this is due to the flexibility provided by the Directive. However, this may also be driven to some extent by a lack of understanding of the negative impact that poorly co-ordinated services can have on victims. This can result in victims being passed between organisations, victims having to repeat information and duplicate interviews, losing themselves in the system or not being able to understand how they can access their rights. All these factors can significantly contribute to secondary victimization.

From a cross-border perspective, victims face additional difficulties such as knowing their rights, participating in proceedings, which can be helped by affective cross-border co-operation.

It is therefore recommended, that further research is carried out to better understand what problems are arising, the impact of these problems and how coordination mechanisms are able to help resolve them. This will help governments and practitioners to identify what practices may be best suited to their situations, and determine how best to implement those practices.

### Article 28 – Data

It remains the case that there is a severe lack of data relevant to victims issues. This means that justice agencies are not collecting primary data on how the justice system is functioning with respect to victims nor on whether victims are able to access their rights or what the impact of any rights, laws and practices are. The collection of such data will be of great value not only for victims policy but also with respect to many other aspects of justice systems including rights of the defendant.

Similarly there is insufficient research carried out to evaluate practices, determine what methods or processes work best and to see how good practices can be applied more widely.

It is recommended that States actively examine what information and data is already available but not collated in a form usable for victim research. States must begin work to ensure this data is processed to enable better analysis and that gaps in data are filled.

The European Commission should re-examine its proposal for the collection of victims' data through Eurostat as well as developing long term plan for how EU agencies can collect consistent data on victims issues.

It is also recommended that both States and the EU should examine how to include broad victims priorities into funding programmes to enable greater opportunities for research. Current priorities often focus on only specific groups of victims or very limited issues, which prevents cross-cutting research from being carried out.

Overall, it is clear that important progress has been made in many countries and with respect to many rights. Nevertheless, research through Project Ivor and other projects has brought to light some important gaps in implementation and knowledge.

The recommendations above just represent a starting point in how to address those gaps. In the coming months and years, much more will have to be achieved to fully understand the situation of victims in all Member States and ensure they are able to exercise their rights in reality.

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# **Appendix I**

## **Interview guide**

### **national experts**



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## Appendix I - Interview guide national experts

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### 1. Definition of victim (Art. 2 Directive)

A central issue in the Victims' Directive is the definition of victimhood. In many jurisdictions the term victim itself is not used to describe the person affected by crime and/ or relevant victims' rights that might be available to for instance the injured/ aggrieved party.

- According to our information the term victim is/ is not defined as such in legislation in your country. Is this correct?
- Instead/ in addition the term [*insert term*] is used. Is this correct?
- The definition/ definitions of the term victim/ *-include other terms used-* in your country is/ are the following. Is this correct?
- *For countries without a definition of victim as such.* In your country the term victim is not in use. Would you be in favor of adding a definition of the term victim? Why/ why not?

*PROMPT: if respondent does not introduce this issue him/ herself: what consequences does the use of the different term have for the accessibility of victims' rights within the criminal justice process.*

### 2. Victim Support (Art. 8 and 9 Directive)

A main component of victim assistance is known as victim support. The EU Directive proscribes the right to access to and support from victim support organisations. Many EU countries have several organisations, state-funded or as NGO, that provide general and/or specialised help to victims. While a relatively large amount of information is available on victim support, we would like to know more about its accessibility and the type of support provided.

- Concerning your country, we have read/heard about several organisations that provide victim support. The main ones seem to be [*name the largest or most important organisations*]. Is this correct? Did I leave anything out?
- From what we read about your country, it seems that [*your country's victim support seems to be well organized/ little attention has been given to victim support in written legislation/many victim support organisations exist but there is little coordination/etc..*]. Would you agree?
- In what way is access to victim support facilitated and who is the facilitating party? What measures are successful in promoting access to victim support according to you and which fail to do so?

Are there any exclusion criteria that deny victims access to victim support services (e.g. geographical limitations, previous offending, same sex partners)?

- In your country *emotional/medical/financial* support is provided to victims of crime. Do you agree? If so, can you elaborate on how and by whom such support is provided in daily practice?
- What is the cooperation like between criminal justice authorities and victim support services in your country? Are you satisfied with it? What would you identify as good practices?

[Reminder to interviewer]

- Do victims have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings?
- Do family members have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim?

### 3. Restorative justice (Art. 12 Directive)

An important component of the EU Directive is restorative justice, defined as **any process** where the parties affected by the crime can voluntarily participate in the resolution of their matters with “the help of an impartial third party” (Art. 2.1. (d)). Although the Directive recognizes the benefits of restorative justice for victims of crime (Recital 46), many jurisdictions still grant limited access to such services.

- According to our information, the concept restorative justice is not used in your country, but it is replaced by the term [*insert term, e.g. conciliation*], which is defined as [*insert definition*]. Is this correct? Which RJ-practices does [*insert term*] include?

Or

- According to our information, the concept restorative justice is not used in your country, but it is replaced by the term [*insert term, e.g. VOM, or peacemaking circles, or RJ conferencing*], which is a specific RJ-practice defined as [*insert definition*]. Is this correct? Is [*insert term*] the only RJ-practice adopted in your country?

Or

- We found no definition of RJ/other term for your country. Is there one and/or could you give it to us? Please define it. If not, how does your country deal with the duty to inform about RJ services (Art.4)?

[*The following questions apply only if there is any kind of understanding of RJ in the country*].

- The Directive prescribes the right to be informed about RJ from the first contact with competent authorities. Who has the duty to inform victims on restorative justice in your country? How and what information is given to victims?
- How are victims granted access to RJ in your country? Who facilitates the referral to a RJ service? How is the process initiated in practice?
- The Directive prescribes several safeguards to protect victims from further victimization (i.e. safe and competent RJ services; free and informed consent of victims; possibility to withdraw at any time; full and unbiased information about RJ; the offender’s acknowledgement of the basic facts; confidentiality of the process). Are victims in your country granted such safeguards?
- Are there any exclusion criteria in your country discouraging victims from having access to RJ and initiate a RJ process (e.g. seriousness of the crime, age of the victim, offender’s admission of guilt, geographical limitations, etc.)

- How is cooperation between referral bodies and RJ practitioners strengthened in your country? Are you aware of any good practice?

### 4. Victims resident in another Member State (Art. 17 Directive)

A key issue in European legislation for victims of crime concerns the treatment of victims resident in other European countries. The Directive proposes three different ways in which reporting a crime and participating in criminal proceedings can be facilitated for victims from other EU Member States.

- The first concerns the possibility of taking *a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority*. To what extent does the legislation in your country permit this to happen?
- The second concerns recourse to the provisions on videoconferencing and telephone calls. To what extent/ under what conditions does a victim have recourse to these provisions in principle/ in law? To what extent does availability in practice the limit victims' recourse to these options?
- Finally *Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence*. Does 'competency' in your country also depend on the nationality of victim and/ or offender?

### 5. Individual needs assessment (Art. 22 Directive)

A novel issue in the Directive is the so-called *individual needs assessment* in article 22. This assessment is meant to identify specific protection needs, and to identify whether and to what extent victims may benefit from special measures. Prior to the adoption of the Directive most Member States did not have legislation or indeed practice in place concerning the assessment of victims' individual needs. We would like to discuss the key features of the way your country has transposed/ is planning to transpose this article.

- According to our information your country does not mention the individual needs assessment in their national legislation. Is this correct?
- If so, are there any practices that correspond with the Directive's call for individual needs assessments that are not included in legislation?
- Are there any plans that you know of regarding the transposal of this article 22?
- What, according to your opinion, are the most important aspects to focus on regarding the contents and the transposal of article 22?
- **Or:** According to our information your country mentions the individual needs assessment in their national legislation. Is this correct?
- Could you describe a) whether all or instead only some type of victims receive the assessment, b) when and with what explicit purpose the assessment is given, c) how victims are assessed (assessment procedure)?

*PROMPT: The Directive mentions that the individual assessment should focus particularly on a) the personal characteristics of the victim; b) the type or nature of the crime and c) the circumstances of the crime. Are all these factors included?*

- Do you believe that the way your country has implemented article 22 succeeds in benefitting the victim and achieving its purpose?

### 9. Vulnerable groups (Art. 23 and 24 Directive)

The individual assessment we talked about previously is specifically meant to identify **vulnerable** victims, or victims with specific protection needs. In the continuation of this question, we will use vulnerable victims at our convenience to indicate what the Directive calls “victims with protection needs due to vulnerability to secondary and repeat victimization, to intimidation and to retaliation” (Art 22/4). While female victims of domestic violence and children are frequently named in MS’ national legislation as groups with specific needs, other groups are also sometimes identified.

- In your country, [groups] have additional rights or enjoy different treatment compared to other types of victims. Is this correct? Are there any additional (groups of) victims in your country perceived and treated as ‘vulnerable?’”

*PROMPT: Examples of groups mentioned in the Directive are victims of terrorism, organized crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities.*

- Could you elaborate on those ‘needs’ and ‘rights’ mentioned in the question above?

*PROMPT: Do all victim groups identified as ‘vulnerable’ (or another term indicating the same status) receive the same treatment and rights, or are these specified per group?*

- If no such thing as an individual assessment (article 22) exists in your country’s legal system, how are these victims identified in practice?

### 10. Training (Art. 25 Directive)

The Directive calls for general and specialist training for all professionals dealing with victims of crime, including police officers, court staff, judges, prosecutors, lawyers, victim support and restorative justice practitioners.

- To our knowledge, your country provides training for [insert group of professionals/volunteers]. Can you elaborate (contents and format of trainings, timing and frequency, compulsory/mandatory)?

or

- Concerning your country, there is no information on training for [*insert group of professionals/volunteers*]. Are you aware of any training available for them?

### **11. Cooperation and coordination (Art. 26 Directive)**

The Directive calls for increasing cooperation between MS and raising awareness on victims' rights (Art. 26). Not much information has been found on how this article is implemented in practice.

- Does your country cooperate with other Member States in order to increase access to victims' rights? How?
- Is your country keeping track of its best practices to improve access to victims' rights?
- Is there any awareness of victims' rights in your country and how is such awareness raised?

### **11. General questions regarding (practical) implementation**

- How do you regard the relation between victim rights in national legislation and victim rights in practice in your country?
- Is there anything else you would like to share, something you find remarkable about victim rights and the criminal justice system in your country?

*PROMPT:* If you reviewed the CECL report beforehand, what stood out? Did you find any inaccuracies or gaps that we have not discussed so far?

- Member States are required to comply with the Directive by 16 November 2016 (Art.27). Is there something that you see as specifically problematic in your country, or some part of the EU Directive that will be very difficult to implement?

*PROMPT:* e.g. individual needs assessment, funding, victims resident in other member states, etc.

### **12. Context**

In the course of this interview, we have discussed several topics that have to do with the rights and position of the victim. All of the questions so far were related specifically to the criminal justice system and the EU Victims Directive. Yet there are probably other contextual factors that have an impact on the position of the victim in your country. For your convenience we attached in our correspondence a model that includes factors on an individual, institutional and societal level that may influence the rights and position of the victim in any given society.

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## Appendix - Interview guide national experts

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- Are there any factors, which are found outside the criminal system, that have a strong impact on victim rights within your country? Could you elaborate on why these factors in particular have a strong influence?
- Could you point towards any significant historical developments that have contributed to the rights and positions of the victim as they are now?

*[Specific PROMPTS might be in order if we know anything of the country's history]*







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