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Delegations will find in the [Annex](#) the Report 'Strengthening victims' rights: from compensation to reparation', as presented by the Special Adviser, J. Milquet, to the President of the European Commission in March 2019.

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STRENGTHENING VICTIMS' RIGHTS: FROM COMPENSATION TO REPARATION

For a new EU Victims' rights strategy 2020-2025

Report of the Special Adviser, J. Milquet,
to the President of the European Commission,

Jean-Claude Juncker

March 2019

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CONTENTS

EXECUTIVE SUMMARY

PREFACE

I. INTRODUCTION: WHAT PLACE FOR VICTIMS' RIGHTS IN THE EUROPEAN AREA OF FREEDOM, SECURITY AND JUSTICE?.....	13
A. HUMAN RIGHTS-BASED CONCEPT OF VICTIMISATION.....	14
B. OBJECTIVES OF COMPENSATION.....	15
C. EVOLUTION OF VICTIMS' RIGHTS IN INTERNATIONAL LAW AND IN EUROPEAN LAW	17
1. International law.....	17
2. European law.....	17
D. STATE OF PLAY AND NEW THREATS AND CHALLENGES	19
1. State of play	19
2. New threats and challenges	19
II. PROBLEMS FACED BY VICTIMS.....	21
A. GENERAL PROBLEMS.....	22
1. Lack of/Access to information and to guidance.....	22
a) The lack of information and clear guidance.....	22
b) The failure of the actors involved in the judicial system to inform the victims or verify that the information has been provided to them.....	22
c) Information on compensation for victims is not available.....	22
d) Lack of assistance in accessing information.....	22
e) Lack of quality of information.....	23
f) Information is not provided in accordance with victims' individual needs.....	23
g) Lack of guidance and training.....	23
2. Problems concerning State compensation.....	23
a) Low amounts of compensation.....	23
b) Restrictive eligibility criteria for state compensation.....	23
c) Lack of emergency payments or upfront payments.....	24
d) Lack of extended notion of reparation in kind.....	24
e) Limited compensation resources of some Member States.....	24
3. Problems concerning Offender compensation.....	24
a) Lack of financial means to compensate the victim.....	24
b) Difficulties in the enforcement of the compensation decision.....	24
c) Lack of systems of compensation to the victims as a criminal sanction.....	24
4. Procedural obstacles: Lengthy, complex and costly procedures that lead to victims being discouraged from claiming compensation.....	24
a) Interdependence between state compensation and offender compensation.....	24
b) The costs of procedures to obtain compensation are too high for victims.....	25
c) Slow procedures and lack of respect by the compensation authorities of the compensation decision deadlines.....	25
d) Restrictive time limits to apply for compensation.....	25
e) Refusal because of incompleteness of the file.....	25
f) Lack of transparency of the decision-making process	25
g) The limited use of alternatives to judicial proceedings	25
h) The limited scope for review of the compensation decision.....	26

5.	Cross-border and international victimisation.....	26
a)	Low number of cross-border compensation claims.....	26
b)	Lack of collaboration across the Member States.....	26
6.	Lack of sufficient number of professional and multidisciplinary free support services in the Member States able to meet different general and personalised victims' needs.....	26
7.	Insurance.....	27
B.	SPECIFIC NEEDS AND PROBLEMS OF VICTIMS OF CERTAIN CATEGORIES OF CRIME.....	27
1.	Terrorism.....	27
2.	Trafficking of human beings.....	29
3.	Gender-based violence.....	30
III.	NEW EUROPEAN AND NATIONAL STRATEGY ON VICTIMS' RIGHTS AND COMPENSATION.....	33
A.	INTRODUCTION: THE NEED FOR A EU VICTIMS' RIGHTS STRATEGY.....	34
1.	Why do we need a EU victims' rights strategy for the next five years?.....	34
a)	Compensation of victims of violent crimes is much more than a mere question of solidarity and empathy, it is a question of ensuring that victims' have effective access to their rights.....	34
b)	Minimum rules on compensation for victims of violent crime is an issue of equal treatment of EU citizens and a requirement to build a more harmonious Europe	35
c)	Political parallelism with the increased focus on the fight against violence and terrorism in EU.....	35
d)	Risks of an increase in number of cross-border victims in a borderless European Union	35
e)	Need for the EU to renew its commitment to victims' rights	36
2.	Which Objectives for a European strategy for victims of intentional violent crimes?.....	36
a)	A shift from the concept of "victims' needs to state compensation" to "victims' rights to state reparation"	36
b)	A shift from the priority of the offender compensates first to the priority of the state compensates first.....	37
c)	A shift from the principle of compensation by the Member State where the violent act occurs to the possibility for victims to choose compensation from the Member State of their residence.....	38
d)	A shift from disparities and lack of cooperation to stronger cooperation, coordination and harmonised minimum standards	38
3.	Which Methodology for a EU victims' rights strategy?.....	38
B.	RECOMMENDATIONS FOR A EU VICTIMS' RIGHTS STRATEGY	39
1.	Better cooperation at national and EU level.....	40
a)	Better cooperation at national level.....	40
b)	Better coordination at EU level.....	42
c)	EU actions to improve collaboration between different national authorities and with stakeholders.....	44
d)	EU initiatives to set up the EU Solidarity Fund for victims of terrorism.....	45
2.	Better and more accurate information on victims' rights and compensation (state and offender).....	45
a)	Short term actions and recommendations to sufficiently and accurately inform the victims in a simple way about their rights and compensation schemes.....	45
b)	Short term recommendations and actions to ensure that victims are sufficiently informed about how to proceed through the complex administrative and judicial procedures.....	46
c)	Recommendations to have Information available in other languages.....	47
3.	EU initiatives for better training and guidance to ensure respectful treatment of victims in state and offender compensation schemes.....	48

4.	EU initiatives for quicker, fairer and simpler state compensation scheme.....	49
a)	Need for a clear definition of “victims eligible for compensation” and “intentional violent act”.....	49
b)	Elimination of the possibility of unfair eligibility criteria.....	50
c)	Adaptation of Article 2 of the Compensation Directive to allow victims to be compensated in the Member State of residence.....	51
d)	EU recommendations or obligations to set up national guaranty funds and single contact points for victims to be compensated.....	51
e)	Providing for fairer and more harmonized state compensation mechanism based on a principle of reparation of the personal damages experienced and the need for support services tailored to the personal situation.....	53
f)	Less costly and complex state compensation procedures at national and cross-border level.....	53
5.	EU initiatives to improve offender compensation to victims within the judicial proceedings.....	55
a)	A “compensation measure” in the form of an accessory penalty related to the financial capacity of the offender that would exist along with the civil claim, decided by the judge ex officio and enforced by the Member States.....	55
b)	Improvement during the judicial proceedings.....	55
c)	Recommendations addressing difficulties in enforcement of offender compensation.....	56
d)	Confiscation as a more generalized mechanism to help the victims to be compensated.....	56
6.	EU initiatives for more adequate, multidisciplinary and more personalised support services in accordance with victims’ individual needs.....	57
IV.	CONCLUSION.....	59

BACKGROUND

On 4 October 2017, President Jean-Claude Juncker, appointed Joëlle Milquet as his Special Adviser for compensation to victims of crime. The Special Adviser’s mandate included the preparation of a report on how to improve access to compensation for victims of crime.

This report is the result of numerous meetings that the Special Adviser had with victims, victim support associations, national authorities responsible for compensation and other persons involved in victims’ rights (who assisted the Special Adviser within the informal Steering Committee). The Special Adviser also has been assisted in her work by Commission staff responsible for victims’ rights.

The opinions expressed in this report are personal and do not necessarily reflect the position of the Commission or its President.

“You are not a victim. No matter what you have been through, you’re still here. You may have been challenged, hurt, betrayed, beaten, and discouraged, but nothing has defeated you. You are still here! You have been delayed but not denied. You are not a victim you are a victor. You have a history of victory.”

Steve Maraboli, “Unapologetically You: Reflections on Life and the Human”

EXECUTIVE SUMMARY

The report of Special Adviser Joëlle Milquet on “Strengthening victims’ rights: from compensation to reparation” tackles the main problems that victims of crime currently face when claiming compensation in European Union. **The report takes a holistic view to compensation** and is not limited to the pecuniary aspects of compensation or the compensation procedure *stricto sensu*.

The Special Adviser looks into the causes underlying the problems that victims face when claiming compensation (such as difficulties in accessing justice or state compensation related to a lack of information, insufficient support, and overly-restrictive eligibility criteria or procedural hurdles). Victims of crime may claim and receive compensation only at the end of a very long process. This process starts with reporting a crime and goes on through different stages of criminal and often additional civil or administrative proceedings to end up with yet another procedure - during which victims may claim state compensation. It only takes one element to go wrong during one of the stages that precedes the state compensation and they will not receive it. **The Special Adviser looks into these interdependencies and tackles not only compensation per se but also the subjects that condition its access.**

This report is founded **on a human rights-based approach** to criminal justice. It is based on the assumption that victims of crimes against the person have a right to justice and that criminal justice serves to redress – to ‘right’ – the wrong done to victims. If an offender, by committing a violent crime, calls victims’ rights into question or fails to compensate, victims can legitimately expect that their legal community will defend their rights to justice in criminal proceedings and that the State will have the duty to compensate them in place of the offender.

The report is based **on a participatory method** involving- throughout the entire drafting process- different stakeholders. Such stakeholders include victims, victim support associations, national authorities dealing with compensation, Commission services responsible for victims’ rights and other stakeholders active in the area of victims’ rights.

PROBLEMS IDENTIFIED BY THE SPECIAL ADVISER

The report looks in detail into **problems that victims currently face when claiming compensation**. Thanks to contributions from different stakeholders¹, the analysis of problems takes into account the perspective of victims and victim support organisations and the perspective of national compensation authorities. Such an approach contributes to finding the right balance between the expectations and needs of victims and the feasibility of actions. The analysis of problems is divided into five broad categories. They include problems related to: lack of information, state compensation, offender compensation and numerous procedural obstacles (such as interdependence between state compensation and offender compensation, costly procedure, and restrictive time-limits). Problems in cross-border cases are dealt with in a separate chapter. For persons who became victims of crime when travelling to another EU Member State, it is even more difficult to receive compensation in a country which they do not know and where they do not reside. Such additional difficulties affect even more the already great disparities in victims’ access to compensation among the EU Member States.

The Special Adviser also highlights the importance of taking into account not only the general problems faced by victims but also specific problems related to individual characteristics of each victim (such as age, gender and gender identity, ethnicity, race, disability or religion). Moreover, she dedicates a part of her report to victims of particular categories of

1 The views of victims were gathered by victim support organisations, notably Victim Support Europe, V Europe and other victim support organisations who conducted questionnaires and gathered victims’ testimonies. The data related to the state of play of national compensation schemes comes from a study of the European Network of Victims’ Rights and is based on a series of Member States’ questionnaires that were done in the course of 2018. Moreover, the report also takes into account documents (such as reports, studies) from the European Commission and EU agencies (such as EIGE).

crimes: victims of terrorism, victims of trafficking and victims of gender-based violence².

The report provides numerous examples of what works well for victims in different Member States and at EU level. In this regard, the new EU strategy for victims' rights should build on what has been achieved so far. The report recognises the achievements of the 2012 Victims' Rights Directive, which delivered a set of binding rights for all victims of all crimes and corresponding obligations on Member States. The EU has also adopted a series of specific rules that deal with victims of specific categories of crime. Within the major achievements, the Special Adviser underlines the 2011 Anti-trafficking Directive that lays down specific rights for victims of trafficking in human beings and sets up the Office of the EU Anti-trafficking Coordinator (EU ATC). Another achievement is the adoption of the 2017 Counter-terrorism Directive that addresses the specific rights of victims of terrorism, including the right to specialised support immediately after an attack and for as long as necessary. The EU Centre for victims of terrorism that the Commission is planning to set up in 2019 in response to a call from the European Parliament should be another example of good practice.

The Special Adviser however admits that even the best rules are only as good as their implementation and practical application. It is now up to the Member States, under the supervision of the Commission, to ensure correct transposition and application of these rules. The Special Adviser also admits that victims' access to compensation (both offender and state compensation) is still left to the Member States' discretion. These lacunae in the EU legislation hinder victims' access to compensation and expose them to a high risk of secondary victimisation.

RECOMMENDATION FOR EU AND NATIONAL ACTIONS

When it comes to recommendations, the Special Adviser is of the view that the scale of problems as well as their cross-cutting nature requires **a strategic approach**. If victims cannot access justice (because they are afraid to report the crime), or cannot claim offender compensation in civil proceedings (because they cannot afford it) or are not even aware of their right to compensation (because no one informed them) – their access to compensation will always be hindered. Therefore, for the next five years, the Special Adviser calls for setting up **an ambitious EU victims' rights strategy that would tackle the problems in a holistic manner**. The proposal for a new EU victims' rights strategy would include a two steps-graduation (depending on the choice of the next Commission): the first step with immediate practical initiatives to be taken by the EU without any changes to EU legislation and the second step with recommendations requiring EU legislative changes.

The Special Adviser proposes that the EU victims' rights strategy is built around **four "paradigm shifts" ("major principles")** that aim to strengthen victims' rights by changing considerably the current approach towards victims' compensation:

- **a shift from compensation to reparation** (involving a departure from compensation as a mere payment of an insufficient pecuniary lump sum towards the broader concept of reparation including the compensation for the different individual damages experienced to be covered but also to recognition, restitution, support and care (what we can call compensation "in kind")
- **a shift to the priority of state compensates first** - by adopting the principle of the states' upfront payment where the state compensates victims first and later recaptures it from the offender as opposed to the victim having to claim from the offender first.
- **a shift from disparities and lack of cooperation to stronger cooperation, coordination and harmonised minimum standards.**
- **a shift from the needs-based approach towards the rights-based approach** – this approach changes profoundly the relationship between the victim and the state. The victim is no longer pleading for help on the basis of their vulnerability or needs but rather demanding that the state should take seriously its duty and what it owes to the individuals living on its territory and their human rights.

² Other categories of crime or other victims – such as children also deserve a special attention. The limited scope of this report did not allow elaborating this subject.

The proposed strategy of the Special Adviser is composed of **41 detailed recommendations that are constructed around six blocks**, aimed at improving different aspect of victims' compensation: **better cooperation, training, information, state compensation, offender compensation and support services**. The recommendations are illustrated with good practices.

The major recommendations in the area of **cooperation and coordination** include the adoption of national strategies on victims' rights, setting up national coordinators for victims' rights and national coordination structures including national crisis centres. At EU level, the Special Adviser calls for a nomination of an EU Coordinator for victims' rights and for setting up of an EU multidisciplinary centre for victims of all crime. Such a centre could build on the EU Centre for Expertise for victims of terrorism that will be set up by the Commission in 2019 (to be incorporated into the larger centre as a specific victims of terrorism department).The Special Adviser also calls for an EU solidarity fund for victims of terrorism.

When it comes to recommendations related to **access to information**, the Special Adviser recommends a set of immediate concrete actions such as to oblige prosecutors/judges to verify victims' awareness of their right to claim compensation from the offender during criminal proceedings. Regarding improvements to training, the Special Adviser proposes mandatory training for all persons coming into contact with victims and in particular for judges and prosecutors, as well as new EU actions concerning EU websites, expertise and an awareness-raising campaign.

As for recommendations to improve **state compensation**, the most important recommendation is that "fair compensation" should also include non-pecuniary damages and corresponding support, not simply cash payments. The Special Adviser recommends specifying the definition of "victims eligible for compensation" and "intentional violent act". A further important recommendation is to facilitate victims' access to compensation through mandatory emergency and upfront payment by the state. The most efficient way to achieve this recommendation would be via legislative changes at EU level. It is also recommended to allow cross-border victims to access state compensation in their country of residence and to set up national compensation funds and single compensation contact points for victims.

The major recommendations related to improvements of the **offender compensation** schemes (within the criminal proceeding) include the introduction of a possibility for criminal judges to impose compensation measures in a form of accessory penalties. The Special Adviser also pleads for better access to legal aid for victims of crime and better enforcement measures.

The final recommendations of the Special Adviser respond to victims' expectations for free multidisciplinary victim support services from the beginning to the end of their difficulties. Provision of support services, including personal navigators and setting up national resilience platforms should be considered as part of the compensation sensu largo ("compensation in kind") .

The Special Adviser concludes her report with a call to act swiftly in order to reaffirm and reinforce the EU and national commitments to strengthening victims' rights. According to the Special Adviser, it is important to show Europeans that they are living in a Humanistic Europe that protects, cares, repairs, connects, supports and offers a new beginning for everybody.

PREFACE

On 4 October 2017, President Jean-Claude Juncker appointed Joëlle Milquet as his Special Adviser for compensation to victims of crime. The overall objective of the Special Adviser was to explore the possibilities and suggest solutions on how to improve victims' access to compensation. In particular, the mandate of Joëlle Milquet was to advise the President on how the Commission can foster a better implementation of the existing rules on compensation of victims of crime and how to improve cooperation among national authorities responsible for compensation of victims of crime, specifically with regard to cross-border situations. The mandate of the Special Adviser also requests her to recommend options for a faster and fairer compensation across the EU. With the present report, the Special Adviser presents her recommendations on the above subjects and concludes her mission as the Special Adviser to the President of the Commission.

- This report is based on **a participatory method**. I have chosen this method in order to present findings and recommendations that respond to the victims' actual needs and expectations and take into account concrete problems faced by national compensation bodies and by victim support services. I have decided to use the participatory method also to involve different actors who may be instrumental for continuing discussions on victims' compensation during the term of the next European Commission and next European Parliament. Indeed, the chosen method allowed for a creation of an informal platform of actors composed of victim support associations, national compensation bodies, representatives of Member States, the relevant services of the European Commission and members of the European Parliament. If the next Commission decides to follow the dynamic proposed in this report, the creation of such informal platform enables the actors involved to continue their work on victims' compensation in line with the objectives and recommendations of this report.
- As the Special Adviser is independent, **all views and recommendations reflected in this report do not necessarily reflect the position of the European Commission or particular members of the Steering Committee**. The main objective of this report is to present to the President of the European Commission, Jean-Claude Juncker, personal recommendations that are based on the main expectations of a large number of stakeholders. In particular, this report is without prejudice to any actions that the Commission may take in the area of victims' rights.
- The work leading up to the report was organised in three stages:
 - a) the **inception stage** (January – April 2018)
 - b) the **problems identification stage** (May - September 2018)
 - c) the **recommendations stage** (September 2018 - January 2019)
- The discussion on improving victims' access to compensation continued in the course of 2018 during all stages of the report. Major events included, among others, a High Level Conference on victims' rights and an experts' meeting dedicated to compensation in May and in October 2018.
- The **input from different stakeholders is a crucial part of this report**. You will find enclosed in annexes some of their contributions. Numerous discussions with national experts, victims and victim support organisations and their input have contributed to the formulation of problems and recommendations. The role of the Steering Committee was to share the expertise in the particular field of each member and to provide their input to the report. The victim's perspective is present throughout the report. In particular, the part related to problems would not be feasible without the important support and input from victims and from victim support organisations. The Steering Committee met on five occasions. The comments from the Steering Committee have been vital for this report. Nonetheless, the outcome is an independent report of the Special Adviser.

- In this report, I formulate recommendations for the future policy on victims' compensation and practical advice on concrete problems. **The analysis takes into account the problems expressed by victims and those that emerged from the analysis of national compensation schemes.** The views of victims were gathered for this report by victim support organisations, notably Victim Support Europe, V-Europe and other victim support organisations who conducted questionnaires and gathered victims' testimonies (hereafter "the research by victim support organisations"). The data related to the state of play of national compensation schemes comes from a study of the European Network of Victims' Rights and is based on a series of Member States' questionnaires that were done in the course of 2018³(hereafter "the ENVR study"). Moreover, the report also takes into account documents (such as reports, studies) from the European Commission and EU agencies (such as EIGE).
- When it comes to the scope of the report, I looked into the causes underlying the problems that victims face when claiming compensation (such as difficulties in accessing justice) and direct problems (such as lack of information, support, eligibility criteria or procedural hurdles). Therefore, **the report is not limited to the compensation procedure stricto sensu.** Victims of crime may claim and receive compensation only at the end of a very long process. This process starts with reporting a crime and goes on through different stages of criminal and often additional civil or administrative proceedings to end up with yet another procedure - during which victims may claim state compensation. It suffices that one element goes wrong during one of the stages that precedes the state or offender compensation and victims will not receive their compensation. It is therefore essential that this report tackles not only compensation per se, but also the subjects that condition access to fair and appropriate compensation, such as information, training, support services and collaboration between authorities.
- All victims of crime against the person have a right to compensation and should be treated in accordance with this right. However, in order to render this right practically effective, a victim's individual situation and needs must be taken into account. **Therefore, it is important to take into account specific needs of victims according to their own characteristics (gender, age, disability, religion) or according to certain categories of crimes.**
- Victims of certain categories of crime face specific problems that are related to type or nature of the crime. This report has therefore a general and a specific and personal approach and explores also in particular whether victims of terrorism, victims of trafficking in human beings and victims of gender-based violence have such specific needs and problems and how to respond to them in the course of the compensation process.
- I also acknowledge that children constitute a particular group of victims that requires specific attention when it comes to their needs, problems and access to compensation. The limited scope of this report did not however allow to explore more in detail this important subject.
- There are two main sources of compensation for the victim of violent crime: the offender compensation (OC) and the state compensation (SC). **This report deals with state compensation and offender compensation.** Some Member States rely however also on insurance compensation. This report deals in an ancillary way with this issue. This important topic should however be further analysed with a view to ensure a more consistent approach, harmonisation between Member States and better cooperation with state compensation authorities and judicial authorities. This report does not deal with social security benefits.

³ The ENVR collected information from the database of the e-Justice Portal, the comparative study prepared by McKenzie on behalf of French Fund of Guarantee (FFGTI) and from the ENVR own data collection among 19 Member States who participated in questionnaires. The gathered results cover information from 25 EU MS.

Firstly, I would like to thank Jean–Claude Juncker for his trust. Secondly, I would like to thank all persons who have contributed to this report. I would like to particularly highlight the special and indispensable role of Katarzyna Janicka-Pawlowska (Team leader - Victims’ Rights team in DG Justice) whose intelligence, intellectual rigour, motivation and support have made this report possible. She really deserves my particular gratitude.

Particular thanks goes to the members of the Steering Committee, whose input has been vital for drafting this report: Elizabeth Pelsez- Interdepartmental Delegate for Victim Support, France; J. Rencki- Director of the Guarantee Fund for Victims(FGTI), France; S. Ramos- DG to support victims of terrorism, Ministry of Home Affairs Spain; M. Minguenza- Senior Adviser, Ministry of Home Affairs Spain; J.J. Mesu- Ministry of Justice Netherlands; M. Pagazaurtundúa- Member of the European Parliament; M. Vassiliadou- EU Anti-Trafficking Coordinator; L. Altan– Victim Support Europe Director; R. Shrimpling- Policy Officer, Victim Support Europe; A. Dearing- Programme Manager Research- Criminal Law and Criminal Justice, Research & Data Unit, EU Agency for Fundamental Rights; M. A. Ferenczi– professional manager, Association of the European Network on Victims’ Rights; A. Verelst– External Expert; F. Rudetzki- Victim and Board Member of the Guarantee Fund France : L. Dolci– Victim and Manager Humanitarian Funds, Office of the UN High Commissioner for Human Rights; S. Valentin- Policy Officer, DG Migration and Home Affairs; J. Heisserer- Interdepartmental Delegation for Victim Support Head of European and International Relations, Ministry of Justice, France; E. Dimovne Keresztes- DG Migration and Home Affairs; I. Bellander Todino- Deputy Head of Unit, gender equality, DG for Justice and Consumers; H. Voolma- gender equality, DG Justice; C. Pambianco- gender equality, DG Justice, Gilles de Kerchove was also an additional, efficient and so friendly support via his extraordinary experiences and competences.

I am also grateful to individual victims and victim support organisations who provided particularly valuable contributions to the report. Last but not least, I would like to thank my two assistants Alketa Selimaj and Sara Marcireau for the assistance they provided me during the redaction of this report. They have been so extremely supportive.

Joëlle Milquet
11 March 2019

I. INTRODUCTION: WHAT PLACE FOR VICTIMS' RIGHTS IN THE EUROPEAN AREA OF FREEDOM, SECURITY AND JUSTICE?

A. HUMAN RIGHTS-BASED CONCEPT OF VICTIMISATION

This report is founded on a human rights-based approach to criminal justice and has been inspired by different contributions of the Fundamental Rights Agency (FRA). It assumes that victims of crimes against the person have a right to justice and that criminal justice serves to redress – to ‘right’ – the wrong done to victims. If an offender, by committing a violent crime, calls the victims’ rights into question, victims can legitimately expect that their legal community comes to the defence of their rights. In light of the right to an effective remedy – in the sense of Article 13 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights (the Charter) – criminal proceedings assert the victims’ rights as much as they preserve the identity of a community of law based on human dignity and human rights⁴.

Victims’ rights to access to justice, as interpreted by the European Court of Human Rights (ECtHR)⁵, include the following elements:

- A right to proceedings that aim to identify, convict and punish offenders
- A right to participate in the proceedings with full fair-trial rights (Article 47(2) and (3) of the Charter)
- A right to be compensated within the framework of criminal justice whenever a victim of violent crime under substantive law is entitled to compensation

Such understanding of victims’ rights to access justice that includes elements of compensation is incorporated into EU law by the Charter via the 2012 Victims’ Rights Directive⁶ and the 2004 Compensation Directive.⁷

This human-rights approach to victims’ rights is also clearly defined in the Victims’ Rights Directive – currently the major EU instrument on victims’ rights. It states that a crime is a wrong and a violation of the individual rights of the victim, and due to this fact, victims are to be recognised and treated respectfully⁸. It means that EU policy has to start from the fact that the offender and, if the offender is unable to compensate, the state owes compensation to victims of crimes against the person for the damages incurred.

According to FRA⁹:

“The move from a needs-based rhetoric to human rights language changes profoundly the relationship between the victim and the state. The victim is no longer pleading for help on the basis of their vulnerability, pressing needs and deservingness but demanding that the state should take seriously what it owes to the individuals living on its territory and their human rights. The state is no longer in the comfortable and patronizing position of a more or less generous Good Samaritan, but a duty-bearer indebted to the individuals living under its jurisdiction as rights-holders”.

⁴ For a more comprehensive account of the fundamental rights basis of victims’ rights, refer to the second Chapter of the report FRA (2019a).

⁵ ECtHR, Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania [GC] No. 47848/08, 17 July 2014, para. 149

⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

⁷ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

⁸ See recital 9 of the Preamble to the Victims’ Rights Directive

⁹ FRA (2019), “Justice for victims of violent crime. Part I: Victims’ rights as standards of criminal justice” Luxembourg, Publication office of the European Union. (to be published)

B. OBJECTIVES OF COMPENSATION

Under the Compensation Directive, “*Crime victims in the European Union should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Community the crime was committed*” (point 6 of the Preamble to the Directive). The Directive sets up the rights of victims of cross-border crimes to access fair and appropriate compensation. The way national authorities develop, implement and understand the right for compensation is left at the discretion of the Member States.

The lack of clear guidance and obligations for Member States on how the national systems should be developed results in differences in national compensation systems. The differences include: the role of state compensation in the national compensation schemes and at what point victims can refer to state to be compensated:

- In most Member States, state compensation is regarded as the ‘last resort’ to offer financial support, often via lump sums, due to the financial harm caused by the victimisation experience. In such systems, compensation is limited, covering limited, precisely defined and justified expenses made in the wake of the victimisation experience. The state compensation is sought at the end of the line when all other actors providing financial restitution have failed to provide satisfaction for the victim (e.g. offender compensation, insurance etc.). In many of these Member States, procedural and administrative limitations will be put in place to ensure victims first pass by other actors before coming to state compensation authorities (e.g. through condition of court ruling before being able to request state compensation).
- In some EU Member States, state compensation authorities serve as a point of entry for victims seeking financial redress. The French system for instance serves as a buffer between victims and other actors potentially providing restitution such as insurance companies and offenders. This means that victims can address the French compensation authority before seeking financial compensation from the offender or insurance actors. By stepping in at an early stage, the French government aims to reduce the harm caused to victims when seeking compensation for the losses they endured. It is very important however to understand that whilst stepping into the recovery process at a rather early stage countries like France uphold subrogation principles – meaning they will seek restitution for the victim from the other actors like insurance companies after having compensated the victim.

- In addition, there are systems between these two extremes, like, for example in the Netherlands. Here victims are actively supported by e.g. victim support organisations to seek compensation elsewhere as the clear objective of state compensation is to be a ‘point of last resort’. However, the compensation authority, if needed, will apply a subrogation principle where they will cover the necessary costs (through emergency or other payments) and seek the amount due from insurers and offenders. Whilst being a point of last resort, they consciously seek to reduce the harm faced by victims by stepping in and limiting the waiting time, procedural difficulties and secondary victimisation through offering subrogation. To have this system function, the Dutch government invests strongly in facilitating victims to apply and receive compensation from offenders first.

The relationship and complementarity with the wider social (welfare) system influences the way compensation systems are being set up or perceived. Some Member States that have strong social welfare systems like the Netherlands or Sweden conceptualise state compensation as a small piece in a larger puzzle of social services that exist to support the victim in recovery from the victimisation experience.

Research into definitions upheld by international actors and non-EU countries inspires a wide perspective on financial compensation as one element of a wider approach to remedy and reparation of victims. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law¹⁰ offer a useful and powerful framework to view financial compensation of victims of crime in the EU as one link in a wider perspective on reparation.

¹⁰ General Assembly resolution 60/147, annex, paras. 18-23

According to international law and international agreements that underwrite the approach to reparation, full and effective reparation should include, as appropriate, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

- **Restitution** consists of measures trying to re-establish, as much as possible, the situation of the victim prior to the violation but in including when needed the irreversible effects of the violent act. It aims at restitution of what is taken. Very rarely victimisation has merely reversible consequences.
- **Compensation** is a specific form of reparation provided to victims when replacement or recovery is not possible. This applies for instance for victims of rape or terrorism where the experience, psychological consequence or other cannot be erased. The financial compensation can pertain to pecuniary (monetary) or non-pecuniary losses. Money will be used not to replace but form a monetary substitute for the pre-victimisation status. But money is insufficient to provide reparation for victims. That is why support services must also be included in a broader definition of compensation.
- **Rehabilitation** is the provision of medical and post trauma or psychological care, as well as additional social services that foster the rehabilitation of a victim.
- **Satisfaction/Recognition** refers to forms of reparation that include ‘full and public verification of the facts, and formal acceptance of any State responsibility’¹¹ The concept of satisfaction is closely linked to recognition of victims.
- **Guarantees** of non-repetition or non-recurrence is a form of reparation where governments and actors take the necessary responsibility and actions to protect the victims and reduce the risk of repetition.

As can be seen above, reparation efforts can be individual and collective, financial or not, and a successful reparation strategy entails reparation on both levels. All aspects of reparation are strongly connected and interlinked. Additional efforts on aspect of reparation will unavoidably have an influence on the others. Having a stronger rehabilitation system – with quality medical and psychological services accessible to all – will unavoidably influence the compensation that is required to contribute to the reparation of the harm done by the victimisation.

Compensation for me means that I would have financial security and that I would receive the therapeutic and medical support I need without making ten applications or sue it before a court. And this [compensation] would also give me a feeling that they believe me and that the psychological damage / suffered is actually seen. (interview of a victim)¹²

Compensation is a key element of reparation and its effects go far beyond the financial restitution but feed into rehabilitation, satisfaction and recognition. The report will be based on this broad concept of compensation and will not be limited to financial compensation.

[Compensation] if done correctly, should have a positive and restorative impact. If it is done badly, it will undoubtedly be a negative factor, producing secondary victimisation and promoting suffering and psycho-pathological complication.¹³

¹¹ https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-14_en.pdf

¹² Survey organised by victims associations under the Coordination of VSE in the framework of this report.

¹³ Victims support services under the lead of V-Europe conducted in the course of 2018 a survey about specific compensation needs of victims of terrorism. The survey gathered over 200 responses from individual victims and victims' associations from France, Belgium and Spain.

C. EVOLUTION OF VICTIMS' RIGHTS IN INTERNATIONAL LAW AND IN EUROPEAN LAW¹⁴

1. International law

Compensation is one of the most important rights of victims of crime. This has been recognised in international and European instruments.

- The victim's right to access compensation was first recognised by the international community in 1985 when the United Nations General Assembly adopted the Declaration of Basic Principles of Justice for victims of Crimes and Abuse of Power.¹⁵
- Recognising that millions of people throughout the world fall victim to crime every year and that their rights were not adequately recognised, the General Assembly wanted to secure justice and assistance through a range of rights for victims, including compensation.
- As a pioneer, the Council of Europe adopted the European Convention on the Compensation of Victims of Violent Crimes in 1983¹⁶. Under the Convention, State parties have the obligation to compensate victims of intentional and violent offences resulting in bodily injury or death.

2. European law

As the international community made progress on victims' rights, the EU started its own path towards an EU area of freedom, security and justice, including in the area of victims of crime.

- The European Union took a first step in the recognition of the importance of compensation for victims of crime with the adoption of the **Council Framework Decision on the standing of victims in criminal proceedings** in March 2001¹⁷. Importantly, the Decision encourages Member States to take appropriate measures to ensure that victims of criminal acts are entitled to obtain a decision on compensation in criminal proceedings. The Decision does not however mention state compensation.
- As a next major step towards establishing European victims' rights, in 2004 the **Compensation Directive**

was adopted¹⁸. The Directive imposes an explicit obligation on Member States to have state compensation schemes in place for violent intentional crime, including crime of terrorism. The instrument additionally includes mechanisms to facilitate compensation claims in cross-border cases. According to Article 1 of the Compensation Directive "Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State".

- In 2012, the EU took another important step towards ensuring rights of victims of crime with the 2012 Directive establishing minimum standards on the rights, support and protection of victims of crime (**the Victims' Rights Directive**)¹⁹. This Directive strengthens victims' rights in comparison to the Council Framework Decision from 2001. This horizontal Directive constitutes the cornerstone of the EU victims' rights policy, which is applicable in the Member States since November 2015. The Victims' Rights Directive provides for a set of binding rules for all victims of all crimes. It includes the right to be recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner. Concerning compensation, it provides for a right to obtain a decision on compensation by the offender within a reasonable time during criminal proceedings and that Member States shall promote measures to encourage offenders to provide adequate compensation to victims (Article 16).
- On 15 March 2017, the European Union adopted Directive (EU) 2017/541 on combatting terrorism (**the Counter-terrorism Directive**)²⁰. Chapter V of this Directive explicitly lays down provisions on protection of, support to, and rights of victims of terrorism. These new rules build on the already existing horizontal EU rules on victims of crime, (the Victims' Rights Directive and the Compensation Directive). The Member States must establish confidential, free of charge and easily accessible support services helping the victims of terrorism immediately after a terrorist attack and for as long as necessary. Concerning compensation, it is required from these support services to assist victims of terrorism with claims regarding compensation which is available under national law. This Directive entered into

¹⁴ European Parliament "How can the EU and Member States better help the victims of terrorism?", Policy department for Citizens' Rights and Constitutional Affairs, September 2017, pp. 64-76, available at [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2017\)596805](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2017)596805).

¹⁵ UNGA, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985, UN Doc. A/RES/40/34, available at: <http://www.un.org/documents/ga/res/40/a40r034.htm>

¹⁶ European Convention on the Compensation of Victims of Violent Crimes, ETS No. 116, opened for signature on 14th November 1983, entered into force on 1st February 1988

¹⁷ 2001/220/JHA, Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings

¹⁸ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0080>.

¹⁹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>.

²⁰ Directive 2017/541/JE of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0541&from=FR>

application in Member States only in September 2018 and it is not yet fully transposed in the Member States. The Commission is closely observing this process.

- Another instrument that is specifically dedicated to victims of a particular category of crime is the 2001 **Anti-trafficking Directive**²¹ on preventing and combating trafficking in human beings and protecting its victims. The Directive sets out minimum standards to be applied throughout the European Union in preventing and combating trafficking in human beings and protecting victims. It is based on the human rights approach and gender perspective. It contains provisions on victims' protection, assistance and support, but also on prevention and prosecution of the crime. The Anti-trafficking Directive explicitly states in Article 17 that Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent. Moreover, Member States must ensure that victims of trafficking in human beings have access without delay to legal representation, including for the purpose of claiming compensation. Member States were required to complete the transposition of the Anti-trafficking Directive by 6 April 2013. All Member States bound by the Directive had communicated their transposition measures to the European Commission. With regard to enacting the EU Anti-trafficking Directive into national laws, the European Commission's 'Transposition report'²² concluded that while there has been substantial efforts by EU Member States, there still remains significant room for improvement in various aspects, including, compensation. The Commission continues to monitor the correct transposition and implementation of the Directive. A number of Commission reports, studies and documents address the matter of compensation to victims of trafficking.²³ In 2017, the Commission issued its Communication identifying further actions to address trafficking in human beings²⁴.

21 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036&from=en>

22 COM(2016) 722 final

23 Among others, see the first Progress report (2016) by the European Commission (Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (COM(2016)267 and SWD(2016) 159 final), Second progress report and Staff Working Document (COM(2018) 777 final and SWD(2018) 473 final) ; Commission Communication 'Reporting on the follow up to the EU Strategy towards the eradication of trafficking in human beings and identifying further concrete actions

24 (COM(2017)728), the Commission's overview document «EU Rights of victims of trafficking» (2013, available in all EU languages at:

https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_rights_of_victims_of_trafficking_en_1.pdf; Study on Case law relating to trafficking in human beings for labour exploitation (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_case-law_on_trafficking_for_the_purpose_of_labour_exploitation_2.pdf)

D. STATE OF PLAY AND NEW THREATS AND CHALLENGES

With new threats and challenges, the already extremely high number of victims of crime is expected to increase in the future. Moreover, the nature of crime changes and becomes more and more globalised. For particular EU Member States it becomes more difficult to deal on its own with crime prevention and victims' protection.

1. State of play

In Europe 75 million people become victims of serious crimes every year²⁵. That's 15% of the population, or 200 000 victims every day. One in three women report being sexually or physically abused. In 2016, around 5 200 intentional homicides and over 1.3 million home burglaries were reported. Millions more are being defrauded, robbed or physically assaulted. Eurostat even reports a rise in physical assaults in the last years²⁶. One in five children under the age of 18 in Europe is a victim of sexual violence. In 70-85% of cases, the perpetrator is a person known to the child and part of their "circle of trust".

Concerning victims of terrorism only in 2017, 88 EU citizens were killed, 70 of them in the EU territory and 18 Europeans died in attacks outside the EU's borders. With regard to the victims of terrorism in the period of 2000-2017 there were 1790 victims killed including 740 victims killed in the European Union and 1050 European victims killed outside the European Union. Among the 740 victims killed in the EU, 614 were EU nationals, 117 were of another nationality and 9 unknown nationalities²⁷. The Member State most affected by terrorist acts since 2000 is Spain with 269 victims, including 203 victims of the Madrid attack. Spain is followed by France with 254 victims including 151 victims of the Paris attacks and the United Kingdom with 120 including 67 in London²⁸.

Attacks in Paris (2015), Brussels, Nice, Berlin (2016), London, Barcelona (2017) and Strasbourg (2018) demonstrate the devastating impact of jihadist/extremist terrorism in Europe and the high number of cross-border cases²⁹. However, it is necessary to recall that these figures concern only the victims who died during these attacks but this number can be largely multiplied if we count the number of injured or the relatives of the victims.

There is also an underestimation of the actual number of victims. Many violent crimes are unreported with, for example, studies pointing to only 10% of child abuse cases reported to the police³⁰. 20 532 victims of trafficking in human beings were registered in the EU Member States over the two years of 2015 and 2016. Trafficking has a strong gender dimension: 68 % of registered victims for all forms of exploitation were female. Trafficking for sexual exploitation remains the most widespread form (56%) within the EU³¹.

2. New threats and challenges

a) Increased mobility of persons

It is unquestionable that the European area of freedom security and justice has brought great advantages to EU citizens. It brought however also new challenges and new European responsibilities vis-à-vis EU citizens. The principle of free movement within the European Union has led to an increase in the number of individuals working, studying or travelling abroad. Around 13.6 million EU citizens live for diverse reasons in a Member State that is not the Member State where they were born in³². Over the last few decades, crime is becoming increasingly globalized, posing particular challenges to national criminal justice systems³³. With the increased mobility of people in the EU and the increasingly globalized nature of crime, more and more people are becoming victims of crime in a Member State other than their own.

25 Analysis carried out in "The Burden of Crime in the EU", p. 70, of results from the EU International Crime Survey (EUICS) 2005 (www.europeansafetyobservatory.eu)

26 EUROSTAT (April, 2013). EU citizenship statistics on cross-border activities. Retrieved September 22, 2015, from https://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:EU_citizenship_-_statistics_on_cross-border_activities

27 Maitte Pagazaurtundua-Ruiz, « Black and white paper on terrorism in Europe: Victim's data and status. In defence of freedom and security against fanaticism in the 21st century », ALDE, Brussels-Madrid, May 2017

28 Maitte Pagazaurtundua-Ruiz, « Black and white paper on terrorism in Europe: Victim's data and status. In defence of freedom and security against fanaticism in the 21st century », ALDE, Brussels-Madrid, May 2017

Terrorist attack	Number of deceased, foreign nationals
Paris, France, 13 th November 2015	130 deceased, 29 foreign nationals ²⁹
Brussels, Belgium, 22 nd March 2016	32 deceased, 38 foreign nationals ²⁹
Nice, France, 14 th July 2016	86 deceased, 43 foreign nationals ²⁹
Berlin, Germany, 19 th December 2016	12 deceased, 5 foreign nationals ²⁹
Westminster, United Kingdom, 22 nd March 2017	6 deceased, 2 foreign nationals ²⁹
London, United Kingdom, 3 rd June 2017	8 deceased, 7 foreign nationals ²⁹
Barcelona, Spain, 17 th August 2017	15 deceased, 11 foreign nationals ²⁹

30 <https://www.coe.int/en/web/child-rights/child-sex-abuse-day>

31 It is followed by trafficking for labour exploitation (26%). 95 % of victims of trafficking for sexual exploitation were women and girls. 23% of registered victims who were trafficked for sexual exploitation were children. Children were almost one quarter (23%) of registered victims of trafficking. Nearly half (44%) of the victims were citizens of the EU, out of which half (22%) are citizens of other EU member States, and just over half (56%) were non-EU citizens. 22% of registered victims of trafficking were trafficked internally within the same Member State. Given the complexity of the phenomenon, there are solid grounds to expect that the actual numbers of victims of trafficking in the EU are indeed substantially higher

32 EUROSTAT (April, 2013). EU citizenship - statistics on cross-border activities. Retrieved September 22, 2015, from https://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:EU_citizenship_-_statistics_on_cross-border_activities

33 Letschert, R. M., & Groenhuisert, M. S. (2011). Global governance and global crime: Do victims fall in between? In R. M. Letschert, & J. J. M. Dijk (Eds.), *The new faces of victimhood*. (pp. 15-40). Dordrecht: Springer.

b) The rise of the terrorist threat³⁴

Europe has faced a high and evolving terrorist threat over the last decade. While this terrorism threat is shared across the EU, there are differences in the threat level faced by the different Member States. Radicalisation which may be leading – as seen in several cases – to violent extremism and terrorism is not a new phenomenon. Nevertheless, the process is taking place at an alarming speed and scale. Social media as well as a combined interplay of other factors such as sense of injustice and discrimination, identity crisis, social exclusion participate in radicalisation mechanisms at a much faster pace than previously experienced. With the changing threat of terrorism in Europe, new challenges for the EU include securing the rights of cross-border victims which represent a significant percentage of fatal casualties.³⁵

Cyberterrorism presents a new and ever-growing threat in the realm of terrorism. CEPOL defines cyberterrorism as 'the use of computers and/or related technology with the intention of causing harm or damage, in order to coerce a civilian population and influence policy of target government or otherwise affect its conduct'. In a similar manner, NATO defines cyber-terrorism as '[a] cyberattack using or exploiting computer or communication networks to cause sufficient destruction or disruption to generate fear or to intimidate a society into an ideological goal'.

c) Cybercrime

Cybercrime consists of criminal acts that are committed online by using electronic communications networks and information systems. It includes among others harassment, hate speech, child abuse, trafficking or terrorism. Cybercrime poses a real threat for EU citizens and residents. In recognition of this, several EU legislative actions already contribute to the fight against cybercrime. These include the 2011 Directive on combating the sexual abuse and sexual exploitation of children and child pornography³⁷ as well as the 2013 Directive on attacks against information systems³⁸.

d) Climate change

1.8 million migrants have come to Europe since 2014. Although recent figures show that the number of migrants

and asylum seekers entering the EU has decreased since 2015 – 2016. In many parts of the world and in Europe, people are suffering from growing environmental disasters such as droughts, floods, heatwave and other extreme weather. Due to the effects of climate change, the scale of voluntary or forced environmental migration to Europe is likely to increase.

e) Trafficking in human beings (THB)

Trafficking in human beings is yet another current threat to our society. This is also a highly profitable form of crime. The annual profits from all forms of trafficking in human beings are estimated at EUR 29.4 billion globally³⁹. Europol equally highlights the profit generated by trafficking of children⁴⁰. Driven by considerable profits and a very complex interplay of supply and demand, trafficking involves a complex chain of actors who are knowingly or unknowingly involved.

Moreover, trafficking in human beings is a transnational crime, often involving cross-border movement and exploitation of victims, where for detecting, investigating and prosecuting the crime, there is need for cross-border cooperation by law enforcement and judicial authorities, including joint law enforcement actions for following the money involved in the crime and seize and confiscate the criminal proceeds.

f) Racism, homophobia, sexism, gender-based violence

Moreover, the EU is confronted with new challenges such as populist and extremist movements manifesting in sexist, homophobic and racist hate speech or violent acts. The fear of migration and terrorism increased the number of victims of violent acts based on origin or religious beliefs. The EU is also confronted with resistance to gains made in women's and girls' rights. After decades of progress in terms of gender rights, several parts of Europe are currently facing new waves of resistance to progressive gender equality, equal pay and equality in decision-making.

The increase in social movements of discontent in Europe can also lead to an increase of violence and therefore there will be more victims of violent acts – as we saw recently in France.

³⁴ European Parliament "How can the EU and Member States better help the victims of terrorism?", Policy department for Citizens' Rights and Constitutional Affairs, September 2017, pp.17-19

³⁵ Terrorists often target densely populated, tourist area

³⁶ Centre of Excellence Defence Against Terrorism, ed. (2008). Responses to Cyber Terrorism. NATO science for peace and security series. Sub-series E: Human and societal dynamics, ISSN 1874-6276. 34. Amsterdam IOS Press. p. 119. ISBN 9781586038366. Retrieved 2018-07-22. The current NATO Definition of cyber terrorism is: 'A cyberattack using or exploiting computer or communication networks to cause sufficient destruction or disruption to generate fear or to intimidate a society into an ideological goal.'

³⁷ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

³⁸ Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA

³⁹ Europol's Report on Trafficking in Human Beings, Financial Business Model (2015).

⁴⁰ Europol, Situation report (2018), Criminal networks involved in the trafficking and exploitation of underage victims in the European Union, at: <https://www.europol.europa.eu/publications-documents/criminal-networks-involved-in-trafficking-and-exploitation-of-underage-victims-in-eu>

⁴¹ FRA(2014), "Violence against women: an EU-wide survey". Main results reports, FRA(2017), "Second European Union Minorities and Discrimination Survey - Main results, FRA(2018), "Experiences and perceptions and anti-Semitism, Second survey on discrimination and hate crime against Jews in the EU"

II. PROBLEMS FACED BY VICTIMS

As we saw in the introduction, victims have general and specific needs relating to their own situation and characteristics or to the type of crime committed. In a similar way, they face general problems, but also specific problems. Annex I of this report gives a more detailed version of the general and specific victims' needs and Annex II describes more deeply the general and specific problems faced by the victims.

A. GENERAL PROBLEMS

1. Lack of/Access to information and to guidance

Article 4 of the Victims' Rights Directive provides victims with a right to receive information from the first contact with a competent authority. Victims should receive different types of information about their rights, including how and under what conditions they can access compensation. The extent or detail of information should vary depending on the specific needs and personal circumstances of the victim.

Moreover, Article 3 of the Victims' Rights Directive states that victims have a right to understand and to be understood. Research of victim support organisations indicate however that victims are not sufficiently informed of their rights to claim compensation and on how to proceed through a complex judicial or administrative system. Moreover, information is either difficult to understand or is not provided in a language the victim knows. The reasons for the information deficit from which crime victims suffer are the following:

a) The lack of information and clear guidance

The result of the ENVR study shows that Member States apply various forms of providing information on compensation. The most common way is when victims are informed by the police (orally and by leaflets), or they are informed online. Additional forms of providing information are: through prosecutors, courts, NGOs, other professionals (who can be in contact with the victim, e.g. hospital staff, women shelters) and embassies. On the basis of the data collected by the ENVR, in 14 Member States⁴² there is a hotline which can give information on compensation. However, not all of these Member States dedicate their hotline specifically to compensation. The ENVR study however underlines – as a good practice – that the online application form is now available in 17 Member States⁴³. Another positive trend is the availability of online information about

compensation in English. Such information is currently available in 14 Member States⁴⁴.

b) The failure of the actors involved in the judicial system to inform the victims or verify that the information has been provided to them

In accordance with the Victims' Rights Directive, national authorities (notably the police) and others having initial contact with victims are under a duty to provide information about compensation. In a few Member States, there is no legal obligation on authorities involved in the criminal proceedings to verify whether victims are aware of their rights to claim or apply for compensation. One reason for this situation is the lack of appropriate training of the frontline staff.

c) Information on compensation for victims is not available

Under the Victims Rights' Directive information should be provided in different formats – corroborating with scientific studies, victims' testimonies and practical expertise highlighting that information for victims needs to be offered in different forms and a number of locations to actually reach victims⁴⁵. In many Member States information for victims is only available in one format or in very limited number of locations. Some Member States do not have a website dedicated to providing victims with information on compensation. In other countries, the website is dedicated to victims of terrorism⁴⁶. When it comes to cross-border compensation, the information is often not available in other languages other than the official language of the country.

d) Lack of assistance in accessing information

According to the research by victim support organisations, victims are often not informed about the support they can receive from victim support organisations. Such support is crucial for victims.

I would not have managed alone — for sure, because the letters from the authority were intimidating. You have got the feeling not to be taken seriously. The application itself was already difficult; I couldn't have filled in the form alone

⁴² "Comparative data collection on compensation schemes of member states" Information appears in this data collection is from the database of e-Justice portal, from the comparative study prepared by McKenzie on behalf of FG11 and from data provision by ENVR experts, available in AT, BE, CRO, DE, FR, HU, IE, LUX, LV, MT, NL, PT, SE, UK

⁴³ According to ENVR data collection AT, BE, BG, CY, CZ, DE, EL, ES, FI, FR, HR, HU, IE, NL, PT, SE, SK

⁴⁴ According to ENVR data collection E, BG, CY, CZ, DE, ES, FI, FR, CRO, IE, LU, PT, SE, SI

⁴⁵ Guidelines VR directive (VSE, Commission)

⁴⁶ Website of the Office of Victims of Terrorism – Direction General to Support Victims of terrorism at the Ministry of Home Affairs: www.interno.gob.es

and it was a burden. Without the support of WEISSER RING and my lawyer, I would already have given up, because the written notes from the authority were not friendly at all.⁴⁷

When it comes to offender's compensation – judicial authorities should provide information during criminal proceedings and in particular at the early stages of the proceedings to ensure that victims do not miss their deadlines to apply for compensation from the offender. Too often victims are not informed about the possibility of claiming such compensation (often within limited deadlines) by the relevant judicial authorities. When it comes to cross-border aspects, victims' access to information about compensation is even more difficult. Therefore, governments and competent authorities should put extra efforts to overcome hurdles that characterise cross-border victimisation.

e) Lack of quality of information

As indicated by the research of victim support organisations, too often information is very difficult to understand for a victim who has no background knowledge in criminal proceedings. Another issue is the fact that information is sometimes inaccurate or contradictory. Contact details, eligibility criteria and forms are not always up to date and available.

f) Information is not provided in accordance with victims' individual needs

The interviews with victims and compensation authorities reveal that there is an important mismatch between what is perceived as 'simple and accessible language' and the reality.

g) Lack of guidance and training

In general, Member States do not invest enough resources into professional guidance and training activities for judicial authorities and police (on victims' rights and needs, on the way to behave, to communicate, to support and to inform victims). Criminal judges still need to be convinced that compensation to victims is an important part of the criminal justice system. The appropriate information is not always given by the police. Embassies and consulates are not prepared enough in case of a terror attack with a large number of national victims. Support services need also to be updated via professional, psychological or specialized guidance.

Even those people who need to provide information don't understand how it works. Sometimes a police officer or even lawyer does not even understand the difference between offender and state compensation. If they – who are supposed to explain this to victims – don't understand, how can victims?' (interview victim's compensation expert)⁴⁸

2. Problems concerning State compensation

a) Low amounts of compensation

The survey by victim support organisations demonstrates that delays, lack of emergency payments and low amounts of compensation present a major problem for victims. In particular, the majority of respondents to the surveys by victim support associations perceive victims' compensation as not sufficient.⁴⁹

The ENVR Comparative Data Collection on Compensation Schemes (the ENVR study) also shows that there is a great diversity in the amount paid by different EU Member States. It varies from a couple of thousands of euros paid to dozens of million euros in other Member States. Even if taking into account obvious differences between the EU Member States such as the population and the GDP the differences in the amount of the awarded compensation are very important.

Regarding the amount of payment, in most Member States it is determined on a case by case basis. Compensation can be paid in all the involved Member States in a single payment (lump sum). Moreover it is available in monthly instalments in 8 of the researched states.⁵⁰

b) Restrictive eligibility criteria for state compensation

Eligibility criteria for state compensation define what and who is compensated. According to the ENVR study, the types of damages for which state compensation is paid in Member States vary depending on the country.⁵¹ Several Member States compensate medical costs and loss of earning during the medical treatment. Some Member States also compensate psychological damage⁵², that often covers⁵³, long term individual needs such as long-term psychotherapy or, adaptation of housing. Most of the Member States cover funeral costs⁵⁴. As regards stolen or damaged property, 7 Member States pay state compensation⁵⁵. Additionally, Finland and France compensate stolen or dam-

47 Victims support services under the lead of FV Europe conducted in the course of 2018 a survey about specific compensation needs of victims of terrorism. The survey gathered over 200 responses for individual victims and victims' associations from France, Belgium and Spain.

48 Survey organised by victims associations under the coordination of VSE in the framework of this report.

49 When it come to the financial losses, 56.3% of respondents stated that the compensation was usually not sufficient. According to 37.5% of respondents it was sometimes sufficient. With regard to psychological harm, 31.3% respondents said that victims never receive sufficient compensation, and 31.3% found that the compensation is usually not sufficient.

50 According to ENVR data collection AT, DE, ES, FI, FR, HU, PT, SE

51 Data collection by ENVR on Member State compensation schemes

52 According to ENVR data collection, except BG, CRO, IE

53 According to ENVR data collection, BG, SI, SK

54 According to ENVR data collection, Except CZ, PT, SI, SK

55 BE, HU, IT, LUX, MT, PL, SE

aged property under certain conditions.

In some Member States third country nationals may be excluded from the scope of victim compensation schemes. Also extremely restrictive eligibility criteria often result in serious limitation to effective access to compensation. For example, in 11 Member States victims of crime with a criminal history may not be eligible for compensation, (depending on the type and time of the committed crime)⁵⁶ Most violent crimes such as homicide, sexual offences and assaults are today covered in all Member States. But variations in the coverage of violent crime compensated are viewed as 'unfair' by victims. In particular, when it comes to consideration of what constitutes a violent act – there are still great differences among the EU Member States. Other criteria preventing the victims from obtaining compensation in cross-border cases are the differences in limitation periods and in evidential requirements.

*Our law is filled with restrictions for victims to be eligible for compensation. It seems to be the intention of the lawmaker is to give less and less money. In that way restricting the rights of victims. - Interview victim support expert*⁵⁷

c) Lack of emergency payments or upfront payments

Only a few Member States grant to the victims emergency payments in few days or weeks after the violent act to help the victim to face the first costs (funerals, loved ones travels, child care). We have the same situation regarding upfront payment during the judicial proceedings in order to partly compensate the victims before the judicial decision concerning the perpetrator.

d) Lack of extended notion of reparation in kind

The practice of arranging -in parallel with the financial compensation-reparations in kind (free support for professional reintegration, mobility, trauma, or childcare or special practical support) is not included in the definition of state compensation.

e) Limited compensation resources of some Member States

According to the ENVR study, most state compensation schemes are financed from the state budget. Ireland noted that there is annual limit on the amount of compensation that can be paid. Nevertheless, most Member States have a ceiling of the amount that can be paid in a single case with the exception of Austria, Ireland, Germany, and, in case of major crimes or serious injury, France. In France,

as an alternative scheme to the state budget, contribution by insurance contracts exists. The amount paid out by Member States for state compensation varies significantly.

3. Problems concerning Offender compensation

It is essential that the perpetrator of the act of violence is prosecuted and convicted as well as compensates his victim. Nonetheless, very often the punitive element of compensation is not guaranteed since the offender does not have the means to compensate the victim or the execution of the judgment imposing the compensation is too difficult for the victim.

It means that even after a very long and challenging process leading to the judgment imposing the obligation on the perpetrator to compensate, the victim is often not compensated (or fully compensated). This is mostly due to:

a) Lack of financial means to compensate the victim

Offenders, especially those convicted for violent crimes, often come from low social-economic backgrounds. This means that they are potentially unemployed and on low incomes or do not possess capital nor property with which they could pay the compensation. According to the calculations based on Eurostat data, only about 8.5% of the guilty offenders of a violent⁵⁸ crime end up being fined.

b) Difficulties in the enforcement of the compensation decision

This is partly due to the absence of or a lack of obligations on Member States to assist victims in enforcing compensation from offenders. In only a few Member States authorities enforce the compensation decisions on behalf of the victim at no cost for the victims. In some countries such upfront payments are however conditioned⁵⁹.

c) Lack of systems of compensation to the victims as a criminal sanction

The option to put criminal sanctions as pressure on the offender to make payments to the victim (compensation in lieu of punishment) is rarely used by the criminal courts in the Member States (it is used in Germany).

4. Procedural obstacles: Lengthy, complex and costly procedures that lead to

⁵⁶ European Commission > EJM > Compensation to crime victims (factsheets by country)

⁵⁷ Survey organised by victims associations under the coordination of VSE in the framework of this report.

⁵⁸ Sources: European Sourcebook of Crime and Criminal Justice Statistics – 2010, Eurostat

⁵⁹ For instance in France, the victims are entitled to receive part of the compensation awarded for minor crimes.

victims being discouraged from claiming compensation

a) Interdependence between state compensation and offender compensation

The ENVR study shows that most of the 25 Member States for which this data is available, requires that crime must be at least reported in order to claim state compensation. The end of a police investigation was reported as a condition of state compensation in 9 Member States out of 12 Member States for which the data has been collected. BE and NL reported that the prosecution of the reported criminal offence is also a condition to claim state compensation. The ENVR study scrutinised the issue of advance payment of state compensation to the victim. The advance/upfront payment is available in several countries⁶⁰. Moreover, in some Member States⁶¹ compensation or emergency compensation can be received directly after the crime, though it can be restricted to some kind of costs. In countries where the upfront payment is ensured, the authorities need to face the issue of risks of double payment - how the victim should report if the damage is compensated later from another source(s).

In order to seek offender compensation a victim may have to submit legal forms or make an application to the court depending on the jurisdiction involved. The victims' situation can be also complicated if no one is found guilty or the case is thrown out on a legal technicality. There is provision in some jurisdictions for state compensation to be awarded where the offender is not identified or has not been apprehended. If victims do not report crimes, they are not entitled to seek compensation. These are often the most vulnerable victims, such as children, undocumented migrants, homeless, trafficked victims to name a few. They are arguably the most in need of emergency compensation.

b) The costs of procedures to obtain compensation are too high for victims

In some Member States administrative fees are charged for applications for state compensation (e.g. from €9 to €170). According to the ENVR study, state supported legal aid for victims is available in several Member States⁶³ under specific conditions set up by law on legal support⁶⁴.

It has to be mentioned that victim support services or other associations/funds provide assistance to victims in compensation procedures (e.g. in filling out the application form, legal assistance). According to the data reported by Member States, there is assistance for victims with particular needs in AT, DE and ES. In some Member States the financial situation of the victim can affect the eligibility for compensation. For example, in HU the income threshold is a general eligibility criterion, in HR in the case of compensation for loss of maintenance, in NL in case of additional compensation.

c) Slow procedures and lack of respect by the compensation authorities of the compensation decision deadlines

According to the research by victim support organisations, victims often receive their compensation several years after the crime was committed⁶⁵. In some Member States, there are no concrete deadlines to be compensated, and when there are deadlines, they are not always respected. Only few cases are closed and compensated in a state compensation scheme within the first 12 months and 50% after 24 months. The positive exception here is France, where almost 60% of cases are closed within a year.

d) Restrictive time limits to apply for compensation

The deadlines for claiming state compensation vary in the Member States. Some Member States count the starting point from the date of the crime (e.g. AT - 2 years from the crime retroactively, CY - 2 years from the date of death or the occurrence of the offence, HR - 6 months from offence, HU - 3 months from the offence, LU- within two years of the offence, NL- 10 years after the offence took place and PT- one year from the commission of the offence). In the countries where the deadline is relatively short to apply for compensation, the time limitation can be extended for different reasons (e.g. in case of incapacitation for applying, if the offender is prosecuted or if the victim was minor at the date of the offence). Also a starting point from which the compensation can be claimed, differs greatly among the Member States⁶⁶ (for more details see the Annex).

e) Refusal because of incompleteness of the file

60 According to ENVR data collection, AT, BE, ES, IT, FR, LT, LU, MT, PL, PT, UK in DE, FI, NL under specific conditions (see Data Chart Table 3B)

61 According to ENVR data collection, AT, BE, FR, HU, UK, in FI, LU, NL under specific conditions

62 Example: SE, SK

63 According to ENVR data collection, AT, BG, DE, FI, FR, HU, LU, PT, SK

64 Data collection by ENVR on Member State compensation schemes

65 In a majority of Member States, crime victims can only obtain State compensation after the court judgement and the failure to recover compensation awards from offender. Only in a third of the Member States can the victims obtain the State compensation otherwise

66 Data collection by ENVR on Member State compensation schemes - for some - this is the date of the final judgement (e.g. BE 3 years from final decision or closure of the case, FI- 3 years from judgement, 10 years from the offence if there is no judgement, SE- 3 years from judgement/closure of investigation/ children may file claim till the age of 21, SK- 1 year from validity of judgement) or decision ending procedure and in other Member States there is no time limitation (e.g. DE - generally no time limitation, FR - no time limit in case of justifiable reason)

According to the research by victim support organisations, over two thirds of compensation authorities cite incomplete files as one of the main reasons for not granting compensation. Incompleteness of files is often related to aspects like missing of a signature, missing a date, missing document or absence of translation⁶⁷. According to the ENVR study, several Member States accept other languages during the compensation process. Some assisting authorities cover the costs of translation of the compensation form. If interpretation is necessary FI, FR, HR, HU, IE, LU, PL and SE bear the costs of interpretation. Translation of supporting documents or evidence is covered in at least 7 Member States⁶⁸.

f) Lack of transparency of the decision-making process

According to the research by victim support organisations, many respondents said it was not at all transparent or easy to understand the criteria for compensation in their Member State.

g) The limited use of alternatives to judicial proceedings

Alternative approaches to seek compensation from the offender include the use of mediation and restorative justice. In addition to acting as a form of compensation, these approaches bring extra benefits such as enhancing the victim's re-adaptation into society.

h) The limited scope for review of the compensation decision

This may have the effect of discouraging potential claimants and/or leading to situations where clear principles and procedures are not applied. State compensation regimes do not allow for a review of the decision on compensation in some Member States.

5. Cross-border and international victimisation

a) Low number of cross-border compensation claims

Member States reported a dramatically low number of cross-border cases⁶⁹. 10 countries provided data regarding cross-border cases during the years 2015, 2016 and 2017: altogether these States managed 602 cases during the three years (of which 541 were reported by AT and DE). The low number of cross-border cases can be due to

lack of awareness, lack of available information, language barriers (including the costs of translation), and the lack of possibility of filing claims directly with the national authority (though there is compensation system established at national level). In this context victims often find it difficult to file cross-border claims directly with the national deciding authority.

b) Lack of collaboration across the Member States

The 2004 Compensation Directive stipulates the need for regular meetings of national contact points. All national contact points interviewed strongly applaud promotion of these meetings. The benefits of regular meetings are manifold: 1) Bring national authorities together to discuss European policy and legislation on cross-border compensation; 2) Promote building of relationships between national compensation authorities which in turn facilitates further collaboration; 3) Offer a forum to ask questions bilaterally on procedures to claim for compensation and specific cases; 4) Share good practices on cross-border compensation procedures, information provision and collaboration.

Next to collaboration within EU-wide network, compensation authorities strongly value and appreciate good bilateral contacts and information sharing as a foundation for collaboration on cross-border compensation. Bilateral or trilateral visits can promote collaboration between countries who share many cases. It would moreover facilitate and could even decrease costs of collaboration. Surely, promotion for national contact points to develop and establish themselves as strong networks requires funding. In previous years fewer initiatives (or funding) for facilitating meeting of compensation points has dwindled. To reinforce the network appropriate investment, coordination and sense of initiative is needed. Cross-border collaboration of compensation authorities should be promoted.

The costs of weak collaboration can be much greater in the long run both for governments and victims. A reinforced network can improve collaboration and invite all Member States to engage and use the rights stipulated in the Compensation Directive. Currently, some Member States have stepped away from using the provisions in the Compensation Directive as they feel assisting victims in claiming compensation abroad is more harmful than positive for the victim's well-being.

6. Lack of sufficient number of profes-

⁶⁷ CBC report Victim Support Europe

⁶⁸ According to ENVR data collection, AT, CZ, DE, EL in outgoing cases, FI, HU, LU

⁶⁹ Data collection by ENVR on Member State compensation schemes

sional and multidisciplinary free support services in the Member States able to meet different general and personalised victims' needs

While in the last few years, we have witnessed a strengthening of the number, professionalism and multidisciplinary aspect of victim services, whether public or associative, there are still many shortcomings.

In many countries victim support services do not act proactively. They are waiting for the victim to contact them. Yet many victims have neither the knowledge nor often the strength or the courage to approach a service. Victims are not properly referred to victim support services to coordinate the response to all of their needs. There are still not enough of support services that would provide immediate psychological and practical support (arranging the displacement of loved ones, childcare, etc.). The provision of services to victims does not take sufficient account of the victims' individual needs related to the characteristics of the person, his environment and the type and nature of crime.

In addition, in many Member States, there is not sufficient financial support to ensure proper functioning of victim support services. National support services often lack the expertise (in particular when it comes to specific needs of victims such as post trauma treatment and accompanying towards resilience and self-development).

7. Insurance

Insurance companies are important compensation actors that we cannot ignore. The main problems faced by the victims are, among others: a lack of victims' friendly procedure and respectful treatment, payment deadlines, complex and rigid expertise systems, non-harmonised legislation between Member States, national disparities concerning expertise, procedures, terrorism coverage, lack of sufficient cooperation with the compensation authorities and additional and duplicating formalities.

B. SPECIFIC NEEDS AND PROBLEMS OF VICTIMS OF CERTAIN CATEGORIES OF CRIME

Victims of certain types of crime have specific needs and correlated specific problems that are related to the type and nature of a particular crime. These needs and problems might not necessarily differ in nature from the needs and problems of victims of other crimes. They differ rather in degree or possibility for implementation⁷⁰. Victims of certain types of crimes, such as gender-based violence, trafficking in human beings, terrorism or homicide may have special requirements within the basic needs of other victims of crime.

Understanding the specific needs and problems of each group of victims is crucial to ensuring that every victim is supported, informed, compensated, and protected in the way they need to be⁷¹.

1. Terrorism

As a starting point for addressing the specific needs and problems of victims of terrorism, we must first define exactly who is a victim of this crime. The effects of a terrorist attack reach not only direct victims but also family members, first rescuers, witnesses and entire societies. At the same time, it is important to recognise that the circles of impact are different. This means that the definition of victim may be narrow for some purposes, such as criminal proceedings or compensation, whilst wider for other issues. In terms of compensation, we see that this is usually limited to direct victims and close family members. The report of the European Parliament "How can the EU and Member States better help the victims of terrorism?"⁷² summarises perfectly the specificities of victims of terrorism:

Firstly, terrorism aims to harm individuals as representatives of the larger society, the state or values. Victims are attacked as symbols of the state, which is reflected in the social and psychological impact in the individual victim.

Secondly, while the majority of crimes will leave a mark on victims, the impact is largely limited to immediate family members, rarely to first responders and only exceptionally on the broader community. This broader impact will usually happen in particularly serious instances, or for example when victims are public or important figures.

⁷⁰ R. Letschert, I. Staiger and A. Pemberton (Eds.), *Assisting Victims of Terrorism – Towards a European Standard of Justice*, 2008, p. 13

⁷¹ In this sense see [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2017\)596805](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2017)596805)

⁷² European Parliament "How can the EU and Member States better help the victims of terrorism?", Policy department for Citizens' Rights and Constitutional Affairs, September 2017, pp. 26 to 57

Research confirms the protective factor of social support in the psychosocial well-being of an individual that lived through a traumatic event. However, in the case of a terrorist attack, individuals and professionals in a social environment are impacted as well and sometimes not able to provide support to the victims as they would to victims of other types of crime.

Thirdly, terrorism leaves chaos in its wake, often providing challenges to first responders as well as causing daily life to take a halt. After the Brussels attacks, the city went in lockdown for a few days, preventing life to return back to normal in the city, while shops, restaurants, schools and administrative buildings were being shut down. This is uncharacteristic for most other types of crime, yet strongly affects individual victims of terrorism.

Fourth, terrorism and its victims become an immediate news story, with victims unwillingly at the centre of attention. More violent attacks will attract more attention, but seemingly victimless and failed incidents related to terrorism get broadly reported and have the potential to victimise.

The specific needs and problems of victims of terrorism include the following⁷³:

- **Recognition:** is one of the most expressed needs in the category of terrorism. It also represents a need which is uniquely complex to this type of crime. Unlike in most other violent acts, the victim of terrorism was not personally attacked but as a symbol of the state and society. Lack of recognition from the state and from the society has negative impact on the healing process of victims of terrorism. Therefore, recognition should be associated with remembrance and commemoration. An example of recognising a victim of terrorism can be seen through the National Recognition Medal for Victims of Terrorism in France⁷⁴ and the Royal Order of Civil Recognition for Victims of Terrorism in Spain⁷⁵.
- **Respectful treatment:** victims of terrorism attract important media attention, which can be notoriously insensitive, often exploiting the victims' personal experience, which may lead to secondary victimisation. With this in mind, there is a dual need for victims of terrorism to be supported when dealing with the media, but

also for the media to act respectfully and sensitively in their reaction to the event.

- **Access to information:** applies to all victims, but in case of terrorism, which often involves mass-victimisation, responsible services get quickly saturated in the aftermath of an attack. This may induce miscommunication, incoherent and uncoordinated responses from mainstream services. Hospitals, police authorities, embassies and other organisations should aim to provide a streamlined response offering clear, correct and sensitive information. In addition, victims of terrorism regularly express their need for truth. They seek to understand what happened, why and by whom. Having honest information about the events they experienced can help victims in their recovery.

Victims require personalised information, and not only through emails or online. Information must be provided on cases by case, in person, with enough time for explanations and respectful treatment. A single contact person in order to avoid the need to re-explain several times, and someone who coordinates. – Victim interview testimony⁷⁶

- **Specialised support:** victims may need support in the clinical sense of the word from psychological, medical and social support, both in the short and long-term. When it comes to psychological support, victims of terrorism are specifically prone to post-traumatic syndrome, which requires attention of specifically trained psychologists. It is also extremely important that such support arrives immediately after a terrorist attack.
- In addition to general support, many victims of terrorism find the greatest comfort and help through their own peers – those who have been through the same or similar experience.

According to a survey conducted by victim support associations among victims of terrorism⁷⁷, the most highlighted victims' needs include access to psychological support and access to financial assistance. When it comes to psychological support, most Member States do not offer free-of-charge psychological follow-up.

Moreover, those who offer some level of coverage often limit this to several sessions, falling short of what victims

⁷³ European Parliament "How can the EU and Member States better help the victims of terrorism?", Policy department for Citizens' Rights and Constitutional Affairs, September 2017 available at: [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2017\)596805](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2017)596805)

⁷⁴ Médaille nationale de reconnaissance aux victimes du terrorisme'

⁷⁵ Real Orden de Reconocimiento Civil a las Víctimas del Terrorismo'

⁷⁶ Victims support services under the lead of V Europe conducted in the course of 2018 a survey about specific compensation needs of victims of terrorism. The survey gathered over 200 responses for individual victims and victims' associations from France, Belgium and Spain.

⁷⁷ Victims support services under the lead of V Europe conducted in the course of 2018 a survey about specific compensation needs of victims of terrorism. The survey gathered over 200 responses for individual victims and victims' associations from France, Belgium and Spain.

actually need. This is therefore a necessity which victims believe should be covered by compensation. The psychological consequences faced by victims and indirect victims of terrorist attacks are well known requiring that victims of terrorism receive immediate, continued and tailored therapy.

Some victims may not develop signs of trauma until many years after the attack, especially in cases of Post-Traumatic Stress Disorder. In this light, victims highlight the importance of financial intervention for psychological treatment not only in the immediate aftermath of an attack, but for as long as it is necessary. Psychological trauma is often accompanied by wide-reaching economic consequences, including: adaptation of living arrangements, reduced earnings due to loss of productivity through work absence and/or early retirement, greater probability of divorce, cost of medication, hospitalisation and additional therapy sessions etc. Victims repeatedly referred to the need for immediate financial assistance under the form of an emergency payment to cover loss of earnings, medical costs and rehabilitation expenses immediately after an attack.

Other problems highlighted by victims in the survey include: lack of recognition and acknowledgment of their victims' status (this includes lack of recognition of different forms of damages, such as loss incurred and the continued psychological trauma which victims of terrorism experience daily) and lack of practical support and assistance (such as assistance with the administrative process, professional adaptation, on-going support for translating documents and legal advice).

Cross-border victims of all crimes face increased difficulties to access compensation in comparison to their resident counterparts. Cross-border victims of terrorism also face additional obstacles due to the nature of the crime. Since 1980, 9 EU Member States have fallen victims to a terrorist attack, meaning that 19 Member States have no recent history with terrorist attacks. Cross-border victims who come back to their country of origin often feel abandoned and face even more difficulties in accessing specialised psychological support and compensation schemes in the country of the attack.

2. Trafficking of human beings

When it comes to compensation provided for victims of trafficking in human beings (THB), most Member States rely on their general compensation schemes, which are described in other parts of this report⁷⁸. Various EU reports and the contributions from the EU civil society platform against trafficking in human beings for the survey launched by EU ATC for their contributions to the work of the Special Adviser⁷⁹ identify a number of challenges.

Civil society contributions overall highlight that significant challenges exist with respect to access to compensation for victims of trafficking, with information on the implementation of national provisions in this sense being still limited and complex procedures. Particularly victims of trafficking for sexual exploitation sometimes are not able to meet the requirements for producing evidence of verifiable expenses or employment losses⁸⁰.

Civil society organisations highlight that the type of exploitation suffered by victims of trafficking can play an important part in the accessibility of compensation: victims trafficked for labour exploitation have additional avenues to claim compensation, including loss of earnings, whereas victims trafficked for sexual exploitation do not have verifiable expenses or employment losses and cannot avail in many cases to work related bodies. It is more difficult to prove and assess the psychological harm caused by sexual exploitation or trafficking for prostitution than physical injuries. Trafficked victims for forced begging and for forced criminalities often are not recognised as victims when convicted for those minor offences.

EIGE's report on gender specific measures⁸¹ notes that women are often more vulnerable to become victims of trafficking⁸².

Moreover, *"When it comes to women victims of trafficking for sexual exploitation, in many cases they experience harm that is not material, in the sense that they are difficult to quantify — there is no tangible, objective measurement of harm. While this is the case for many violent crimes, the psychological damage for trafficking victims, in particular, is in many cases extensive and long-lasting."*

78 Commission, Transposition report (2016), COM(2016) 722 final and also document 'Key concepts in a nutshell' at: https://ec.europa.eu/anti-trafficking/eu-policy/working-together-to-address-trafficking-in-human-beings-concepts-in-a-nutshell_en

79 Extensive contributions were received from participants to the EU Civil Society Platform against THB, including 12 individual submissions from civil society organisation participant to the platform from 9 EU MS and 1 non-EU country and 3 joint submissions by either umbrella civil society organisations or platforms working against THB.

80 Staff Working Document to second progress report of the European Commission (SWD(2018) 473 final)

81 <https://eige.europa.eu/rdc/eige-publications/gender-specific-measures-anti-trafficking-actions-report>

82 "women are in many countries disadvantaged when it comes to accessing education and employment opportunities. As a result, they are more likely to be preyed upon by traffickers, including those who use false promises of employment as a ruse. A background of socio-economic disadvantage makes it less likely that a victim who has recently escaped a trafficking situation will be able to support herself. A compensation payment can provide vital cushioning for a woman to enable her to support herself, prevent her falling back into exploitation as a result of economic duress, or otherwise." The same EIGE report highlights that the EU compensation provisions fail to specify the ambit of what types of harms could/should be covered by compensation. It is left to Member States whether, and to what extent, psychological harm is included.

Civil society organisations noted that victims of trafficking may encounter difficulties in receiving compensation in cases, where the crime itself does not take place in the Member State where the victim stays or where the victim left the territory of the Member State where the crime took place. Civil society organisations reported that in case it is not proven that the trafficking offence involved the use of direct violence against the victim, victims have difficulty to access compensation. Child victims of trafficking seem to have more difficulty to receive compensation.

Children's compensation should serve to find durable solutions for children and need to take into account in particular their lack of access to education, missed opportunities, loss of primary carers and emotional support⁸³. Civil society organisations highlight that children may need also financial advice upon receiving compensation.

There are difficulties to establish the amount of material and non-material damages⁸⁴ and the procedures may contribute to secondary victimisation. Compensation amounts differ between EU countries and within the same country. Training of legal professionals in the criminal justice system dealing with compensation of THB victims is needed. Civil society organisations stress the lengthy compensation procedures. Additional conditions to receive free legal aid (such as financial test or requirement to stay or have a legal residence for over 90 days) make it even more difficult for victims of THB to receive compensation⁸⁵. If compensation is granted, it is often difficult to enforce the entitlement, because the perpetrators are not found or have moved their assets abroad or have declared themselves bankrupt. According to civil society, confiscation of criminal proceeds is rare as countries face significant challenges in identifying, tracing, seizing and confiscating proceeds of crime. Civil society organisations note the pressing need for more pro-active investigations into traffickers and their assets, which can be a basis to compensate victims. Civil society organisations highlight that victims of cross-border crimes might encounter different obstacles when claiming compensation.

Since trafficked persons experience physical and psychological consequences of the exploitation and abuse, compensation helps redefine victims as 'subjects' of justice rather than 'objects'. Compensation can support victims

to remedy the damage done, helps them towards their financial and economic autonomy and can reduce their vulnerability. Victims have mixed attitude towards compensation received from the traffickers, in some cases they see important to receive direct justice from the perpetrator in other cases they rather refuse the 'dirty money' from the crime.

3. Gender-based violence

According to the Istanbul Convention⁸⁶, gender-based violence includes acts causing "physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life". Domestic or intimate partner violence, sexual violence (including online), are all examples of the forms gender-based violence takes. The Istanbul Convention (which mirrors to a large extent the Victims' Rights Directive) sets out the following specific support needs of gender-based violence victims: information, general and specialist support services, shelters, telephone helplines, specific support for victims of sexual violence, protection and support for child witnesses.

Article 30 specifies that the State Party should ensure that victims of violence against women and domestic violence have the right to claim compensation from perpetrators for any of the offences established in accordance with the Convention.

Several key characteristics of gender-based violence result in particular hurdles/problems that are characteristic for victims of this type of crime. These problems – often structural and rooted into the European societies – have impact on access to compensation for victims of this type of crime.

Gender-based violence is rooted in, and a manifestation of, structural gender inequality. The European Institute for Gender Equality explains that "*gender-based violence may be normalised and reproduced due to structural inequalities, such as societal norms, attitudes and stereotypes around gender generally and violence against women specifically. Therefore it is important to acknowledge structural or institutional violence, which can be defined as the subordination of women in economic, social and political life, when attempting to explain the prevalence of violence*

83 The impact of online child sexual exploitation related to child trafficking, for example livestreaming is less re-searched and more is needed to training professionals in this regard. Repetitive-trauma of children needs to be avoided in the applicable procedures.

84 Some civil society organizations referred to UNODC model law: <http://www.unodc.org/unodc/en/frontpage/2009/July/model-law-on-trafficking-in-persons.html>

85 Other obstacles enumerated by the civil society include: lack of awareness among professionals, lack of interpretations, lack of access to legal aid, postponement of trials and long duration of criminal and civil proceedings or the return of foreign victims to their country of origin

86 The Council of Europe Convention on preventing and combating violence against women and domestic violence ("Istanbul Convention"), the most comprehensive international legal instrument in this field, frames gender-based violence as a violation of human rights and a form of discrimination against women.

*against women within our societies*⁸⁷.

It is also important to note that rates of reporting gender-based violence to the police are very low. For instance, the European Fundamental Rights Agency 2014 survey on violence against women revealed that victims reported the most serious incident of partner violence to the police in just 14% of cases and the most serious incident of non-partner violence in just 13% of cases. The reasons for not reporting are multiple and include the trouble involved in reporting an incident and a sense that the police will not be able to do anything about the crime. For around one quarter of victims of sexual violence by a partner or non-partner, feeling ashamed or embarrassed about what happened was the reason for not reporting the most serious incident to the police or any other organisation.

Particularly in the case of domestic violence, the violence is usually perpetrated over a long period of time, and in the form of different, repeated, coercive and controlling acts. This is relevant both for the extent of the harm for the victim specifically, and also for members of the victim's family, including any children, and community. In cases of femicide, children lose a parent. An additional challenge for victims of domestic violence is that in order to survive, victims tend to have to accept the attitudes of the offender. This creates a barrier for victims to recognise themselves as victims of crime.

Against this backdrop, civil society organisations reported that a crucial need of victims of gender-based violence is justice. It is important for victims to receive a clear message that what happened to them is not their fault (despite what the perpetrator, people in their social circle, or messages in the media, may have expressed), and is the sole responsibility of the perpetrator. Compensation can serve as a societal recognition that the violence was wrong and the victim should not be blamed.

Moreover, civil society organisations reflected that the level of compensation, beyond simply the availability of it, is important here. They explained that victims of gender-based violence may take the amount of compensation received as a reflection of how seriously the state/ society takes the harm they suffered, and the worth of their physical and psychological integrity.

In addition to adequately compensating harm and trauma experienced by victims as a result of gender-based violence, compensation should also serve as a form of support for an independent life covering among other things

therapy costs, loss of earnings and psychological damages.

Furthermore, the amount of compensation attributed should take into consideration that in cases of domestic violence, the victim may have to leave their home town in order to be safe from the violence. This means the need for reintegration in a new environment including finding a new job, schools for children and building up a new support network.

With regard to the delivery of compensation, it is important that there is a state advance of the compensation in cases where there is a delay in extracting the amount from the perpetrator, to ensure that any dependency or traumatic experience is not continued. The way the compensation is delivered should be sensitive to the specific needs of the individual victim.

Women victims of gender-based violence and their children often require special support and protection in legal proceedings because of a high risk of secondary and repeat victimisation, of intimidation and retaliation connected with such violence. Due to the prevalence of victim-blaming attitudes in society, including among professionals in the criminal justice system, and the normalization of gender-based violence⁸⁸, victims are vulnerable to re-victimisation during the criminal justice proceedings. Furthermore, retaliation or continuation of violence by the perpetrator is a real risk.


Civil society organisations emphasised that practical support is also essential for victims of gender-based violence and domestic violence. In the case of domestic violence, the decision to leave an abusive relationship is a complex one, fraught with insecurity and danger. Specialist support services play a crucial role in giving necessary practical support to survivors. Financial support is complementary to the practical support in order to empower the victims in particular in cases of economic abuse, where the victim becomes economically dependent on the perpetrator.

There are several specific barriers that prevent victims of gender-based violence from accessing fair compensation for the harm that they have suffered:

- Provision of the required documentation during the judicial proceedings (in cases of sexual violence, there are often no witnesses, and there may be no physical signs left by the time the victim has a medical examination).

⁸⁷ <https://eige.europa.eu/gender-based-violence/what-gender-based-violence/forms-gender-based-violence>

⁸⁸ Such attitudes are manifested in, for instance, false assumptions that women are likely to make up claims of violence

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- It is not clear who (police, support organisations, medical professionals, etc.) should be involved when it comes to providing basic information and support, including specifically on compensation. For victims of gender-based violence, it is crucial that specialised support organisations are involved to offer advice. These services also have an important role in empowering victims, which enhances the capacity of victims to endure challenging and lengthy court processes.
 - The amount of compensation attributed in gender-based violence cases is often very low. This might in part be related to a lack of awareness and training of judges on the dynamics and traumatic consequences of this type of crime. The amount of compensation should reflect the wide-ranging and long-term harm of gender-based violence, going beyond potential medical and therapy costs, to also cover loss of earnings and broader psychological damages. Compensation should serve as a means for re-building an independent and violence-free life of dignity.

Finally, I would like to praise the Commissions' efforts for the EU joining the Istanbul Convention – which is crucial for strengthening the rights of victims of gender-based violence. First it is important that all Member States support the EU's accession and swift ratification. Once in place, the Member States and the Commission need to ensure that these rights are implemented and give real benefit to victims. Even the best rights are only as good as they are implemented and applied in practice.

III. NEW EUROPEAN AND NATIONAL STRATEGY ON VICTIMS' RIGHTS AND COMPENSATION

A. INTRODUCTION: THE NEED FOR A EUROPEAN STRATEGY FOR VICTIMS OF VIOLENT CRIMES

A lot has been achieved so far in the European Union in the area of victims' rights. In particular, the 2012 Victims' Rights Directive is an important achievement. It entered into application in November 2015 and brought a set of binding rights for all victims of all crimes and corresponding obligations on Member States. The EU has also adopted a series of specific rules that deal with victims of specific categories of crime. Within the major achievements, I would like to stress in particular the 2011 Anti-trafficking Directive that lays down specific rights for victims of trafficking in human beings and sets up the Office of the EU Anti-trafficking Coordinator. Another great achievement is the adoption of the 2017 Counter-terrorism Directive that dedicates an entire chapter to specific rights of victims of terrorism, including a right to specialised support immediately after an attack and for as long as necessary. Finally, I would like to praise the Commissions' efforts for the EU joining the Istanbul Convention – which is crucial for strengthening the rights of victims of gender-based violence. Nonetheless, even the best rights are only as good as they are implemented and applied in practice. Now, it is up to the Member States – under the supervision of the Commission – to ensure correct transposition and application of these rights.

However, victims' access to compensation (both offender and state compensation) is still very much left to the Member States' discretion. The problems presented in chapter III of this report demonstrate also that there are still lacunas in the EU legislation that hinder victims' access to compensation and expose them to high risks of secondary victimisation.

We must also admit that the creation of the European Network on Victims' Rights is a first step towards improving coordination and cooperation at EU level. The Network re-groups national experts from Member States working in Ministries of Justice and provides for a platform for discussion, exchange of best practices and policy making for the national experts⁸⁹. Nonetheless, the extent and nature of problems presented in the first part of this report shows that the coordination and cooperation at both EU and national level must be significantly strengthened in the future.

When it comes to victims of terrorism, in 2019 the Commission will set up the EU Centre of Expertise for victims of terrorism⁹⁰, which will provide the expertise and guidance for the Member States, the European Commission and the European Network of Victims' Rights. It will also be a very important step before the setting up of a real coordination centre for victims' rights (including victims of terrorism), as proposed in this report.

1. Why do we need a EU victims' rights strategy for the next five years?

Today, the EU needs – more than ever – to continue developing and deepening its policy on victims' rights (including support and compensation). It requires an ambitious approach over the next five years. I therefore suggest launching a EU victims' rights strategy by the next Commission. Such strategy is indispensable to solve recurring issues and to provide the Commission with the tools to improve the lives of thousands of EU citizens that were harmed by crime and are now often forgotten by the state. In the following points, I explain why there is a need for such a strategy.

a) Compensation of victims of violent crimes is much more than a mere question of solidarity and empathy, it is a question of ensuring that victims' have effective access to their rights

Of course, we could easily explain the need for better reparation and compensation schemes in the EU to defend a humanist and solidarity-based vision of society and politics. According to such vision, we are under a moral duty to respond to the physical, economic and psychological difficulties of thousands of citizens affected in their flesh and souls after a violent act for which they are in no way responsible. However, improvement of the state and offender compensation schemes for victims goes beyond responding to victims' needs and showing our empathy. It is the state's duty to implement their rights. Compensation schemes for the victims are based on victims' rights and not only on victims' needs. Compensation of victims of violent acts belong to a system of human rights based on human dignity which entitles victims to be fairly compensated by their offender or, if not possible, by the state and to actively participate in a fair trial which aims at avoidance of impunity.

In my view and in light of the excellent analysis of the Fundamental Rights Agency⁹¹ it is necessary to promote

89 The Network is also working closely with victim support organisations, such as Victim Support Europe that are very active in advocating victims' rights at the EU level. When it comes to victims of trafficking in human beings, the Anti-trafficking Directive the position of the EU Anti-trafficking Coordinator that is effectively coordinating all issues related to anti-trafficking policy, including the victims' rights
90 As a pilot project and in line with the request of the European Parliament to set up a coordination centre for victims of terrorism
91 FRA (2019), "Justice for victims of violent crime. Part I: Victims' rights as standards of criminal justice" Luxembourg, Publication office of the European Union. (to be published)

the move from a needs-based rhetoric to human rights language. As explained at the beginning of this report such shift “changes profoundly the relationship between the victim and the State. The victim is no longer pleading for help on the basis of vulnerability, pressing needs and deservingness but demanding that the State takes seriously what it owes to the individuals living on its territory and their human rights. The State is no longer in the comfortable and patronizing position of a more or less generous Good Samaritan, but a duty-bearer indebted to the individuals living under its jurisdiction as rights-holders”.

b) Minimum rules on compensation for victims of violent crime is an issue of equal treatment of EU citizens and a requirement to build a more harmonious Europe

Lack of minimum standards on compensation and of cooperation within the EU is at the source of several major problems that victims face today when accessing compensation. A strong intervention of the EU and the Commission is needed to address the identified problems:

- Firstly, an increasing number of cross-border victims (involving both EU citizens and third country nationals) in the EU requires strengthening of cooperation among the relevant national authorities and calls for approximation of national compensation schemes.
- Secondly, all Member States provide some form of compensation. However, the levels of compensation and the efficiency of compensation mechanisms vary greatly from one Member State to another.
- Thirdly, the Member States have implemented their obligations under the 2004 Compensation Directive differently. The differences in the application of the rights to compensation of crime victims still persist. It results in inequalities in victims’ access to compensation. In some instances, this has prevented Member States judicial authorities from cooperating with those Member States with deficiencies in their compensation arrangements. This has an adverse impact on the victims’ rights to compensation and to effective access to justice.
- Finally, lack of certainty as to the level of protection (including access to justice and compensation) in another EU Member State may create obstacles to free movement of persons and of services (tourism). Some EU citizens may refrain from taking job opportunities, providing services or visiting another Member State if they feel that, they may become victims of a crime in another Member State and will not be properly protected. The wider impacts in terms of cost to society, citizen’s trust

in their Member States’ justice system and judicial cooperation across Member States are potentially large.

c) Political parallelism with the increased focus on the fight against violence and terrorism in EU

Under the pressure of the barbaric and deadly terrorist attacks experienced during the last legislature, the European Union decided to take giant steps forward in strengthening coordination and harmonisation in the fight against terrorism. The significant increase of terrorist acts over the past five years has demonstrated that the situation of victims of terrorism and more generally victims of violent acts deserve to be improved and that the European Union needs to take further steps to better implement their rights. Some important initiatives were already taken. The EU counter terrorism policy includes for the first time victims of terrorism. In particular, the adoption of specific rights for victims of terrorism in 2017 and setting up of the EU Centre of Expertise for Victims of Terrorism planned for 2019 are great examples of such victims’ oriented EU policy.

This approach should be now spread to victims of all crimes. For the next five years, strengthening victims’ rights should become a political priority, as strong as priorities concerning counter-terrorism or security policies.

d) Risks of an increase in number of cross-border victims in a borderless European Union

As explained in the introduction of this report, the EU should prepare itself to fight with new forms of crime and to take care of an increasing number of cross-border victimisation.

It is related to the fact that more people travel or move to another EU country. The number of cross-border victims in the EU may also increase due to new risks related to terrorist attacks and new forms of violence such as violent forms of cybercrime. Moreover, even if it is not the scope of this report, we must acknowledge that climate change and the recent deadly natural disasters will not stop and will lead to a significant increase in the number of victims of natural disasters in Europe. It will also be up to the next EU Commission to address the situation of victims of natural disasters, which can be the subject of a second possible report requested by the next Commission. The number of reported crimes may also increase, because we can expect that victims of gender-based violence will start reporting the crimes: one woman in three has been a victim of violence and we know that gender-based violence is typically unreported. By improving support and protection services and the level of compensation within a strategic frame-

work, we will enable these women's plight to empower more women to come forward and report the crime and make offenders accountable for their acts.

e) Need for the EU to renew its commitment to victims' rights

In-depth analysis of the problems in accessing compensation shows their cross-cutting nature and involvement of different actors at EU and national level. Any policy strengthening and harmonising victims' right to compensation should include imposition of minimum standards and a deeper cooperation among all actors involved. A coordinated and holistic approach is necessary to ensure that victims have effective access to their rights. At the same time, no major new action on compensation matters has been taken since 2004.

In the Commission's preparatory work on the Victims' Rights Directive, the Commission committed to acting with respect to compensation matters in the coming years. A similar commitment was made in the Budapest Resolution of the Council in 2011.⁹² Whilst the Commission clearly remains committed to progress in this field, the complexity of the issues combined with many important priorities in the victims' field has made such progress difficult. A strategy could permit the Commission to clarify its priorities in the field. It would also facilitate the necessary planning for the Member States.

2. Which Objectives for a European strategy for victims of intentional violent crimes?

The title of this report is "Strengthening victims' rights: from compensation to reparation".

It already indicates the main objective of the strategy and recommendations which I propose in this report: an evolution or a "paradigm shift" from an approach based on victim's needs for limited financial support to a more ambitious and fairer approach based on victim's rights to reparation for the harm suffered.

The recommendations propose in fact 4 key "paradigm shifts" in the EU victims' compensation approach:

- a) A shift from the concept of "victims needs to state compensation to a concept of victims' rights to state reparation".
 - A shift from the concept of "victims' needs to vic-

tims' rights" means that currently under EU law, victims of violent acts have a mere right to access national schemes of compensation, which results in their need for compensation not being fully met. This right should be strengthened. EU law should provide for a right to be fully compensated by the offender or, if not possible, by the state.

- A shift "from compensation to reparation" implies an evolution from a mere financial assistance "compensation" to the concept of "reparation" covering the compensation for the personal, physical, psychological and financial harm suffered (and not via lump sums) but also elements of recognition, reparation (as much as possible), rehabilitation and building resilience.
- b) A shift from the priority of the offender compensates first to the priority of state compensates first - by adopting the principle of the states' upfront payment where the state compensates victims first and later recaptures it from the offender. It means that compensation has first to be granted by the state and not any more, as in a majority of Member States, after the judicial decision concerning the offender.
- c) A shift from the principle of compensation by the Member State where the violent act occurs to the possibility for victims to choose compensation from the Member State of their residence. In this case the Member State of residence would be able to recuperate the compensation from the Member State of crime.
- d) A shift from disparities and lack of cooperation to stronger cooperation, coordination and harmonised minimum standards.

a) A shift from the concept of "victims needs to state compensation" to "victims' rights to state reparation"

From needs to rights

As explained more in detail in the part on "Human-rights based concept of victimisation", the shift from a needs based approach to a rights based approach means that victims of crimes have a right to justice and that the State, via criminal justice has an obligation to redress – to 'right' – the wrong done to victims. When the offender is fully or partly insolvent or unidentified or dead, the victim's right to be fully compensated by the offender is not respected. In

⁹² Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings - 2011/C 187/01 (see, in particular, Measure D in the Annex) http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=urisrv:OJ.C_.2011.187.01.0001.01.ENG

this case, it has to be the duty of the State to compensate instead of the offender and to implement the violated victim's right. This approach is in line with the Council of Europe Convention on Compensation, which states in Article 1.2 that "Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished".

Therefore, the second shift is closely linked to the first one and requires that the right of a victim of a violent act is to be compensated for the different damages suffered which should be defined in the same way independently of whether the victim is compensated by the State or by the offender. The objectives of compensation should be the same in the case of compensation from the perpetrator on the basis of its own civil responsibility and also in cases where the State compensation replaces or advances the compensation of the perpetrator owed to the victim.

From compensation to reparation

For state compensation, the 2004 Compensation Directive requires Member States to ensure that victims have access to "fair and appropriate compensation". In several Member States, this concept is implemented by the grant of a lump sum which is unrelated to the damages suffered.

The "compensation schemes" should shift to "reparation schemes". It means that the "fair and appropriate compensation" defined in the Compensation Directive cannot be implemented by granting lump sums on the basis of a mere financial support which is unrelated to the personal damages suffered. This principle of "full reparation" is the logical consequence of the rights-based approach presented above. The "reparation scheme" has a dual meaning, different from the compensation schemes as implemented by the majority of the EU Member States.

- First "reparation scheme" includes the coverage of the different personal damages and harm done to the victims by a violent act (physical, professional, psychological). It requires analysis and expertise of the different damages, the short and long term personal assessment of the victims situation in order to try to fully repair what happened and to place the victim to the closest position possible of his/her previous life. Provision to the victim of a full reparation is not only about compensating for the unjust harm suffered, it is also a mechanism of giving the victims the opportunities to return to the circumstances that are the possible closest to that of the victim before the crime.
- Secondly, the term "compensation" refers only to the purely financial and pecuniary aspect of the response given to a victim of a violent crime. It is a fundamental element to enable the victim to cover his economic

and material damages (loss of salary, travel or funeral costs, adaptation of the house, family assistance, financial compensation for physical and psychological damage, etc.). But it is clear, that financial compensation is insufficient to meet the personal needs of victims who require more personalised ways to be compensated not only in money, but also and above all "in kind", via services (health care but also human assistance, psychological, administrative and practical support, post trauma resilience and a referral person). When recovering from a violent crime the assistance of others, including psychological, practical and administrative assistance is essential. It is the first kind of reparation that the State has to offer alongside financial compensation. The concept of reparation implies therefore a State duty to subsidize or directly offer, as part of the compensation, in addition multidisciplinary free victims support services (health, psychological, practical, legal, family, rehabilitation) in the short and long term. According to the principle of full reparation, state compensation should also aim for the development of each victim's personal resilience despite the trauma and damages suffered.

That is why the proposed strategy also addresses aspects related to victim support services.

b) A shift from the priority of the offender compensates first to the priority of the state compensates first - via states' upfront payment where the state compensates victims first and later recaptures it from the offender

The principle according to which the duty to compensate victims lays in the first place with the offender is not questioned here. Wronged victims will always expect that their legal community will not allow the crime to pass with impunity and the offender should be sued both for the crime perpetrated and for victims' compensation. However, as specified in this report offenders' compensation is extremely difficult for victims to obtain.

It is costly and time consuming and often provides only symbolic compensation. It is also difficult to execute the adjudicated compensation decision from the offender. The majority of EU Member States require that the victim first pursues offender compensation before claiming state compensation. A reversal of this approach is needed. The duty of the State to respect victims' rights to be compensated should be to provide victims with upfront payment and to recapture it later from the offender. The state advances the payment to the victims and is immediately subrogated in the victims' rights to return to the offender to obtain all or part of the due compensation. With this logic, victims

benefit from dealing with one single interlocutor and avoid the risks of secondary victimisation related to often prolonged contacts with the offender.

The upfront payment by the state should be a victims' choice. Victims should always be able to claim compensation from the offender (in criminal or civil proceedings) if they wish so. This system is far fairer towards victims and can be organised in each Member State without any deep legislative changes concerning the judicial proceedings that vary between the Member States.

c) A shift from the principle of compensation by the Member State where the violent act occurs to the possibility for victims to choose compensation from the Member State of their residence

According to Article 2 of the 2004 Compensation Directive, the Member State where the intentional violent act occurs has to compensate the victim according to its national compensation scheme. The same principle is incorporated in the Council of Europe Convention on Compensation. The differences in legislation and compensation arrangements in Member States make it difficult for the victims in Member States in which they do not reside to submit compensation claims. The lack of uniformity of compensation practices and procedures, governance requirements and arrangements at national level and national legal framework make it difficult for respective national authorities (i.e. deciding and assisting authorities) to navigate compensation arrangements other than their own. In the light of all these problems, seeking compensation from the offender in cross-border situations may prove impractical if not impossible. There may be merit in requiring national compensation scheme to allow cross-border victims to access state compensation in their country of residence, and not where the crime took place. Victims would however, retain the option of claiming compensation in the country where the crime took place.

This recommendation would enhance the crime victims' access to financial compensation. The likelihood of receiving compensation and support provided to crime victims would also increase. It would render cross-border compensation simpler, less burdensome to the victim and more certain of leading to a satisfactory outcome. EU citizens would become aware of differences in victim's compensation regimes between Member States and it is likely that there would be peer pressure amongst Member States to 'reciprocate' in the sense of adopting similar approaches

to victims compensation so that EU citizens would increasingly look to the country in which the crime took place to provide access to compensation. In this way it is likely that in due course the proposal would reinforce the tendency for differences in victims' compensation regimes to reduce between EU countries.

d) A shift from disparities and lack of cooperation to stronger cooperation, coordination and harmonised minimum standards

One of the most important sources of problems is also the large discrepancies between Member States compensation schemes and practices preventing EU citizens from obtaining equal and fair treatment. Therefore, there is a need for a much more harmonised legal framework within the EU.

The other problem is due to the lack of cooperation at national level between stakeholders, national authorities, public services and victim support associations, but also at EU level. Actions should be taken at EU and national level:

- At national level, the care for victims requires close collaboration between public authorities and support services (health, justice, police, psychological assistance, support services and insurance, etc.).
- At EU level there are many actors that deal with victims' rights policy (FRA, EUROJUST, DG Just, DG Home, EU Anti-Trafficking Coordinator and the ENVR) and NGOs (victims' associations and victim support organisations, such as Victim Support Europe) that require a more coordinated and integrated approach.
- Coordination and cooperation should also be strengthened among the EU Member States as the increase of cross-border cases requires better coordination between national authorities and their respective coordination centres, but also greater harmonisation of legal provisions for victims.

3. Which Methodology for a EU victims' rights strategy?

- The Commission could set up a European Experts' Committee on victims of violent crimes, including experts from the Member States, different stakeholders, such as the relevant services from the European Commission (DG HOME and DG Justice), Eurojust, the ENVR, the EU Counter-Terrorism Coordinator, Victim Support Europe, EU Anti-Trafficking Coordinator and NGOs. The high-level members of the informal Steering Committee that

kindly advised me in drafting this report can provide a basis for such a formation. In line with the objectives to be decided by the next Commission, such Experts' Committee could advise the Commission on how to improve victims' access to compensation in the European Union on the basis of the findings of this report and other reports from different stakeholders. The Expert's Committee could also act as an embryo of the hub of expertise to be integrated into the future European Coordination Centre for Victim's Rights (see below)⁹³.

- The first important step for the next EU policy should be to publish a White Paper for victims' rights. The White Paper should present the strategy that would be based on the results of several reports including this one, research, expertise, and consultation and should include specific actions and guidelines to the Member States. The strategy should also include in my point of view (if in line with the objectives of the next Commission) a draft legislative proposal on victims' compensation – including adaptations to the 2004 Compensation Directive and to the 2012 Victims' Rights Directive.

B. RECOMMENDATIONS FOR A EU VICTIMS' RIGHTS STRATEGY

I present my recommendations on the basis of the analysis of problems and suggestions that I have gathered during the one-year work on this report. My research includes in particular several reports in the area of victims' rights, numerous meetings with various stakeholders including victim support services, testimonies and studies presented by Victim Support Europe, the data gathered by the ENVR and different contributions of the members of the informal Steering Committee. The recommendations are also based on the best practices of different Member States which are summarised in Annex IV. My recommendations are constructed around 6 blocks: better cooperation, better training, better information, better state compensation, better offender compensation and better support services.

Recommendation n°1: A EU victims' rights strategy for the next five years divided in two-steps: the first step with immediate practical initiatives to be taken by the EU without any changes to EU legislation and the second step with recommendations requiring EU legislative changes

I propose a progressive but also proactive strategy, divided in two steps- depending on the choice of the next Commission:

First step: Immediate practical initiatives to be taken by the EU without any changes to the EU legislation

I have identified a number of actions that can improve victims' access to compensation in the short term. They can be carried out without having to adapt the existing legal framework and existing policy mechanisms. The European Commission can play a leading role in taking new concrete initiatives concerning information, training and cooperation between the Member States. These can be done by supporting collaboration in cross-borders cases, providing guidelines and expertise, facilitating actions to be implemented by the Member States, agencies, and victim support organisations. It can also guide Member States to improve their national systems on a voluntary basis. Such non-legislative recommendations should be supported by peer learning activities, benchmarking, systematic reporting and other tools aimed at improving cooperation between the Member States. Some actions, however, should be decided rapidly and may require quick changes (such

93 If still necessary a large inquiry on the state of play of the Member States implementation of EU rules, a large consultation (including digital platforms) concerning problems and expectations from the EU victims and organisations to have the largest participation process could be organised but the problems faced are already well known and it is argued to be more appropriate for actions and decisions than long surveys

as the designation of a EU Victims' Rights coordinator or the setting up of an EU Coordination Centre for Victim's Rights).

Second step: recommendations requiring EU legislative changes

These actions should be preceded by the first step actions which are necessary to efficiently improve victims' compensation, but may not suffice to complete all objectives. Given the often poor performance of the national compensation schemes, it is likely that the adoption of recommendations without legal backing would have a lower impact on the ability of victims to access compensation arrangements. This is particularly true, when it comes to the likelihood of obtaining compensation decisions and the enforcement of the compensation awards from the offender.

That is why I have also included in the recommendations (as a second step) long-term recommendations for the Commission to set up a coherent package of legislative proposals. These recommendations will make a stronger contribution to the policy objectives. The proposed changes would enable the Member States to move towards more common standards and legally binding enforcement mechanisms at EU level.

Such new legislation would respond to the problems such as the lack of fair and timely offender's compensation and the diversity of national compensation schemes that persist, despite the existing EU rules in the area. The central argument for these additional recommendations is that the current legislative framework needs adaptation in order to give an adequate response to the problems faced by victims and effectively implement their rights to compensation. It will be up to the next Commission to consider the entire recommendations or choose the most appropriate. If there is a solid will for legislative changes, I would recommend to merge Directives 2012 and 2004 to indicate that victims reparation or compensation needs a holistic approach and falls on one hand under victims' rights states' duty, State compensation and on the other hand under judicial proceedings and support services. Of course, mere adaptations can also be integrated in the 2 existing Directives. In the event that unfortunately, the Commission does not choose this option, the proposals of EU legislative changes presented in this report should be then presented as recommendations to the Member States to implement themselves at national level. Both options are mentioned in the report.

My suggestion for the next Commission is to make an overall plan with a step-by-step programme. Not all things can be done at the same time. Better implementation of the existing EU rules, new immediate EU actions concerning cooperation, information and training and therefore the designation of an EU Victims' Rights coordinator or the setting up of an EU coordination centre for victim's rights. It is the same for funding of EU actions and guidelines. Meanwhile, the second step concerning the preparation of the next rules can be launched with the participation of various working groups by involving the different stakeholders.

The point of departure of the Member States is very different. Some have lots of facilities for compensation, others do not. This situation should be taken into account. If a Member State has not implemented the present rules, how can we expect it to be ready to implement higher standards on the basis of new EU rules?

1. Better cooperation at national and EU level

To achieve better, fairer and quicker reparation, including compensation and support for victims that would be non-discriminatory and would include immediate and long term support, we have to ensure better coordination among all actors involved. That would include exchange of best practices and mutual training activities.

a) Better cooperation at national level

Recommendation n°2: Guidelines or legislative provision to make the Member States adopt a "national victim's rights strategy" (legislative change or recommendations)

We have noticed that many Member States do not have an elaborated strategy on the objective of state compensation. Indeed, some compensation authorities interviewed in the framework of this report admitted their lack of strategy.

Others have developed their objectives for compensation but don't seek to share these with victims, sometimes by creating a difference in expectations and disillusioning the victim.

Recommendations:

- 1° to recall⁹⁴ EU guidelines for the Member States to

94 Such guidelines already exists see https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights_en

develop a more integrated and holistic approach concerning victims' rights and to adopt a national victims' rights strategy including all relevant actors to improve the support and compensation of victims of violence acts. This strategy should fulfil some EU requirements based among others on the present report.

- 2° or to be more efficient in drafting a new provision in the 2012 Directive or in a new global Directive on victims' compensation to impose on the Member States an obligation to adopt a national victims' rights strategy and, on this basis, to send to the Commission every 2 years a national report on the state of play of the implementation of the strategy.
- 3° EU could propose "flying squads" of specialists in order to assist the Member States to improve present systems (including implementation of existing EU rules on compensation) and to assist in implementing new rules.

Recommendation n°3: setting up of national victims' rights coordinator, national victims' rights coordination body, national single point for victims' compensation and national crisis response networks (legislative or non-legislative changes)

The strategy should include the setting up of national victims' rights coordination body. A holistic strategy for victims involving all actors that come into contact with victims is absolutely necessary in order to ensure that victims' have effective access to justice and to compensation. Such a holistic approach cannot be achieved if all actors coming into contact with victims do not work closely together. Such a structure already exists in some Member States, for instance in France. At this point I would like to stress that I have been very much inspired by the efficiency and great work of the current French inter-ministerial delegate on victims' rights.

- 1° The Commission could oblige or recommend⁹⁵ to the Member States to designate a national victims' rights coordinator in charge of the national coordination between the different authorities and between the public authorities and the victim support services. This proposal would go with the setting up of a permanent national coordinating structure under the supervision of the national victims' rights coordinator, providing for internal different platforms of department to offer common services and exchanges of information between the different national stakeholders (compensation bodies, victim support organizations, prosecutors, police,

health care, emergency services, foreign affairs). This structure could be decentralized and become a single contact point where the victims can find different information and connections with the personal support needed and the direct contacts with the state compensation authorities.

- 2° The Commission could – in addition to the current recommendations - adapt the 2004 Compensation Directive so that the national contact point designated according to this Directive is responsible for the state compensation national structure. Without any specific request, the contact points are often not directly linked with the daily exercise of the state compensation competences and can also differ from one meeting to another which results in inefficient and unstable cooperation.
- 3° Another important recommendation expected by numerous victims and organizations supporting victims of terrorism should be to set up within this coordination structure, a national crisis response department, closely coordinated with police, prosecutors, emergency services, rescuers, health services and of course victim support services. It should be sort of single contact point, or 'one-stop-shop', for victims of terrorism with several casualties especially in the immediate aftermath of a terrorist attack. For example, the Dutch government has also established an online one-stop-shop after the MH17 attack⁹⁶. The online platform offered victims information from different authorities, support organisations and experts and facilitated contact with the different actors.

The national crisis centre could include the following services:

- To provide for an official and reliable source of information to victims and their families and to set up a free 24-hour call line offering advice and guidance to callers.
- To coordinate governmental/public authorities and NGOs reacting to the event.
- To establish near the site of the crisis an immediate reception centre of all victims who are not in need of urgent medical care with psycho-medical first aid.
- To train professionals supporting victims, offering a multidisciplinary team to meet the immediate needs of traumatised victims and their families.
- To inform victims face to face of their rights and offer practical guidance on how to navigate through

⁹⁵ in integrating a provisions in the directives

⁹⁶ (in the framework of the above mentioned permanent national coordination structure or closely linked to it) taking inspiration from the French model ' (CIAV) and the 'Centre de Crise et de Soutien' (CDCS).

the system. Providing information on compensation face-to-face is argued to be more effective for those experiencing trauma and information is more likely to be better perceived as being provided respectfully when done so in person.

- To provide documents on compensation, including documents necessary to make a cross-border application for compensation.
- To refer victims to external referral points depending on their needs: medical service, police station, victim support organisations, embassy, national compensation authority, etc.
- To provide assistance on translation for cross-border victims.
- To conduct a full mapping exercise of all the services that can react after an attack and in the long term, determination of what activities each service is responsible for and collaboration and preparation prior to an attack.

4° A qualitative and comprehensive registration of victims is crucial for quality support and follow up of victims. Member States have to take measures to share information among services and institutions whilst respecting privacy. Developing a list of registered victims is a precursor for the provision of wide-scale targeted information, access to justice and tailored services which have to be directly offered to the victims and not requested by them. A proactive follow-up is needed to reach the victims without having to wait for a special request to be allowed to accompany them. It should be done in accordance with the EU rules on personal data protection and data sharing.

Recommendation n° 4: New rules to coordinate between the insurance sector and state compensation authorities or governments (recommendations)

When an insurance system exists for terrorism or violent act, there is a need for the Member States to put legal in place mechanisms on coordination of public/private actions. In particular, to make private actors accountable, while ensuring public financial participation in the event of excessive losses and to define more precisely their duties toward the victims and to oblige them to grant emergency and upfront payments, to simplify the procedure and decide on a common system of expertise and evidentiary requirements.

b) Better coordination at EU level

In-depth analysis of the problems in accessing compensa-

tion shows how victims' rights and victims' compensation relate to cross-cutting issues and involve different subjects and actors at EU and national level. Any policy improving the situation of victims' rights or victims' compensation must go through a reinforced cooperation between EU actors and much closer EU policy coordination. There is also an important need to improve under the active supervision of EU the coordination between the Member States and national authorities to deal effectively with cross-border cases.

Recommendation n° 5: Designation of a EU Victims' Rights Coordinator (internal decision of the Commission or legislative change)

I recommend the designation of a EU Victims' Rights Coordinator who will be responsible for improving (on behalf of the Commission) the coordination and coherence within the EU, coordination of the work of the experts and for developing existing and new EU policies to address victims' rights issues (as does the EU Anti-trafficking Coordinator for anti-trafficking issues).

The EU Victim's Rights Coordinator could be responsible for improving coordination and cooperation among and between EU institutions, EU agencies, between the Member States, between on the one hand EU and on the other hand national authorities and victim support services. The Victims' Rights Coordinator should also be responsible for developing new actions. He/she should have the same statute as the EU Anti-trafficking Coordinator who has been perfectly ensuring a coordinated approach on all issues related to trafficking of human beings in relation to other relevant EU policies and with relevant EU and national actors. To avoid duplication, the EU Victims' Rights Coordinator's competences should not enter into the scope of the EU Anti-trafficking Coordinator's actions.

The following mission of the EU Victims' Rights Coordinator:

- In close connection with the ENVR, ensuring the coordination of the actions and collaboration with external stakeholders (such as the European Network on Victims' Rights, FRA, EUROJUST, DG Just, DG Home, EU Anti-Trafficking Coordinator, EU Counter-Terrorism Coordinator, the Judicial Training Network) and NGOs (victims' associations and victim support organisations, such as Victim Support Europe);
- Proposing guidelines and action plans on victims' compensation and victims' rights, helping to prepare and implement the next EU strategy on victims' rights;
- Monitoring the implementation of the Victims' Rights Directive, 2004 Compensation Directive, 2017 Counter-terrorism Directive;

- Increasing awareness raising and acting as a victims' rights advocate in the EU (organise and promote awareness raising campaigns, promote the EU approach to victims' rights in contacts with third countries);
- Ensuring appropriate mainstreaming of victims' rights policy into all other victims' related policies (gender-based violence, counter-terrorism and security, inclusive society and insurance);
- Initiating the coordination between the national authorities;
- Ensuring the supervision of the EU Centre of Expertise for Victims of Terrorism and if established the Victims' Rights Coordination Centre (see below).

If the option of establishing an EU Coordination Centre for Victims' Rights is pursued, the Victims' Rights Coordinator should ensure the supervision and direction of the centre and, in this case, the above-mentioned missions should be implemented through the Coordination Centre. If the option of creating an EU Coordination Centre for Victims' Rights is not chosen, the Victims' Rights Coordinator should run a specific task force in charge with the same mission and gather different stakeholders in a participative platform dealing with victims' rights and compensation. If the option of designating a Victims' Rights Coordinator is not chosen, these functions should be endorsed by a special task force within DG Justice to guide and facilitate actions, implementation and cooperation.

Recommendation n°6: Setting up of an EU Coordination Centre for Victims' Rights under the supervision of a EU Victims' Rights Coordinator (legislative change)

In addition to the designation of an EU Coordinator for Victim's Rights, I also recommend to set up a multidisciplinary EU Coordination Centre for Victims' Rights within the Commission. Given the complexity of victimisation and the challenges, there is a need for expertise to support the European Commission in different fields. Such a Coordination Centre should work under the coordination of the EU Victims' Rights Coordinator and could be managed with different departments dedicated to specific missions, with a support of a multidisciplinary board regrouping the major relevant stakeholders in the area of victims' rights. It should not deal with the present and legal mission and action of EU ATC, but will closely collaborate with her.

The role of the Centre should be to:

- Gather the expertise about victims' rights and compensation in a specific department that would provide expertise, training, exchange of good practices, guidelines to EU institutions, Member States authorities and victim support services. It could integrate a EU resilience and post trauma platform or choose to closely collaborate with the resilience centre in France;
- Assist the EU Coordinator in ensuring coordination of the actions on victims' rights within the Commission and externally with the different stakeholders such as the European Network on Victims' Rights, FRA, EUROJUST, DG Just, DG Home, EU Anti-Trafficking Coordinator and the Judicial Training Network) and NGOs (victims' associations and victim support organisations such as Victim Support Europe);
- Ensure appropriate mainstreaming of victims' rights policy into other EU victims' related policies and contribute to the development of existing or new Union policies and strategies to improve victims' rights and compensation;
- Increase awareness raising and assist the EU Coordinator in its role of a victims' rights advocate (organising and promoting awareness raising campaigns, information tools and promoting the EU approach to victims' rights in contacts with third countries);
- Set up a single EU online platform and website (see below) in all EU languages on concrete information concerning the rights of and support to victims, including victims of terrorism with a link to the contact points in each Member State including a help line setting;
- Ensure implementation of the relevant EU rules by providing guidelines and constructive dialogues with the Member States and other actors; or taking adequate actions in case of infringement of the legal EU obligations;
- Within a special department dedicated to victims of terrorism or multi casualties violent act, as proposed by the European Parliament, provide for timely and adequate crisis support in cases of mass attacks in one or several Member States;
- Within a special department dedicated to cross-border cases, provide for concrete coordination between the Member States and practical support if needed concerning complex cross-border cases⁹⁷. Whilst opportuni-

97 The coordination of cross-border compensation across EU Member States requires a coordination role embedded in the responsibilities of EU. If the option of a EU victims' rights coordinator is not chosen neither the setting up of a coordination centre, DG Justice can guide and facilitate the functioning of national compensation authorities to support resolution of concrete issues, mediate, find solutions. Ensuring the network of national compensation authorities functions sustainably and effectively necessitates such a position.

ties for coordination with consular services lie primarily with the Member States, the Centre could facilitate structural coordination through increased collaboration with the EEAS, embassies and consulates.

The activities of the Centre should be supported by the ENVR. The modalities of close cooperation between both structures should be established at a later stage. The EU Centre of Expertise for Victims of Terrorism that will be set up in 2019 should be integrated into the future European Coordination Centre for Victims' Rights, as an expertise department. The Centre should develop and keep updated a pool of experts to assist the Member States in different domains including psychologists, lawyers, victim support organisations and first respondents.

The platform should in particular develop a specific pool gathering psycho-trauma experts specifically trained to deal with post-traumatic syndrome characteristic to victims of terrorism, ready to be deployed, immediately after a terrorist attack to the Member State concerned.

The platform would gather experts, research, knowledge and skills from the European Union and around the world. The Centre will develop awareness raising activities and develop guidelines and training programmes for the Member States.

c) EU actions to improve collaboration between different national authorities and with stakeholders

Recommendation n°7: A common concrete action plan to deeply and concretely strengthen the cooperation in cross-border cases concerning the relevant and compensation state authorities (no legislative change)

DG Justice and the ENVR, on the basis of the results of technical working groups with the contact points, the national compensation and other relevant authorities should set up in short term a common concrete action plan under the impulse of the Commission to deeply and concretely strengthen the cooperation in cross-border cases. This action plan should:

- Recommend concrete actions and proposals of agreements or protocols to be adopted between the relevant authorities;
- Solve different problems concerning the implementation of the Compensation Directive, the hurdles in compensation procedures and the exchanges of information duties;

- Propose concrete cooperation and common decisions concerning common forms, evidentiary requirements, expertise, translation duties and collaboration between involved support services;
- Decide on a type of common national and bilateral actions process in the aftermath of a terror attack between the relevant national authorities, contact points and embassies of the deciding or assisting Member States;
- Clearly state the respective duties of the assisting and of the deciding contact points under the 2004 Compensation Directive. Currently, some Member States have stepped away from using the provisions in the Compensation Directive as they feel assisting victims in claiming compensation abroad is more harmful than positive for the victim's well-being. Some Member States do not even receive any information on the decision on compensation to a victim by Member State where the crime took place. There are no specific procedures to avoid duplication of payment;
- Ensure that the network of national compensation authorities functions sustainably according to a new clear process mutually decided, that the contact points designated according the 2004 Directive are the persons responsible for compensation and participate on a regular basis in meetings. Stronger networks of cross-border collaboration of authorities should also be embedded in stronger coordination with other European institutions, the ENVR, agencies and non-state actors such as Victim Support Europe;
- Organise regular meetings of national contact points. It has to be organised officially on a regular and professional basis. All national contact points interviewed strongly applaud the promotion of these new meetings that could take place under the impulse of the Commission.

The benefits of regular meetings are to bring national authorities together to discuss European policy and legislation on cross-border compensation. They also promote building relationships between national compensation authorities that facilitates further collaboration.

The meetings offer a forum to ask questions bilaterally on national procedures to claim compensation and on specific cases, share good practices on cross-border compensation procedures, information provision and collaborations, organise mutual trainings between national compensation bodies and victim support organizations to improve the handling of compensation claims and minimize the risk of secondary victimisation.

Next to collaboration as an EU-wide network, compensation authorities strongly value and appreciate good bilateral contacts and information sharing as a foundation for collaboration on cross-border compensation. Bilateral or trilateral visits can promote collaboration between countries who share many cases. It would facilitate and could even decrease costs of collaboration. Promotion of national action plans and for as strong networks requires specific initiatives and funding from the Commission. In previous years fewer initiatives or funding for facilitating the meeting of compensation points has dwindled. To reinforce the network, appropriate investment is needed.

Recommendation n°8: New provisions to integrate in the 2004 Compensation Directive concrete duties of collaboration imposed on the different relevant national authorities (legislative change)

To be more efficient, Articles 3 and 5 of the Compensation Directive should be adapted to provide for more precisions regarding the concrete duties of national authorities in cross-border cases (binding mechanisms of collaboration, exchange of information, victims' assistance and information, see other examples above).

Recommendation n°9: Better harmonisation of the EU insurance sector and cooperation with the compensation authority

The Commission should launch a call of procurement to study how to improve harmonization between the EU insurance sectors and national laws concerning the coverage of terrorism or violent crime, the need for a private/ public model, the ways to simplify the procedure (expertise's etc.), to be more victims' friendly, to collaborate with the national compensation funds or with public authorities.

Recommendation n°10: A common action plan to concretely strengthen the cooperation in cross-border cases concerning judicial authorities (non-legislative change)

The Commission should ask EUROPOL, EUROJUST and FRA to work together to draft a report on how to improve the cooperation and exchange of information between the judicial authorities (police, prosecutors and judges) concerning victims of violent crime including terrorism in cross-border cases.

d) EU initiatives to set up the EU Solidarity Fund for victims of terrorism

We suggest the creation of an EU Solidarity Fund for victims of terrorism.

Recommendation n°11: The creation of an EU Solidarity Fund for victims of terrorism

We suggest the creation of an EU Solidarity Fund for victims of terrorism that would support national actions for victims of terrorism. Such fund could be extended to other victims of mass casualties. To cover the additional costs of terrorist (or other criminal acts) of an exceptional dimension and exceeding a certain national budgetary level. The fund can be established as a self-standing instrument on the basis of new EU legislation or by extending the scope of the EU Solidarity Fund covering natural disasters.

2. Better and more accurate information on victims' rights and compensation (state and offender)

a. Short term actions and recommendations to sufficiently and accurately inform the victims in a simple way about their rights and compensation schemes

First of all, in order to be as efficient as possible and to better support victims, the EU should conduct studies to measure how victims perceive the information they receive. On this basis, the EU (through the EU Victims' Rights Coordinator and the EU Victims' Rights³⁸ Coordination Centre or DG Justice) should take important measures to strengthen information on victims' rights.

Recommendation n°12: Better, accurate and victims' friendly information (non legislative changes)

EU should take the following measures:

- 1° To fund initiatives for the development of awareness raising campaigns in the Member States through media advertising on television, radio, advertisements on billboards, transportation hubs, tourist maps, airline, medical services, Facebook, social media etc.
- 2° To take support initiatives for awareness raising campaigns about the obligation to provide information by competent authorities who come into the first contact with victims to also include information concerning local victim support organisations and other available support services.

98 A good example of EU wide awareness raising campaigns is the information provision on EU rights for travelers that is spread in airports, travel hotspots, websites

3° To ensure uniformity with regard to information provided to victims, Member States should provide a single official website containing accurate information on their national compensation schemes. This information should be revised and updated annually. This will avoid incoherent and inaccurate information being provided. The EU should promote setting up of e-interactive and user-friendly informative national websites, hotline telephone lines, personal contact with victims via victim support organisations and compensation bodies.

4° To set up a EU multi-languages and victims' friendly website on legislation, national compensation schemes, forms, contacts, expertise and news in case of emergency with updated information. The European e-Justice Portal⁹⁹ is the primary tool for compensation authorities to find information on compensation schemes in the Member States. Currently, the e-Justice Portal cannot be seen as a fully reliable source, as information can be contradictory to other national sources.

- The e-Justice Portal needs to be more widely advertised, for example on national websites on compensation schemes. This EU website should include direct links to national websites. The Commission should establish a common glossary of terms related to compensation to avoid confusion for victims and national authorities;
- There is a need for a strong system that ensures a continuous and multi-languages update of information through good communication and coordination with the Member States. Public contact details for claiming compensation have to be regularly updated on the e-Justice Portal;
- To increase the trust and usefulness of the e-Justice Portal (to be encoded directly by the national e-Justice content managers). Contact details of individual experts who act as Central contact points are communicated to the Commission (for further distribution among the network) and have to be available upon request from other Member States through the website;
- To ensure better comprehension of information, multi-media formats should be provided for at national and European level. National websites and a renovated e-Justice Portal should contain not only written information, but also audio and video information.

5° From the early stages of provision of information until the end of court hearings, communication safe-

guards should be implemented to ensure comprehension by all victims of crime, regardless of their linguistic and intellectual abilities, taking into consideration accessibility requirements of victims with visual, hearing and speech impairments, including victims with learning disabilities¹⁰⁰ and children.

6° The Commission should recommend to the Member States to develop simple, accessible, trauma-sensitive information to ensure that victims receive information and can make an informed decision regarding their rights to compensation. The Commission could provide for guidance documents to the Member States on development of simple, understandable, trauma-sensitive information for victims which can be directly used by the Member States, authorities and NGOs. Efforts should be made to have official information also available in a 'child friendly' format, so that child victims understand their rights, but also to ensure that children of victims have the opportunity to be informed and understand what is happening in their home environment. Information should be adapted for other victims with communication difficulties. States should explore ways to have information pre-tested by different groups.

7° To implement cross-border victims' access to compensation, the Commission should suggest that information should be available in public spaces where tourists are likely to visit (for example airports, public transport stations, etc.) The contact details of victim support organisation should be printed on tourist maps and be available in tourist information centres, which is in line with our recommendation on general awareness raising.

b) Short term recommendations and actions to ensure that victims are sufficiently informed about how to proceed through the complex administrative and judicial procedures

Recommendation n° 13: Better information about how to proceed through the complex administrative and judicial procedures (recommendations or legislative change)

1°- The EU (through the Victims' Rights Coordinator and the EU Victims' Rights Coordination Centre or DG Justice) should develop a common document which sets out a description of the minimum information that a Member State must provide for victims of crime on victims' rights and guidelines on applying for com-

pensation¹⁰¹

- 2° As Compensation schemes are complex, and victims have to trail through an enormous amount of information before finding the section which applies to their situation, this could be simplified by using a 'smart search' filter when displaying results on a website, so victims can quickly find relevant information concerning their individual situation.
- 3° The EU should recommend to the Member States to explore the use of new technologies to improve the way victims are informed, including through artificial intelligence and support bots.
- 4° The EU should encourage a built-in check in the data system managed by police and prosecutors which indicates whether information has been provided, under what form, in which language in order to ensure that information is provided to victims in practice. It should not be possible to digitally surpass this checking system.
- 5° The Member States should establish mechanisms to control and evaluate the performance of police officers and how they comply with the obligation to inform victims.
- 6° In the Member States, information should be provided repeatedly and at different stages. Primary information provided at first contact (with police officers, doctors or victim support organisations) should be repeated for the second contact with the same actors, repeated before, during and after court proceedings, and repeated by support workers within victim support organisations.
- 7° The Commission should recommend that compensation authorities should develop procedures to increase transparency towards victims and other stakeholders.

Recommendation n°14: To provide a legal obligation for prosecutor/judge to verify during criminal proceedings/trial whether the victim is aware of the right to claim compensation (legislative change or recommendation)

Lack of information not only represents a serious obstacle to the enjoyment of victims' rights, but research on victim satisfaction has also repeatedly identified the lack of information as a prime source of dissatisfaction with criminal proceedings, and one which discourages them from actively participating. Measures aimed at raising victims' awareness of their rights are therefore equally important

101 The guidelines should include, national deadlines, Information on the interrelationship between offender and state compensation, Guidance for cross-border victims Cost of applying for compensation, support services, legal aid, a practical guide on the compensation procedure in a simple and easy-to understand language, that includes video and audio information (what forms to complete, what evidence to provide, where to submit the claim, etc.) and a Contact list of Victim Support Organisations, National Compensation Authority, local police stations, etc.
102 FRA (2019), "Justice for victims of violent crime. Part I: Victims' rights as standards of criminal justice" Luxembourg, Publication office of the European Union. (to be published)

as access to information specific to an individual case¹⁰²

- 1° The EU should require under EU legislation (or recommendation) the creation of an obligation for prosecutors or judges to inform victims and to verify during criminal proceedings whether the victim was informed about the right to claim compensation from the state and/or the offender. The implementation of the obligation would be confirmed by an 'acknowledgement of understanding' mechanism (for example, a record would be made of the victims' decision to constitute civil party to the criminal case file or otherwise to pursue compensation).

The proposal would increase the knowledge of the availability of the financial compensation and ways to access it. Hence the likelihood to obtain compensation would increase. The proposal would improve victims' equal treatment and reduce legal uncertainty that could arise if victims are not informed at the trial stage. As the proposal would lead to changes during criminal proceedings it could have an indirect effect on the prosecutors or judges consideration of compensation, hence some positive influence on whether compensation was pursued. Also, the measure would improve support as it would ensure both awareness and understanding of the right to compensation. In the absence of the proposal being implemented it is likely that judges and prosecutors may assume that victims are already appropriately informed about compensation. The proposal is likely to be more effective if it is underpinned by EU legislation because the procedures would be more systematically applied.

- 2° The proposal would involve EU funding for the training of national trainers and the development of EU-wide training content. (See above).

c) Recommendations to have information available in other languages

Providing translators is invaluable to non-native victims, but often timely and expensive, and may not be viable for all Member States to achieve.

Recommendation n°15: Translation of documents and information (legislative change or recommendation)

A guiding principle should remain that victims are not to be penalised within the compensation procedure for any de-

lays caused by administrative requirements (e.g. translation of documents), authorities, or any other delay caused by the nature of a cross-border application which is beyond the control of the victim. I would suggest:

1° To launch a research and analysis of the cost and impact of translation for cross-border compensation claims for national compensation authorities. The Commission should examine what is the impact of failure to translate and the potential cost of translating documents. Developing cooperation mechanisms for language services should be explored which could result in reduced overall costs for all Member States to ensure the correct implementation of Articles 4, 8, 9 of the Victims' Rights Directive.

The Commission facilitates the discussion between the Member States to make a decision on the burden of responsibility of providing interpretation and translation – and bearing the costs – for cross-border victims by either the deciding or assisting authority.

2° To implement creative measures and flexibility to provide victims with the possibility for (informal) translation in as many languages as possible. For example, the Swedish national compensation authority has developed a system where informal translations and interpretation by multilingual staff can provide preliminary information on compensation files and procedures.

3° To explore existing technologies to allow for automatic translation of online information on compensation. Member States can allow for applications to be filled online in formats where existing technologies are able to provide preliminary translations¹⁰³.

4° To promote English as a single common official language to be used by national authorities dealing with cross-border compensation.

Recommendation n°16: To include more detailed provisions in the Directives on the Member States duties concerning information to victims

Besides the necessity of the recommendations and actions presented in this section, I recommend that:

- For state compensation, Article 4 of the Compensation Directive should be adapted to include more precise obligations for the national and compensation authorities including the obligation to ensure that the information is translated – so it reaches victims in a way that corresponds to their needs.

- Concerning offender compensation, the Victims' Rights Directive should be adapted to include more precise obligations of information for the judicial authorities and the police, including the need for translations.

A new provision of the Victims' Rights Directive should oblige the prosecutors or judges to inform victims and to verify during criminal proceedings whether the victim was informed about the right to claim compensation from the state and/or the offender. The implementation of the obligation would be confirmed by an 'acknowledgement of understanding' mechanism (for example, a record would be made of the victims' decision to constitute civil party to the criminal case file or otherwise to pursue compensation).

3. EU initiatives for better training and guidance to ensure respectful treatment of victims in state and offender compensation schemes

We share the analysis of the Fundamental Rights Agency stating that "Providing relevant training is another crucial element to ensure that victims' rights are guaranteed and translate into the provision of appropriate victim support. All persons likely to come into contact with victims, such as police officers and court staff, and those providing victim support and restorative justice services, should receive such training. To be effective, training needs to cover both the need for a sensitive approach to victims, especially regarding particularly vulnerable groups, and specialised knowledge, again with an emphasis on certain groups of victims". The EU should analyse the need to adapt Article 25 of the Victims' Rights Directive to be more precise about concrete initiatives to be taken by the police and prosecutors. Ensuring compulsory general as well as specialist training for officials, who are likely to come into contact with victims, such as police officers and court staff, will require increased efforts in a number of EU Member States.

While the primary responsibility for ensuring training, particularly under the Victims' Rights Directive lies with the state, training organised and provided by non-state actors is widespread.

Providing respectful treatment from compensation authorities should be at the heart of any state compensation system as part of the rights-based approach. Ensuring compensation authorities approach victims in a sensitive and humane manner requires a careful combination of leadership, recruitment strategies¹⁰⁴, training and development of

¹⁰³ Good practices from Sweden where compensation authorities allow for information translations from governmental staff to facilitate compensation claims in different languages are a source of inspiration

¹⁰⁴ Recruitment procedures should aim at selection of victim-sensitive staff members who are able to combine professional skills with humane and flexible approach to victims and their environment. Respectful and humane treatment builds on a comprehensive human resource strategy that ensures enough staff to assist victims claiming compensation. In many Member States compensation authorities are understaffed and forced to limit the time they spend on compensation cases below what is needed.

tools for ongoing monitoring and evaluation procedures. Cultural change within authorities cannot be achieved through training by itself. It is important to ensure that law enforcement, judicial authorities, state compensation authorities and victim services providers are capable and trained to provide complete, trauma sensitive, personalized and timely information to victims. The recommendations of this section should be prepared and provided by the EU Coordination Centre for Victims' Rights or, if the option is not chosen, by the Commission (DG Justice).

Victims' issues (victims' needs, rights, reactions to crime, etc.) should be part of basic training for lawyers, social workers and health care workers. We agree that more needs to be done in the field of information and training. It is of particular importance that such measures are anchored in a strategy. The first and elementary training measures should be directed at all victims and - as a next step - further efforts could be made which are focused on groups of victims considered as vulnerable.

Recommendation n°17: Recommendations and guidelines for the Member States to develop obligatory, high quality training of all professionals who have direct or indirect contact with victims (recommendation or legislative change)

1° The Commission should recommend or the EU should impose in the revision of the 2004 Compensation Directive (state compensation) and the Victims' Rights Directive (offender compensation) the development of obligatory, high quality training of all professionals who have direct or indirect contact with victims. That would include police, prosecutors, judges, lawyers, health care workers, victim support services and professionals, consular and embassies to improve institutional capacity and address the problem of lack of information and clear guidelines. Training on how compensation authorities should communicate with victims orally and in written form, projects and guidelines on the way to communicate – what could be harmful and what constitutes positive language could be also of great importance.

2° The Commission should recommend that specific training be provided to compensation authorities to assist specific groups accessing their right to compensation such as victims of terrorism.

After terrorist attacks compensation authorities should be equipped to support large groups of victims with particular needs in a swift and effective way. Continuous follow-up

training and supervision should allow compensation authorities to revise and improve their approach in individual cases and in general.

3° Further guidelines and tools on the way to communicate and train should be provided – what could be harmful and what constitutes positive language should be developed and provided to national compensation authorities by the EU Coordination Centre for Victims' Rights.

4° Monitoring and evaluation systems should be implemented and communicated in a transparent way. National compensation authorities should envisage continuous monitoring mechanisms to ensure victims are treated respectfully in order to prevent secondary victimisation.

5° An EU funded training for national trainers and EU-wide training content should be put in place. The EU should organise mutual trainings between national compensation bodies and victim support organizations to improve the handling of compensation claims and minimize the risk of secondary victimisation.

4. EU initiatives for quicker, fairer and simpler state compensation scheme

a) Need for a clear definition of “victims eligible for compensation” and “intentional violent act” (legislative change)

Across the EU, definitions of who is a victim of crime differs from one Member State to another. This has a direct impact on who has the right to claim compensation and under which conditions. As presented in this report - direct victims, indirect victims, first responders, and the community as a whole can all feel the effects of victimisation. For the latter categories, especially the family of victims¹⁰⁵, varying definitions and their unfolding rights create an uneven playing field for victims across Europe¹⁰⁶. As explained in detail in the problems section, the 2004 Compensation Directive leaves a great margin of discretion on the definition of victims eligible for compensation and on what constitutes an intentional violent crime.

Yet even if there is a wide margin for restrictions, based on ECJ case law, EU rights must be practicable. In other words, restrictions should not operate to the extent that most victims of violent intentional crime are excluded from compensation. I suggest adopting a revised definition of victims that would be both feasible and fair.

¹⁰⁵ By 'family' we adopt the largest sense of the word, including partners, close friends, cohabitants, etc.

¹⁰⁶ Relatives of victims of intentional violent crimes are not eligible for compensation in six Member States from 25 we managed to receive information from

Recommendation n°18: Definition of “victims eligible for compensation” (legislative change)

There are diverse ways in which an individual can be harmed (physical, psychological, social, financial, vocational, and practical). The crucial point is the recognition of harm and the consequences it has on the individuals. It can be the direct victim or the indirect victim such as the victims’ families when the direct victims died or have survived or the first responders.

Different definitions may apply for different objectives or in different fields. The definition of a victim may be more restrictive for the purposes of financial compensation than for the purpose of support.

Another issue is that to define who is a victim is not always clear. For example, in a situation of a terrorist attack it is often clear who the victims are and who are the offenders. But there are situations in judicial practice that are “not black and white”¹⁰⁷.

- 1° The Commission should organise expert groups and consultation to help provide a clearer definition of victims of violent acts eligible for compensation.

For the application of the 2004 Compensation Directive, one recommendation of definition of a victim could be:

- The direct victim who has suffered harm, including physical, mental or emotional harm or economic loss which has been caused directly by an intentional violent crime.
- Family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death. ‘Family 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 dependents of the victim (Article 2 of the Victims’ Rights Directive).
- The family members described above who have suffered harm as a result of the victimisation of the direct victim (The UN Basic Principles).
- First responders who have suffered harm in intervening

to assist victims in distress (The UN Basic Principles).

Such a definition of a victim is reasonable and ensures that groups of victims (including first responders) are eligible for state compensation sense largo that comprises the psychological support.

Recommendation n°19: An extended definition of “victims eligible for compensation” to EU citizens and residents who become victims of intentional violent act who were victimised outside the EU and to victims of intentional violent act committed in the EU, irrespective of their nationality or residence status (legislative change)

A legitimate and important question is whether the principle of equal treatment should be extended to victims of intentional violent act committed in a Member State, irrespective of their nationality or residence status so they are fully covered by the 2004 Compensation Directive.

- 1° New EU rules should ensure that all victims of intentional violent act committed in a Member State, irrespective of their nationality or residence have a right to compensation on a non-discriminatory basis with the EU citizens/residents. The proposal would reduce the somewhat arbitrary variation in the eligibility of persons based on their residence status in the EU.

This would have a direct impact on only a small number of cases. It is likely that a recommendation would be less effective than EU legislation in reducing levels of and numbers of persons affected by discrimination.

- 2° New EU rules should also ensure that EU citizens/residents victimised in third countries have access to national compensation schemes.

Recommendation n°20: Definition of “violent intentional crime”¹⁰⁸ (recommendation or legislative change)

The definition of “violent intentional crime” depends on national legislation and normally includes homicide, assault, sexual assault, violent robbery, trafficking in human beings, terrorism and child abuse. The question here is whether psychological and not only physical violence should be covered by the definition. It is particularly important for victims of trafficking and of gender-based violence. The EU does not have competence to define “violent intentional

¹⁰⁷ For instance people who start a fight in a pub. They hit each other and one of them is severely wounded or even both are wounded. Both of them could claim compensation if they are prosecuted. It may be so that one of them is prosecuted and the other one is not. In these cases there is a certain “culpa in eligendo” and there is less reason for solidarity by the state.

¹⁰⁸ Concerning intentional violent act, the Court of justice made the following statement: 46 “The determination of the intentional and violent nature of a crime, as the Advocate General has stated in points 69 and 83 of his Opinion, although the Member States have, in principle, the competence to define the scope of that concept in their domestic law, that competence does not, however, permit them to limit the scope of the compensation scheme for victims to only certain violent intentional crimes, lest it render redundant Article 1(2)(2) of Directive 2004/80.”

crime". However, it is recommended that the Commission establishes a working group of experts from different sectors (victims in general, gender-based violence, children's rights, trafficking in human beings, rights of migrants, victims' rights, etc.), to recommend how notions such as violence should be defined. The concept of 'crimes against the person' could better reflect the reality of the different types of crime than the current 'intentional violent crime' (especially in the case of gender-based violence). The value of human dignity should be at the centre of the approach to protect and support victims (including through compensation).

Recommendation n°21: A special status for victims of terrorism as proposed by the European Parliament

On 12 December 2018, the European Parliament resolution on findings and recommendations of the Special Committee on Terrorism (2018/2044(INI)) called on the Commission to put forward a legislative proposal on victims of terrorism that responds effectively to victims' needs in the short and long term, including a common definition of the status of victim of terrorism and of victims' rights.

The Commission should take this recommendation into account.

b) Elimination of the possibility of unfair eligibility criteria

Reading Article 12(2) of the 2004 Compensation Directive, a strict interpretation could be applied whereby all Member States would be under an obligation to make compensation available to all victims of violent intentional crime. Member States impose however often too restrictive criteria such as criteria based on income levels or requirement of never been found guilty for any criminal offence. The cumulative application of limitations makes the right to compensation almost non-existent.

If a Member State has hardly any compensation applications, or pay-outs, this could indicate that the Compensation Directive is not being applied faithfully. Restrictions can be part of the reason for this and should be examined bearing in mind principles established by the ECJ on the correct implementation of EU law.

Recommendation n°22: Elimination of the possibility of unfair eligibility criteria (recommendation or legislative change)

isulative change)

I therefore recommend the EU to research the eligibility criteria practices across all the Member States, with the aim of analysing whether conditions placed on the right to access compensation are fair and appropriate. From my point of view, the Directive should clearly forbid minimum income requirement and other criteria of discriminatory exclusion from the scope of the Directive (see below) or requirements to wait for or enforce the judicial decision. The only conditions that may be accepted is to legitimately ask the victim to report the crime and to accept to "initiate" a compensation procedure against the offender¹⁰⁹ in order to confirm that the crime took place, avoid impunity and to allow the victim or the state in case of upfront payment to be compensated by the offender.

c) Adaptation of Article 2 of the Compensation Directive to allow victims to be compensated in the Member State of residence

Recommendation n° 23: To allow cross-border victims to access state compensation in their country of residence (legislative change)

According to Article 2 of the 2004 Compensation Directive, the Member State where the intentional violent crime occurs must compensate the victim according to its national compensation scheme. In the light of all the problems already mentioned, seeking compensation in cross-border situations often proves impractical if not impossible. To avoid the most important problems faced by cross-border cases, it is highly recommended to adapt the existing rules to allow cross-border victims to access state compensation in their country of residence. Under this proposal, victims would however, retain the option of claiming compensation in the country where the crime took place. This change would have the largest impact on ensuring equal treatment and legal certainty for crime victims in cross-border cases. Obliging, via EU legislation, Member States to compensate in the country of residence, irrespective of the location of the crime within the EU (would be highly effective in increasing the likelihood that victims are compensated). Of course, the Member State of residence should be entitled to turn against the perpetrator of the act in the Member State on whose territory the crime was committed.

The obligation on Member States to compensate their own

¹⁰⁹ by him/herself or via the state compensation authority in case of upfront payments and subrogation into the victims' rights

residents would both increase the likelihood that fair compensation is received in the short term and reinforce the tendency towards convergence of approaches between the Member States so that in due course EU citizens who are victims would enjoy equal treatment. Moreover, the choice should be left to the victim if he wants to be compensated by the Member state on whose territory the crime was committed if the compensation scheme is obviously more favourable. In this case, the Member State of residence will have the same duty to fully assist the victim.

d) EU recommendations or obligations to set up national guaranty funds and single contact point for the victims to be compensated

Delays in payment are a recurrent issue. When compensation is awarded, it is often received a considerable time after the crime took place. Regarding victims of terrorism in particular, lack of emergency payments is an important problem reported by the support services and the victims.

Recommendation n°24: On emergency payments (recommendation or legislative change)

- 1° The EU should adopt new binding rules concerning the grant by national authorities of emergency payments to cover the first costs (cost of family travels, funeral costs etc.) within 15 to 30 days after the intentional violent act has occurred. It would result in a crucial improvement for victims if of course the victims are not covered by insurance¹¹⁰.
- 2° If this option is unfortunately not chosen, the Commission will have to strongly recommend to the Member States to introduce the emergency payments in their national legislation if such a provision already does not exist. The French FGTI can be a perfect example. It has made important steps to improve their emergency payment system resulting in a system which ensures payments can be made within weeks after an attack.

Recommendation n°25: New binding provision or recommendation concerning upfront payments, subrogation of the state in the rights of the victims to claim compensation to the offender and to abandon the requirement to seek offender compensation first or to enforce an order for offender compensation prior to seeking state compensation (legislative change or recommendation)

As we mentioned in the introduction of this report, one of the most important recommendations is to facilitate victims' access to compensation by legally ensuring an upfront payment by the state. Different Member States, such as France and the Netherlands, have developed the possibility of upfront payments in different ways. Avoiding further harm to the victim has been an important argument for these systems.

- 1° I therefore suggest to add in the 2004 Compensation Directive a new binding provision on upfront payments.¹¹¹ This proposal places the responsibility for enforcement of offender compensation on the state. This proposal is one of the most efficient systems to achieve policy objectives because it would provide early compensation to the victims irrespective of whether the offender has the means to compensate the victims.

It would ensure victims receive compensation awarded to them and equal treatment and legal certainty of crime victims in cross-border cases.

- 2° In this case, the compensation authority should have the possibility, via new EU rules to be subrogated in the rights of the victims to claim compensation to the offender at its own costs for the amount awarded. If the amount of the offender's compensation granted is lower than the upfront payment, the state is reimbursed for the amount compensated. If the amount granted is higher, the difference is repaid to the victim. In the Member States with a strong insurance sector, we can even imagine that in case of delays of the insurance on awarded payments, upfront payments could be granted with a subrogation of the state compensation authorities to the victims' rights. It would also give a stronger position to defend victims' interests.
- 3° In this case, any national provision allowing the grant of state compensation conditional to different steps to be achieved in the criminal proceedings would be forbidden.
- 4° If the option of a binding provision is unfortunately not chosen, the Commission will have to strongly recommend to the Member States to introduce upfront payments in their national legislation if such a provision does not exist already.

Recommendation n°26: On compensation funds and

110 Emergency payments could be seen as unfair and they may be costly, of particular relevance in member states where insurances are an important source of compensation
111 Emergency payments could be seen as unfair and they may be costly, of particular relevance in member states where insurances are an important source of compensation

on good practices to increase availability of funding (non-legislative change)

- 1° In addition to the recommendation on upfront payments, the EU should issue guidelines on the need to set up national guarantee funds following the principles of the French guarantee fund for victims of terrorism. It offers to the victims a full reparation system including emergency payments and upfront payments, the subrogation in the victims' rights to sue the offender and a single contact point to avoid that victims have to launch different, complex and costly procedures and have to deal with different stakeholders¹¹².
- 2° Promotion of setting up of national compensation/guarantee or solidarity funds should include the following recommendations: Ensuring strict rules governing funding allocations; Establishing a strong decision-making body with sufficient expertise; Spending controls; Priorities for funding determined and published well in advance, following consultations with stakeholders; Platform for funding applications accessible and user friendly; On-going funding streams properly monitored and evaluated; Effective responsibility and accountability of beneficiaries; Budget dispensed centrally, at the regional and/or local level, or in cooperation with different bodies at different levels, as the example from France, where the central government, regional authorities and the judiciary enter into specific arrangements. It is recommended that the mechanism for managing a victim services fund includes external resources¹¹³, profit making from funds, disbursement of funds and monitoring and evaluation of funds should be explored.
- 3° After important studies and analysis of benchmarks, the EU should recommend that significant additional funding should be diverted towards victim support services. Such funding should come from external resources including compulsory insurance schemes, road fines or gambling monopoly.

e) Providing for fairer and more harmonized state compensation mechanism based on a principle of reparation of the personal damages experienced and the need for support services tailored to the personal situation

Crime victims in the European Union question the fairness and appropriateness of their national compensation awards. The amount of compensation awards and the way

they are calculated do not necessarily correspond to the extent of the harm suffered or material damage incurred by the victim. Given this perception and the variations between the Member States in the criteria used to assess and award compensation, there is a need to adopt common criteria on the assessment of the harm suffered, establishing common evidentiary requirements for major types of damages leading to victim compensation. We have to move towards more harmonized criteria to reduce gaps and diversity between the compensation amounts granted, the damages which have to be covered and the eligibility conditions. The Directive should clearly abandon the possibility of payment of a lump sum to achieve the principle of compensation for personal injury to be covered. This means that the Directive should provide for the type of damages which must be covered. Damages suffered should be defined at EU level and cover objective and transparent criteria harmonizing victim's compensation and common criteria for the calculation of state compensation.

The new Directive should provide for an intermediate period of adaptation and gradual evolution with a view to arranging the transition from an assistance system to a reparation system. The Member States could choose to first implement this development for victims of terrorism before extending this system to all victims of intentional acts of violence.

Recommendation n° 27: On new legal compensation scheme based on the concept of reparation of the damages experienced (legislative change or recommendation)

- 1° The EU has to prepare new legal provisions or issue guidelines and recommendations to the Member States on new legal compensation scheme based on the concept of reparation of the damages experienced.
- 2° EU research and EU consultation of relevant stakeholders should take place with a view to establish what elements/type of damage should be covered by state compensation and the harmonised modalities to financially compensate the damages in order to reach (progressively) a full reparation principle.

As compensation amounts is a sensitive subject for the Member States, the EU could undertake research from experts and consultation with the stakeholders to establish a list of elements that should be covered and the amount of awards (taking into account the victims satisfaction and the cost of damage endured). It should be noted that in terms of victim satisfaction with any given amount is un-

112 See the annex V on the French system of compensation (FGTI)

113 Funding coming from gambling monopolies, insurances taxes, offender salary fines, road fines

likely to be achieved without sufficient assistance and support during the compensation application. Such research should explore notions of fairness, appropriateness, and genuine access to rights.

The purpose is to provide for EU wide criteria for determining levels of compensation linked to the different damages, including a personal assessment of the harm suffered. (For example: promoting a list of indicative tariffs for injuries). On this basis, the EU should take a legal initiative or publish recommendations and give concrete guidelines about the damages to be covered and the ways to compensate them.

- 3° The damages should be calculated on the basis of a holistic approach of the victim's situation including the analysis of personalised needs. It could involve payment to other public authorities or agreed association for special support, services or reparation in kind if the concerned support services are not free. The Commission could include in the 2004 Compensation Directive or recommend to the Member States the possibility to include measures of reparation in kind in close cooperation with other relevant support services or administrations and the availability of numerous multidisciplinary free support services (SC). By multidisciplinary free support services, we can mention family care, health care not included in social security, resilience and post-trauma accompanying, professional reintegration, mobility support and practical support.

f) Less costly and complex state compensation procedures at national and cross-border level

Victims, stakeholders and victim support organisations, all unanimously argue that the requirement on the victim to seek and provide evidence, complete complex administrative forms, undertake medical examinations and gather various official reports is unfairly onerous and burdensome. The procedure to apply for compensation is so complex that it dissuades potential applicants, creating an actual barrier to accessing compensation. For those victims who have endured the journey of applying for compensation, they testify that the experience leads to secondary victimisation and left them feeling disrespected by national authorities. A key aspect is also to ensure improved contact between the relevant authorities as well as ensuring that the response from competent authorities can be guaranteed in the management of cross-border applications.

Recommendation n°28: On the simplification and

digitalisation of the national compensation procedure (legislative change or recommendation)

The EU should recommend the following guidelines:

- 1° As a general recommendation, the Member States must endeavour to simplify their national compensation schemes. This can be achieved by any of the following means: reducing the number of documents required to submit for a successful application; digitalisation of documentation (including digital signatures – to avoid victims' travelling to another Member State); facilitating translation of documents (not at the charge of the victim); facilitating online systems of claiming compensation and creating an online chat and/or a telephone help line where victims can directly seek guidance with certain aspects of the procedure.
- 2° One concrete recommendation should be to simplify the administrative burden on victims by the creation of a digital compensation dossier¹¹⁴. The ultimate purpose of a digital compensation dossier is that for any proceedings, victims have easy access to their own personal documents needed to facilitate a compensation claim. Once a claim is submitted, the digital dossier can also serve as a platform through which victims can follow the progress of their claim. Starting with soft measures, Member States should start working on digital means for victims to apply for compensation.

At EU level, creating a European-wide digital system would greatly benefit cross-border victims and would help in creating a uniform approach to compensation claims in the EU. However, it is recognised that such digitalisation across borders requires common software recognition .

- 3° Establishing common evidential requirements for major types of damages leading to victim's compensation. This measure would contribute to the equal treatment of cross-border victims and to the application of common standards. Most likely, such standards would need to be minimum standards. It would be helpful if such common evidential requirements existed from the point of view of citizens spending time in different EU Member States. It would be more likely that victims would ensure that the evidence needed for valid applications and accurate assessment of compensation levels was recorded. This in turn would increase the likelihood that they proceeded with applications and that such applications were successful.

4° Developing a common application form, including common evidential and eligibility criteria for victims to use when applying for compensation in cross-border cases. The proposal would contribute well to all policy objectives. The availability of a common application form would increase access to pertinent information and the awareness of victims compensation schemes in cross-border cases. Victims that completed applications would receive decision relating to their case and the proposal would improve their chances of receiving compensation relative to the status quo. There are no major technical constraints to devise a common application form. This proposal would be more effective if implemented in concert with the proposal to establish common evidential requirements.

Recommendation n°29: Provision waiving the administrative fees (legislative change or recommendation)

The EU should provide for a recommendation or a provision waiving the administrative fees linked to applications for state compensation. This could for example involve waiving the obligation to pay an administrative fee upon submission of an application, even if such fees were later imposed when compensation was received or deducted from compensation obtained. The process of victims applying is potentially difficult for the applicant and the requirement to pay a fee might act as a deterrent to apply. This proposal would improve victims' access to compensation regimes and would, if adopted by the small number of countries that apply fees, in effect, harmonise procedural rules across the EU.

Recommendation n°30: A right to have a decision on compensation reviewed (legislative change or recommendation)

I suggest the introduction of a recommendation or an obligation to provide a review of a decision on state compensation. This proposal would have an impact on the number of victims accessing financial compensation. It would also introduce a beneficial minimum standard and enhance the equal treatment of victims between the Member States and the coherence of national legislation. It would require adaptation of Article 11 of the Victims' Rights Directive by extending a right to revision to the decision on compensation (on the top of the decision not to prosecute).

5. EU initiatives to improve offender com-

pensation to victims within the judicial proceedings

a) A compensation measure in the form of an accessory penalty related to the financial capacity of the offender that would exist along with the civil claim, decided by the judge ex officio and enforced by the Member States.

Recommendation n°31: The introduction of a compensation measure in the form of an accessory penalty related to the financial capacity of the offender (legislative change or recommendation)

The EU should take actions to ensure that victims can effectively receive compensation from the offender. I suggest to recommend or to adopt a new provision on the introduction of a «compensation measure» in the form of an accessory penalty related to the financial capacity of the offender that would exist along with the civil claim, decided by the judge ex officio and enforced by the Member States.

It would reduce the likelihood that offenders avoid paying compensation. It would also reduce the costs and delay associated with victims pursuing compensation in civil courts. There are also potential benefits in cross-border cases where the pursuit of claims by non-national victims may be especially problematic and decisions taken by the judge and enforced by a court could increase the likelihood of compensation being received.

b) Improvements during the judicial proceedings

Recommendation n°32: On minimum deadline for lodging a compensation claim in criminal proceedings (legislative change or recommendation)

I suggest that EU rules (for instance a revised Victims' Rights Directive) include minimum procedural deadline for lodging a civil claim in criminal proceedings in the Member States other than common law Member States having compensation orders in place.

This proposal would increase the number of victims having access to offender compensation because obstacles related to time period and eligibility would be reduced.

Recommendation n°33: On pre-trial mediation/restorative justice to enhance victim's re-adaptation to society and act as a form of offender compensa-

tion (legislative change or recommendation)

I suggest to include in EU rules (for instance a revised Victims' Rights Directive) or to recommend the use of a pre-trial mediation/restorative justice as part of the compensation to the victim. For example, reconciliation between the victim and the offender and cash or in-kind payment of compensation prior to the trial may have mitigating effects and lead to conditional discontinuance of proceedings in less severe offences (for example those punishable by less than 5 years custody sentence).

This proposal promotes an option which would ensure higher level of support to victims in seeking restorative justice corresponding to their needs.

Recommendation n°34: On legal aid (legislative change or recommendation)

Access to legal aid, notably access to legal aid free of charge, represents an area of rights that is closely linked to the role of the victim in the system of criminal procedure. It includes legal advice and legal representation in court (Article 13 of the Victims' Rights Directive). More generally, it also covers interpretation and translation expenses (Article 7 of the Victims' Rights Directive) and possible reimbursement of other expenses (Article 14 of the Victims' Rights Directive). The Victims' Rights Directive does not oblige EU Member States to reimburse legal fees, as if there are any they can be covered by legal aid. In practice, free legal aid is generally available to victims in nearly all (26) EU Member States. In most cases, however, victims are subject to an economic means test from which only certain categories of victims should be exempt.

- 1° The Commission should encourage/or impose on Member States to exempt victims of violent act from the means test.
- 2° The Commission should analyse national income restrictions when accessing legal aid, examining whether these criteria present an obstacle in victims' access to compensation in practice and on this basis include a provision in the Directive to extend the application of legal aid to victims of violent acts according to harmonized conditions.

Recommendation n°35: On undocumented migrants access to compensation (legislative change or recommendation)

Access to redress mechanisms for all victims of crime must be guaranteed in practice as it is in law. It is widely recognised that undocumented migrants, and

those awaiting a decision regarding their residence status, are discouraged to report a crime due to beliefs that their information will be shared with immigration authorities, or due to negative experience with law enforcement agencies in the past

The EU should recommend:

- 1° Acknowledging the particular vulnerabilities of migrants, it is essential that all EU Member States take immediate action to alleviate the obstacles for migrants to report crime and to seek protection. A clear firewall needs to be established between local police stations and immigration authorities. Member States must not create hierarchies of 'illegality' which place the individual's residence status as a 'more important crime' than the crime which they are reporting.
- 2° That Member States must also guarantee access to legal advice for undocumented migrants and access to victim support services.
- 3° Migrants who seek medical assistance following a crime should be offered protection and Member States should ensure that medical information and knowledge concerning the individual's presence in a medical service is not communicated to immigration authorities.

c) Recommendations addressing difficulties in enforcement of offender compensation

There are four new provisions which could address the problem of enforcement of offender compensation. These are to some extent alternatives in that there would be little merit in combining, for example, upfront payment of compensation to victims with the reimbursement of bailiff's fees.

Recommendation n°36: On the duty of the state to cover or reimburse bailiffs' fees for the enforcement of the offender compensation decisions (legislative change or recommendation)

The EU should recommend that Member States cover or reimburse bailiffs' fees for the enforcement of the compensation awarded in criminal proceedings for victims (without sufficient means). This proposal would introduce a higher level of support for victims (without sufficient means). In doing so it would increase their likelihood of receiving the awarded compensation from the offender.

Recommendation n°37: On mechanisms that give offenders an incentive to pay compensation awarded to victims at pre-trial stage or at post-trial stage (legislative change or recommendation)

The Commission should encourage/require the Member States to introduce mechanisms that give offenders an incentive to pay compensation awarded to victims at pre-trial or post-trial stages. Examples of such incentives include: attaching financial conditions to deferred or suspended sentences; improving effective use of the compensation element in probation measures by formal sanction on failure to compensate and/or proactive obligations on authorities to confirm whether the victim has been satisfied within the deadlines and ex officio obligation to reinstate suspended proceedings.

Recommendation n°38: On mechanism that will require offenders to pay towards funding of victim support services or the state compensation scheme (legislative change or recommendation)

This proposal involves the introduction of offender surcharges' and a mechanism that would require offenders to pay towards the funding of victim support services or the state compensation schemes. The surcharge could, for example, be based on a fixed proportion of earnings of each convicted person.

d) Confiscation as a more generalized mechanism to help the victims to be compensated

Confiscation is a strategic priority in the EU's fight against organised crime. It is reflected in the EU Internal Security Strategy in Action, which confirmed the need to revise the existing EU legal framework on confiscation and asset recovery to hit criminals where it hurts them most. Five EU legal instruments aim at improving confiscation and asset recovery¹¹⁵. However, their implementation has shown certain weaknesses. Thus, the Commission proposed in November 2008 ten strategic priorities on confiscation and asset recovery and emphasised the importance of enhancing cooperation between EU States in tracing assets.

In 2018, the EU has adopted a new legislation¹¹⁶ (Regulation on the mutual recognition of freezing orders and confiscation) to make it easier for EU states to confiscate assets derived from serious and organised crime and protect our economies, simplify existing rules and fill important gaps which are being exploited by organised crime groups. It will enhance the ability of EU states to confiscate assets that have been transferred to third parties, it will make it easier to confiscate criminal assets even when the suspect has fled and will ensure that competent authorities can temporarily freeze assets that risk disappearing if no

action is taken. The Recommendation also makes it easier for victims to access seized and confiscated assets in other Member States. The process should now continue at national level, where national authorities should facilitate victims' compensation (including restitutions) from the assets confiscated from the offenders.

In specific crime areas, such as trafficking in human beings, the European Commission continues to promote the use of available legal instruments and to consider the use of seized and confiscated instrumentalities and the proceeds from the trafficking offences to support victims' assistance and protection, including compensation of victims.

6. EU initiatives for more adequate, multidisciplinary and more personalised support services in accordance with victims' individual needs

While in the last few years we have witnessed a strengthening of the number, professionalism and multidisciplinary aspect of services to help victims, whether public or associative, we still see many shortcomings.

Recommendation n°39: The need for multidisciplinary support services (legislative change or recommendation)

There is still too little immediate and short-term care to provide psychological (post-trauma and resilience support) and practical support (arranging the travels of loved ones, childcare, moving or resilience etc.). The provision of services to victims does not take sufficient account of or is not organized to take into account the individual needs related to the characteristics of the person. In addition, Member States with many budgetary problems do not adequately support public services for victims or subsidies to victims' associations.

Many victims point out that victim support services are a key factor in their ability to recover, feel recognised and request compensation. Support through administrative assistance, psychological, post-trauma or resilience guidance, advice and information on success rates and procedures are identified as helpful to victims as an additional part of a compensation scheme and sometimes much more helpful.

It is important to assess with victim support organizations whether the obligations of the Directives concerning sup-

115 Recommendation 38: On mechanisms that give offenders an incentive to pay compensation awarded to victims at pre-trial stage or at post trial stage (legislation changes or recommendations)
116 Recommendation 39: On mechanisms that give offenders an incentive to pay compensation awarded to victims at pre-trial stage or at post trial stage (legislation changes or recommendations)

port services are concrete and detailed enough and also tailored enough to answer to the individual needs to sufficiently offer in the Member State efficient and tailored multidisciplinary professional services including more concrete provisions that could include the results of this assessment. Victim support organisations provide valuable support to victims but parallel to this, given the responsibility of the state it is critical that victim support structures are available and provided by the state in all regions/municipalities of the Member States. Support for victims should more explicitly cover the following needs: emotional and psychological; practical; advice on compensation; vocational or educational; access to justice, medical and protection. Victim/family assistance centres can form important mechanisms in ensuring they are synchronised and made available. Victims must have access to more adequate, multidisciplinary and personalised support services in accordance with victims' individual needs. They have also need for quality assured and monitored.

The European Commission could develop projects, research and guidance to assist the Member States with their crime victim compensation schemes as part of a general strategy to develop comprehensive assistance to all victims of crime. The guidelines could identify best practices and ideally provide detailed information on how those practices were developed, function and what the costs are.

The EU should recommend or include a strengthened obligation concerning the multidisciplinary support services to be offered or subsidized by the state, the level of availability and funding of support services in the Victims' Rights Directive. The European Commission should develop funding, projects, research and guidance to assist the Member States in this area. The guidelines could identify best practices and ideally provide detailed information on how those practices were developed, function and what the costs are. The guidelines should include recommendations to the Member States on how to ensure that victims have access also at local level to general, specialised and personalised victim support services when claiming compensation.

Recommendation n° 40: A need for victim's navigators/assistants or case agents

Many countries are waiting for the victim to contact them and do not organize offers of immediate support. There are very few cases with referrals assigned by victim to coordinate the response to all of their needs.

Each victim should be provided with one referral or navigator/assistant to first take contact with the victim to daily


support them in the best way in respect of each authority, for each procedure, to coordinate support on basis of the best common and personal approach possible. The EU should therefore oblige or recommend providing for "victims' navigators" or "case agents" to help victims in their contacts with the different authorities.

Recommendation n° 41: A need for resilience platforms

The term resilience¹¹⁷ covers different meanings. It can be used as a medical term. It can also be applied more broadly to a person or a society as a whole that manages to remain standing despite the violence. Resilience has also social meaning. From the social perspective, one looks at the person as a whole and at society in all its dimensions. Resilience refers to both an individual journey and its study, as defined by Professor Boris Cyrulnik¹¹⁸ who describes it as "a process, a new development (after a trauma), not an inherent quality of the individual" and "the study of the conditions for the recovery of a development after trauma". As stated in newly adopted Counter-terrorism Directive, support for victims of terrorism should be made in the aftermath as well as in the long-term for as long as needed. Such long-term support should include post-trauma and resilience support-givers. Those in contact with victims should be available and trained to give appropriate support in case of trauma. Particular attention should be given to phases of transition from immediate to medium and from medium to long term. Victims of terrorism need consistency and quality throughout their recovery process and post trauma development.

117 « Résilience d'une nation », Les grands colloques de l'AAIHEDN, Lavauzellen, Avril 2018 ; Françoise Rudetzki « Pour un centre de ressources et de résilience : repartir et prendre soin de la vie », Rapport déposé en décembre 2016, puis remis officiellement à Monsieur le Président de la République et à Madame la Secrétaire d'Etat auprès du Premier ministre, chargée de l'aide aux victimes, le 8 février 2017

118 La résilience : un processus multicausal, Boris Cyrulnik, Revue française des affaires sociales, 2003-1




Within the expertise department of the proposed EU Co-ordination Centre for Victims' Rights, post trauma and resilience expertise should be developed. EU and national resilience platforms should be set up in close cooperation with the French resilience centre which could also have an important European mission or could become also a European resilience Centre.

I conclude this last essential recommendation in French with a quote from one of the best experts in the area of resilience « *Le malheur n'est jamais pur, pas plus que le bonheur. Un mot permet d'organiser une autre manière de comprendre le mystère de ceux qui s'en sont sortis : la résilience, qui désigne la capacité à réussir, à vivre, à se développer en dépit d'adversité*¹¹⁹ ».

119 De Boris Cyrulnik / Antoine Spire – Le Monde de l'éducation – Mai 2001

IV. CONCLUSION



To conclude in a more personal way, I would like to stress that strengthening victims' rights is a **key political issue**. It is not a minor topic to be left aside or to be regarded solely as a matter to be dealt with by good intentions. Protecting victims is equally important as prosecuting terrorists or preventing violence.

Taking care of victims of violent acts is not only about fulfilling legal obligations and ensuring individuals' rights to be protected. **Taking care of victims of violent acts is, above all, a matter of human dignity, solidarity and respect.** It is the symbol of a real democracy for which each person counts and deserves to be protected, supported, helped, integrated and reinserted. **How we treat victims of crime measures the depth and humanity of our civilisation.**

By taking care of victims, we are demonstrating that there are no forgotten citizens in Europe whose distress, trauma or disability would not be a collective emergency. It is why defending and strengthening victims' rights has to become now, more than ever a real political and common emergency for the Commission, for the Member States and for society.

We need to reaffirm our commitment to defending and strengthening victims' rights but also to improve our objectives, methods and actions. In light of all the threats and challenges that the European Union is facing today, we need to stand firm with the most vulnerable among our citizens.

By strengthening victims' rights we are showing and proving to European citizens that they are living in a Humanistic Europe that protects, cares, repairs, supports and offers a new beginning for everyone.

Only such Europe, contradicts in all respects the foundations of acts of terror and violence.

What else can be more motivating for the next European Commission than launching a new ambitious and humanistic EU strategy for victims' rights'?

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