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NOTE

from :	Presidency
to :	COREPER/Council
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Subject :	Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime

The Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime was submitted by the Commission on 18 May 2011. The Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings¹.

At its meetings on 2 December 2011, COREPER discussed three outstanding issues in the Articles' part, confirming the approach of the Presidency. The present document takes into account the results of the discussions at the meeting of the JHA Counsellors on 7 December 2011, where Articles 5, 7, 10, 13, 14, 20, 22, 24, 25 and 27 together with corresponding recitals (9b), (11a), (11d), (11e), (12a), (12b), (15), (16b), (24) and (26) were examined separately.

¹ OJ L 82, 22.3.2001, p.1.

The Working Party on Substantive Criminal Law has discussed the proposal during 13 meeting days: 12-13 July, 1-2 September, 4-5 and 19-20 October, 15-16 and 28-30 November 2011 finalising its sixth reading of the Articles. Recitals have been discussed insofar as this would facilitate reaching an agreement on the operative part of the Directive. In addition, CATS had an initial discussion on the proposal on 18 May, a second discussion on 7 October and a third discussion on 25 November 2011. The protection of victims of crime was also on the agenda of the informal JHA-Council on 17-18 July in Sopot, Poland, and the JHA Council of 28 October for an orientation debate.

As stated previously, the Presidency has aimed at having a balanced Directive, in terms of reconciling the needs of victims and the requirement to maintain smooth proceedings and to take into account financial considerations of the Member States.

Both IE and UK have opted in.

The text of the proposed Directive is subject to parliamentary scrutiny reservation by some delegations.

Changes in relation to the previous document (18096/11) have been marked in the attached text. It should be noted that the Commission maintains a number of reservations, reflected in footnotes, on the modifications made by the Council with a view to future discussions with the European Parliament.

The Presidency invites delegations that still maintain reservations to lift them, and invites the COREPER/Council to agree on a general approach on the Articles. The Presidency stresses that the text attached has to be seen as a package compromise so that the text can be taken further in the legislative process. The Presidency further invites the Council to note that this text, together with the text of the remaining recitals that are still to be agreed, will form a sufficient basis for the incoming Presidency to enter into discussions with the European Parliament.

Those recitals which have not yet been discussed will be discussed by the Working Party on 9-10 January 2012.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters.
- (2) The Union is committed to the protection of victims of crimes and to the establishment of minimum standards and has adopted Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. Under the Stockholm programme, adopted by the European Council at its meeting on 10 and 11 December 2009, the Commission and the Member States have been asked to examine how to improve legislation and practical support measures for the protection of victims.
- (3) The Resolution of the European Parliament of 26 November 2009 on the elimination of violence against women called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.
- (4) Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (c) of Article 82(2) refers to 'the rights of victims of crime' as one of the areas where minimum rules may be established.

- (5) Crime is as an offence against society as well as a violation of the individual rights of victims. As such, victims should be recognised and treated in a respectful, sensitive and professional manner in all contacts with any public authority, victim support service or restorative justice service taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. They should be protected from secondary and repeat victimisation and intimidation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.
- (6) This Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA. Since the amendments to be made are substantial in number and nature, the Framework Decision should in the interests of clarity be replaced in its entirety.
- (7) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular it seeks to promote the right to dignity, life, physical and mental integrity, and respect for private and family life, right to property, and the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.
- (8) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.
- (8a) The rights provided for in this Directive are without prejudice to the rights of the offender. The use of the term "offender" is without prejudice to the presumption of innocence when it refers to stages prior to a possible acknowledgement of guilt or the conviction. However, it covers also the state when a person has been convicted of having committed a crime.

- (8b) **This Directive applies to criminal offences committed in the European Union and to criminal proceedings that take place in the Union. It only confers rights on victims of extra-territorial offences in relation to criminal proceedings that take place in the Union. Complaints made to public authorities outside the Union, such as embassies, do not trigger the obligations in this Directive.**
- (9) A person should be considered a victim regardless of whether an **offender** is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the **offender** and the victim. Family members of victims **may also be** harmed as a result of the crime, in particular the family of a deceased victim, who have a legitimate interest in criminal proceedings. Such indirect victims should therefore also benefit from protection under this Directive. **In the case of a child, the holder of the parental responsibility/[legal guardian] should be entitled to exercise the rights provided for by this Directive on behalf of the child. This Directive is without prejudice to any national administrative procedures and formalities confirming that a person is a victim.**
- (9a) The wish of victims whether or not to receive information or the refusal to receive it should bind the competent authority, unless this information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. The information should be provided if the victim has given his/her most recent correspondence address to the competent authority.

- (9b) Specific information on ~~a~~ **the** release or ~~an~~ **the** escape of the offender should be ~~granted~~**given** to victims where they have expressed such a wish at least in cases where there might be danger or identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification. The reference to "identified risk of harm to victims" should cover such factors as severity or nature of the crime. Therefore, it should not be applied to those situations where petty crimes occurred and thus there is slight possibility of harm to the victim⁴.
- (10) When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information allowing the victim to know about the current status of any proceedings is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute. Unless specifically required, the information communicated to the victim may be provided orally or in writing, including through electronic means.
- (10a) **Member States should not be obliged to provide information, where disclosure of that information would prejudice the administration of justice/is likely to harm a given case or national security.**
- (10b) Competent authorities involved should ensure that victims, who expressed such a wish, receive contact details for communication about their case, depending of the stage thereof.

⁴ **The Commission entered a reservation on this sentence.**

(10c) The role of victims in the criminal justice system varies in each Member State, depending on the national system. Whether a victim has a role in criminal proceedings is determined by one of the following criteria:

- the national system provides for a legal status as a party to criminal proceedings;
- the victim is under a legal requirement or is requested to actively participate in criminal proceedings, such as witnesses; or
- the victim has a legal entitlement under national law to actively participate in criminal proceedings and in seeking to do so, where the national system does not provide for a legal status as a party to the criminal proceedings.

Member States should determine which of those criteria will be applicable to determine the scope of rights provided for under this Directive.

(11) Information and advice provided by public authorities, victim support services and restorative justice services should as far as possible be given through a range of media in a manner which can be understood by the victim. **This information and advice should be provided in a simple and accessible language.** It should also be ensured that the victim can be understood during proceedings. In this respect, the victim's knowledge of the language used to provide information, their age, maturity, intellectual and emotional capacities, literacy levels and any mental or physical impairment such as those related to sight or hearing, should be taken into account. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings.

- (11a) While reporting the crimes, victims who do not understand or speak the language of the criminal proceedings, should be **enabled to** ~~assisted in reporting~~ the crime in a language they understand. Furthermore, these victims should be informed on the right to interpretation and the right to receive information enabling to actively participate in the criminal proceedings. Information on these rights should be presented in a ~~manner and language allowing them to understand~~ **simple and accessible language**.⁵
- (11b) The right of victims to be heard should also be considered to have been granted where the victims have made statements or explanations in writing
- (11c) A decision ending proceedings should/would cover also situations where the prosecutor decides to withdraw charges or discontinue proceedings.
- (11d) A decision of the prosecutor resulting in an out-of-court ~~disposal~~ **settlement** and thus ending proceedings, should only exclude victims from the right to have a decision of the prosecutor not to prosecute reviewed, if the ~~decision~~ **settlement** implies, ~~at least~~, a warning or an obligation.
- (11e) Reference to a "decision" in the context of the right to information, translation and interpretation, should be understood only as a reference to the finding of guilt or otherwise ending criminal proceedings. The reasons of that decision may be provided to the victim either through a copy of the resolution where that decision is included in or through a brief summary of them.

⁵ **Two delegations entered a scrutiny reservation.**

- (12) Justice cannot be effectively achieved unless the victim can properly explain the circumstances of the crime they have suffered and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure the respectful treatment of the victim and to ensure they are able to access their rights. Free of charge interpretation should therefore always be available during questioning of the victim and for their **active** participation in court hearings. For other aspects of criminal proceedings, the need of interpretation and translation can vary depending on specific issues, the **role** of the victim and their involvement in proceedings and any specific rights they have. As such interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights.
- (12a) Victims should not be expected to incur expenses to participate in criminal proceedings. However, they should not incur unnecessary expenses in doing so. Member States are required to reimburse only necessary expenses. Member States can impose conditions of payment in national law, such as time limits for claiming reimbursement, standard rates for subsistence and travel costs and maximum daily amounts for loss of earnings. **The right to reimbursement of expenses in criminal proceedings should not be related to a situation where a victim makes a statement on a criminal offence.** Expenses need only be provided to the extent that the victim is obliged or requested by the competent authorities to **be present and** actively participate in the proceedings.⁶
- (12b) Recoverable property which is seized in criminal proceedings should be returned as soon as possible to the victim of the crime, unless there are exceptional conditions, such as a dispute concerning the ownership, the possession of the property or the property itself is illegal. Return of the property should be without prejudice to its legitimate retention for the purpose of other legal proceedings.

⁶ **Two delegations and the Commission entered scrutiny reservations.**

- (13) Support should be made available from the moment a crime takes place as well as throughout criminal proceedings and after such proceedings in accordance with the needs of the victim **and the rights under this Directive. Once the authorities are aware of the victim, the victims should receive assistance and support.** Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution to allow all victims the opportunity to access such services. Certain groups of victims such as victims of sexual violence **and victims of human trafficking**, gender, race hate or other bias crimes or victims of terrorism may require specialist support services due to the particular characteristics of the crime they have fallen victim to.
- (14) Although the provision of support should not be dependent on a victim making a complaint of an offence to a competent authority such as the police, such authorities are often best placed to inform victims of the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including by ensuring that data protection requirements can be adhered to.
- (14a) If the victim has left the territory of the Member State where the criminal offence occurred, that Member State should no longer be obliged to provide assistance, support and protection. If the investigation or criminal proceedings are conducted by a Member State other than the one where the offence occurred, that Member State should be responsible for providing the required assistance, support and protection.**

- (15) **The right to have the decision not to prosecute reviewed refers to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not to the decisions taken by courts.** Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision, **unless the initial decision not to prosecute was taken by the highest prosecuting authority, against whose decision no review may be made, in which case the review may be carried out by that same authority.** ~~The mechanisms or procedures for such a review should be applied in accordance with national law.~~ **The right to review a decision not to prosecute does not concern special procedures, such as proceedings against members of parliament or government, in relation to the exercise of their official position.**
- (16) Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent any further victimisation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to and in conducting a restorative process. Whilst private proceedings should in general be confidential, unless agreed otherwise by the parties, factors such as threats made during the process may be considered as requiring disclosure in the public interest.

- (16a) The risk of further victimisation either by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a co-ordinated manner which treats victims with respect and enables them to establish trust in authorities. Interaction with authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through for example video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his family, associates or members of the public. To that end, Member States are encouraged to introduce, where appropriate, feasible and practical measures enabling court facilities to include separate entrances, waiting areas, etc., for victims.
- (16b) Protecting the privacy of the victim can be an important means of preventing further victimisation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim, ~~if appropriate and in accordance with the grounds defined by national legislation or procedures.~~ Such protection is particularly important for child victims, including non-disclosure of the name of the child. ~~Any measures which may be taken to protect the privacy and images of victims and of their family members during criminal proceedings, shall~~ should always be ~~subject to the condition that they are~~ consistent with Article 6 of the European Convention of Human Rights of the right to a fair trial.
- (17) The obligation contained in this Directive to transmit complaints should not affect Member States' competence to institute proceedings and is without prejudice to the rules of conflict of jurisdiction as laid down in Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.⁷

⁷ OJ L 328, 15.12.2009, p. 42.

- (18) Some victims are particularly vulnerable during criminal proceedings to secondary and repeat victimisation and to intimidation by the offender or his associates. Such vulnerability can broadly be identified from the personal characteristics of the victim and the type or nature of the crime. Children should always be presumed vulnerable. Vulnerable victims can be particularly exposed to further victimisation and in need of special protection measures. Only in exceptional circumstances, such as balancing the fundamental rights of the accused or suspected person, or where the victim so wishes, should access to such protection measures be limited. In the case of victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography or victims of terrorism, where specific provisions are already included in separate instruments adopted or in course of negotiation this Directive does not deal with those same matters.
- (19) Based on personal characteristics and the crime, any person could be vulnerable. Only through individual assessments, carried out at the earliest opportunity by those in a position to make recommendations on protection measures, can such vulnerabilities be effectively identified. The assessment should in particular take into account age, gender and gender identity, ethnicity, race, religion, sexual orientation, state of health, disability, communication difficulties, relationship to or dependence on the suspected or accused person, previous experience of crime, the type or nature of the crime such as organised crime, terrorism, or bias crimes and whether the victim is a foreign victim. Victims of terrorism require particular attention in any assessment given the varying nature of such acts ranging from mass acts of terrorism to targeted terrorism against individuals.
- (20) Victims who have been identified as vulnerable should be offered appropriate measures to protect them during criminal proceedings. The exact nature and extent of any such measures should be determined through the individual assessment, in discussions with the victim and in accordance with rules of judicial discretion. The victim's concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.

- (21) In applying the provisions of this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.
- (22) In applying the provisions of this Directive, Member States should ensure that persons with disabilities fully enjoy the rights under the Directive on an equal basis with others, in accordance with the UN Convention on the Rights of Persons with Disabilities, particularly the Convention's provisions on the right to equal recognition before the law, equal access to justice, the right to have access to information and accessibility to premises as well as the freedom from inhuman or degrading treatment and freedom from violence and abuse.
- (23) When, in accordance with this Directive, a guardian and/or a representative is to be appointed for a child, those roles may be performed by the same person or by a legal person, an institution or an authority.
- (24) Any officials in criminal proceedings likely to come into contact with victims should be trained to identify and meet the needs of victims both through initial and ongoing training and to a level appropriate to their contact with victims. This should include specialist training as appropriate. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training should include matters relating to the impact that crime has on victims, the risks of intimidation, repeat and secondary victimisation and how these can be avoided and the availability and relevance of support to victims.
- (25) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policy-making initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime.

(26)⁸ Systematic and adequate data collection is recognised as an essential component of effective policy-making in the field of victims' rights covered by the scope of this Directive. ~~Accurate statistical information on victims is important to raise awareness among policy-makers and the public on victims' needs and how to respond to them, and can also encourage reporting by victims or witnesses.~~ Relevant statistical data may include judicial data recorded by judicial authorities and law enforcement agencies ~~as well as and,~~ as far as possible, administrative data compiled by health care and social welfare services and public and non-governmental victim support, restorative justice and other organisations working with victims of crime. Judicial data can include information on reported crime, number of cases that are investigated, prosecuted and sentenced, ~~number of victims that request, receive or do not receive information, protection, interpretation, translation and reimbursement for participating in criminal proceedings.~~ Service-based administrative data can include, as far as possible, data on how victims are using services provided by government agencies and public and private support organisations, such as number of referrals by police to victim support services, number of victims that request support, receive and do not receive support or restorative justice.

⁸ **One delegation, supported by three other delegations, suggested to insert a recital motivating and clarifying Article 27**, based upon recital (44) of the Directive on Child Sexual Exploitation: "*(44) Member States are encouraged to create mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of being a victim of crime. In order to be able to properly evaluate the results of actions to improve victims' experience of the criminal justice system, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.*".

- (27) Since the aim of establishing common minimum standards cannot be sufficiently achieved by Member States acting unilaterally, either at national, regional or local level, and could instead, due to the scale and potential effects be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (28) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters⁹ and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.
- (29) This Directive shall not affect more far reaching provisions contained in other EU acts which address the specific needs of vulnerable victims in a more targeted manner.
- (30) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Directive.

⁹ OJ L 350, 30.12.2008, p. 60.

- (31) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is therefore not bound by it or subject to its application.

HAVE ADOPTED THIS DIRECTIVE:

Chapter 1

INTRODUCTORY PROVISIONS

Article 1

Objectives

The purpose of this Directive is to ensure that victims of crime, as defined in Article 2, receive appropriate protection and support and are able to participate in criminal proceedings and are recognised and treated in a respectful, sensitive, and professional and non-discriminatory manner, in all contacts with victim support or restorative justice service or any competent authority, operating within the context of criminal proceedings.

Article 2

Definitions

1. For the purposes of this Directive:

(a) 'victim' means

- (i)¹⁰ a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by a criminal offence;

¹⁰ One delegation entered a reservation on the definition of "victim".

- (ii) family members of a victim whose death was directly caused by a criminal offence and who have suffered harm as a result,
- (b) 'family members' means the spouse, the person who is living with the victim in a committed intimate relationship on a stable and continuous basis having a joint household, the relatives in direct line, the siblings, and the dependants of the victim, as defined by national law;¹¹
- (d) 'restorative justice services' means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party
- (e) 'child' means any person below 18 years of age.

2. Member States may establish procedures

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

¹¹ **The Commission maintains a reservation, including on the reference to national law.**

Chapter 2

PROVISION OF INFORMATION AND SUPPORT

Article 3¹²

Right to receive information from first contact with a competent authority

Member States shall ensure that victims are offered in a simple and accessible language the following information, without unnecessary delay, from their first contact with the competent authority. The extent or detail of that information may be varied based on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and its relevance at each stage of proceedings:¹³

- (a) the type of support they can obtain and from whom;
- (b) procedures concerning the making of a complaint of an offence and their role in connection with such procedures;
- (c) how and under what conditions they can obtain protection;
- (d) how and under what conditions they can access legal advice, legal aid or any other sort of advice;
- (e) how and under what conditions they can access compensation;
- (f) if they are resident in another Member State, any special arrangements available to them in order to protect their interests;

¹² **One delegation maintains a reservation on this Article.**

¹³ The Commission, supported by one delegation, suggested supplementing this provision by a reference to the right to interpretation and translation.

- (g) any procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings¹⁴;
- (h) contact details for communications about their case;
- (i) available restorative justice services.

Article 4

Right of victims to have their complaint acknowledged

Member States shall ensure that victims receive written acknowledgement of any formal complaint of a criminal offence made by them to the competent authority of the Member State.

Article 5¹⁵

Right to receive information about their case

1. Member States shall ensure that victims are notified of their right to receive the following information on their case and that they receive this information orally or in writing in accordance with the role of victims in the relevant criminal justice system¹⁶:
 - (a)¹⁷ any decision ending the criminal proceedings instituted as a result of the complaint of a criminal offence made by the victim, such as a decision not to proceed with or to end an investigation or prosecution, or a final judgment in a trial, and either reasons or a brief summary of reasons for that decision except in the case of a confidential¹⁸ or jury decision where reasons are not provided as a matter of national law¹⁹;

¹⁴ One delegation maintains a scrutiny reservation on this point.

¹⁵ One delegation has a scrutiny reservation on this Article.

¹⁶ The Commission has a reservation on this text.

¹⁷ **One delegation has a reservation on this point.**

¹⁸ **The Commission has a reservation on this text.**

¹⁹ This point as well as Article 7(3)(b) should be read in conjunction with recital (11e).

- (b) information enabling the victim to know about the state of the criminal proceedings instituted as a result of the complaint of a criminal offence made by the victim, unless in exceptional cases the proper handling of the case may be adversely affected;
- (c) the time and place of the trial.

1a. Member States shall take into consideration, in accordance with national law, whether or not the victims wish to receive the information provided for in paragraph 1.²⁰

2.²¹ Member States shall ensure that victims are offered the opportunity to be notified without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for offences concerning them is released from or has escaped detention²². Victims shall receive this information where they have expressed such a wish at least in cases where there might be danger or identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification.

Article 6

Right to understand and to be understood

Member States shall take appropriate measures to assist victims to understand and to be understood during any necessary interaction they have with any competent authorities in the context of criminal proceedings, including where information is provided by such authorities.

²⁰ The Commission maintains a reservation on this wording.

²¹ **To be read in conjunction with recital (9b).**

²² **One delegation** entered a scrutiny reservation.

One delegation suggested adding two additional elements to this paragraph.

Article 7²³

Right to interpretation and translation

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided if they so wish with free of charge interpretation, in accordance with their role in the relevant criminal justice system, for their participation in criminal proceedings, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their participation in court hearings and any necessary interim hearings²⁴.
2. Where appropriate, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victim to properly exercise their rights or understand the proceedings.
3. Member States shall ensure that victims, who do not understand or speak the language of the criminal proceedings concerned shall in accordance with the role of victims in the relevant criminal justice system²⁵, receive translations in a language understood by the victims if they so wish, free of charge, of information essential to the victims' exercise of their rights in criminal proceedings, to the extent that such information is made available to the victims, at least:
 - (a) the complaint **made by the victim** of the criminal offence to the competent authority;

²³ **One delegation has a reservation on this Article.**

²⁴ This paragraph should be read in conjunction with recital 11a.

²⁵ The Commission is of the opinion that all victims should receive a translation of the complaint. Furthermore, the Commission objects to the deletion of paragraphs 5 and 6 of its original proposal, as set out in 10610/11.

- (b) any decision ending the criminal proceedings related to the criminal offence reported by the victim, and upon request of the victim, reasons or a brief summary of reasons for such decision, except in the case of confidential or jury decision where reasons are not provided as a matter of national law.²⁶
- 4. There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling victims to exercise their role. Victims may submit a reasoned request to consider document as essential.
- 5. As an exception to the general rules established in paragraphs 1, 2 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

Article 8

Right to access victim support services

- 1. Member States shall ensure that victims in accordance with their needs, have access to free of charge, confidential victim support services before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the crime committed against the victim. As a minimum, such services shall provide:
 - (a) information, advice and support relevant to the rights of victims including on accessing state compensation schemes for criminal injuries, and their role in criminal proceedings including preparation for attendance at the trial;
 - (b) information on or referral to, as appropriate, specialist services;

²⁶ **Two delegations entered a scrutiny reservation on this point, and one delegation is of the opinion that all victims should receive a translation of the complaint.**

- (c) emotional support;
 - (d) advice relating to financial and practical issues arising from the crime.
2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and other relevant agencies, to victim support services.
 3. Member States shall promote the setting up or development of specialist support services, where necessary, in addition to general victim support services.

Chapter 3

PARTICIPATION IN CRIMINAL PROCEEDINGS

Article 9

Right to be heard

Member States shall ensure that victims may be heard during criminal proceedings and may supply evidence. The procedural rules under which the victims may be heard during criminal proceedings and may supply evidence shall be determined by national law.²⁷

²⁷ **One delegation maintains a reservation on this Article.**

Article 10

Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims in accordance with their role of victims in the relevant criminal justice system have the right to have any decision not to prosecute reviewed. The procedural rules for such a review shall be determined by national law²⁸.
- 1a. In case the initial decision not to prosecute is taken by **the highest prosecuting authority** ~~an authority which, under national law, is the highest instance~~ against whose decision no review may be made ~~under national law to a higher instance as to the facts, is possible~~, the right to review, may **be carried out** ~~such a decision shall be interpreted as the right to refer it for a second examination~~ by the same authority.²⁹
2. Member States shall ensure that victims, if they have expressed such a wish, are provided with sufficient information to decide whether to request a review of any decision not to prosecute.
3. Paragraphs 1 and 2 do not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court ~~disposal~~ **settlement, insofar as the national law provides for such a possibility.**

²⁸ **One delegation entered scrutiny reservations.**

²⁹ **The Commission maintains a scrutiny reservation on this paragraph.**

Article 11

Right to safeguards in the context of restorative justice services

1. Member States shall take measures to safeguard the victim from intimidation or further victimisation, to be applied when providing restorative justice services, if any. Such measures shall as a minimum include the following:
 - (a) restorative justice services are used if they are in the interest of the victim, and, based on the victim's free and informed consent; this consent may be withdrawn at any time;
 - (b) before agreeing to participate in the process, the victim is provided with full and unbiased information about the process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;
 - (c) the offender must have acknowledged the basic facts of a case;
 - (d) any agreement should be arrived at voluntarily and could be taken into account in any further criminal proceedings;
 - (e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.³⁰

2. Member States shall facilitate the referral of cases, **appropriate for such measures**, to restorative justice services, including through the establishment of guidelines on the conditions for referral.³¹

³⁰ One delegation entered a reservation on this point.

³¹ One delegation entered a reservation on this point.

Article 12

Right to legal aid

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

Article 13³²

Right to reimbursement of expenses

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

Article 14³³

Right to the return of property

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

³² **To be read in conjunction with recital (12a). One delegation maintains a scrutiny reservation on this Article.**

³³ **To be read in conjunction with recital (12b). One delegation maintains a reservation on this Article.**

Article 15

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

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.
2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.³⁴

Article 16

Rights of victims resident in another Member State

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the offence occurs, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the crime took place shall, in particular, be in a position:
 - to take a statement from the victim immediately after the complaint of the criminal offence is made to the appropriate authority;
 - to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 for the purpose of hearing victims resident abroad.

³⁴ **One delegation maintains a scrutiny reservation on this paragraph.**

2. Member States shall ensure that victims of criminal offences in Member States other than the one where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the offence is committed or, in the event of a serious offence determined by national law of that State, if they do not wish to do so.

3. Member States shall ensure that the competent authority to which the complaint is made transmits it without delay to the competent authority in the territory in which the criminal offence was committed, if the competence has not been executed³⁵.

Chapter 4

RECOGNITION OF VULNERABILITY AND PROTECTION OF VICTIMS

Article 17

Right to protection

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

³⁵ The Commission entered a reservation on this paragraph.

Article 18

Right to avoidance of contact between victim and offender

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

Article 19

Right to protection of victims during questioning in criminal investigations

Without prejudice to the rights of the defence, Member States shall ensure that:

- (a) when victims are to be interviewed, the interviews shall be conducted without unjustified delay after the complaint of a criminal offence has been made to the competent authorities;
- (b) the number of interviews with victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of criminal investigations;
- (c) victims may be accompanied by their legal representative, unless a reasoned decision has been made to the contrary in respect of that person.³⁶

Article 20³⁷

Right to protection of privacy

1. Member States shall ensure that competent authorities may adopt during the criminal proceedings, appropriate measures to protect the privacy and images of victims and of their family members.

³⁶ The Commission **and one delegation** entered a reservation on this point.

³⁷ **To be read in conjunction with recital (16b).**

2. In order to protect victims' privacy, personal integrity and personal data, Member States shall, with respect for media freedom and freedom of expression, encourage the media to pursue self-regulatory measures.

Article 21

Identification of vulnerable victims

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to determine whether they are vulnerable, due to their personal characteristics or the circumstances or the type or nature of the crime, to secondary and repeat victimisation or intimidation.
2. For the purposes of this Directive, children shall always be presumed vulnerable.
3. If, following the individual assessment, a victim is considered vulnerable, Member States shall ensure that in accordance with national procedures, it is determined which special measures as provided in Articles 22 and 23, the victim should benefit from in the course of criminal proceedings. The wishes of the vulnerable victim shall be taken into account, including where the victim does not wish to benefit from special measures.
4. The extent of the assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

Right to protection of vulnerable victims during criminal proceedings

- 1 Member States shall ensure that vulnerable victims referred to in Article 21 benefit from the measures provided for in paragraphs 2 and 3 in accordance with an individual assessment as provided for in Article 21(3) and with rules of judicial discretion.
2. Vulnerable victims shall be offered the following measures during criminal investigations:
 - (a) interviews with the victim carried out, where necessary, in premises designed or adapted for that purpose;
 - (b) interviews with the victim carried out, where necessary, by or through professionals trained for that purpose;
 - (c) if possible and where appropriate, all interviews with the victim are conducted by the same persons unless this is contrary to the good administration of justice;
 - (d) all interviews with victims of sexual violence, unless conducted by a public prosecutor or a judge, are conducted by a person of the same sex, if the victim wishes so, and if the course of proceedings will not be prejudiced.
 - (e) a possibility to be accompanied by a person of their choice unless a reasoned decision has been made to the contrary in respect of that person-
3. The following measures shall be available, where necessary, for vulnerable victims during court proceedings:
 - (a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technologies;
 - (b) measures to ensure that the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies;

³⁸ **The Commission maintains a reservation on the Article.**

- (c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and
- (d) measures allowing a hearing to take place without the presence of the public³⁹.

Article 23

Right to protection of child victims during criminal proceedings

In addition to the measures provided for in Article 22, Member States shall ensure that where the victim is a child:

- (a) in criminal investigations, all interviews with the victim may be audiovisually recorded and such recorded⁴⁰ interviews may be used as evidence in criminal court proceedings. The procedural rules for such recordings and the use thereof shall be determined by national law;
- (b) in criminal investigations and court proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for the victim where, according to national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the victim, or where the child is unaccompanied or separated from the family.

³⁹ **Two delegations maintain a reservation on this point.**

⁴⁰ One delegation maintains a reservation.

Chapter 5

GENERAL PROVISIONS

Article 24⁴¹

Training of practitioners

1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff receive both general and specialist training to a level appropriate to their contact with victims to sensitise them to the needs of victims and to deal with them in an impartial, respectful and professional manner.
2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase judges' and prosecutors' awareness to the needs of victims.
3. Through its public services or by funding victim support organisations, Member States shall encourage initiatives enabling that those providing victim support and restorative justice services receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.
4. ~~Training shall in particular focus on the risks of intimidation, repeat and secondary victimisation and how these can be avoided and the availability and relevance of support to victims.~~

⁴¹ **To be read in conjunction with recital (24).** The Commission maintains a reservation on this Article.

Article 25

Co-operation and co-ordination of services

1. Member States shall take appropriate action ~~relating to~~ facilitate co-operation between Member States to improve victims' access to their rights as provided in this Directive and under national law. Such co-operation shall be aimed at least at:
 - exchange of best practices;
 - ~~co-operation on~~**consultation in** individual cases ~~in particular to improve provision of information relevant to the victim, to facilitate the protection of the victim and to minimise practical and administrative burdens on the victim;~~ and
 - assistance to European networks working on matters directly relevant to victims' rights, ~~including networks of victim support organisations~~⁴²

2. ~~Member States shall facilitate that those authorities working with or providing support to victims work together to offer a co-ordinated response to victims and to minimise~~ Member States shall take appropriate action, **which may includeing actions**, including through the internet, such as information and awareness raising campaigns, research and education programmes, where appropriate in co-operation with relevant civil society organisations and other stakeholders, aimed at minimising the negative impact of the crime and the risks of secondary and repeat victimisation ~~and the burden on the victim due to interactions between the victim and criminal justice agencies.~~⁴³

⁴² **One delegation maintains a scrutiny reservation on this paragraph.**

⁴³ **The Commission entered a reservation on paragraph 2.**

Chapter 6

FINAL PROVISIONS

Article 26⁴⁴

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by three⁴⁵ years after the date of adoption at the latest.
2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 27

Provision of data and statistics

Member States shall by five⁴⁶ years after the date of adoption at the latest and every three years thereafter communicate to the European Commission available data showing how victims have accessed their rights covered by the scope of this Directive.

⁴⁴ **To be read in conjunction with recital (26).**

⁴⁵ The Commission maintains a reservation on this issue.

⁴⁶ The Commission maintains a reservation on this issue.

Article 28

Replacement

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

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

Article 29

Entry into force

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

Article 30

Addressees

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President