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NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA - Presidency redraft

On the basis of the exchanges with Member States and the Commission, the Belgian Presidency (PCY) proposes some textual changes, both in the recitals as well as articles, which will be put up for discussion during the COPEN of 15 and 16 April 2024.

The latest changes made by the Presidency are in bold and underlined.

Changes made previously by the Presidency and maintained are in bold.

Based on these exchanges, the Presidency will continue to review the text to achieve a General Approach by the end of the Presidency.

As we approach the deadline we thank the Member State to take a clear position and express clear support as regards the wording of the articles they can agree upon.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

Article 1

Directive 2012/29/EU is amended as follows:

- (1) the following Article is inserted:

'Article 3a

Victims' helpline

To guarantee the harmonised use of notions throughout directives the PCY proposes an alignment of paragraph 2 with article 31, paragraph 4 of the VAW, without changing the content of the article through replacing the wording 'connected to' by 'reachable';

In the samen paragraph, it is clarified that Member States 'may provid' these services by information- and communication technologies, including websites and online application. For the Member States this enlarges the options.

In paragraph 3, the PCY proposes a flexible approach on the linguistic regime.. Furthermore, it is proposed to move the text on telephone interpreting to the recital.

1. Member States shall take the necessary measures to establish easily accessible, user friendly, free of charge and confidential victims' helplines which:
 - (a) provide victims with the information referred to in Article 4(1);
 - (b) offer emotional support;
 - (c) refer victims to specialised support services and/or specialised helplines if needed.
2. Member States shall ensure the provision of helplines referred to in paragraph 1 through a telephone helpline **connected reachable via** the EU harmonised number "116 006", **which may operate in addition to any existing national numbers, and may provide such services also** through other **secure and accessible** information and communication technologies, including **online applications and** websites.
3. Member States shall take appropriate measures to ensure the availability of the services referred to in paragraphs 1 and 2 in ~~other~~ **the official languages or languages of the Member States as determined by national law., and Member States shall strive to ensure the provision of those services in** ~~including at least one or more other the~~ languages most used in the Member State.
4. Helplines may be set up by public or non-governmental organisations and may be organised on a professional or voluntary basis.';

Corresponding recitals:

Following the exchanges, the PCY proposes an addition in the previously proposed sentence in this recital clarifying that providing for these electronic methods is without prejudice to the continued use of in-person methods.

- (3) In order to provide victims with seamless and modern means of exercising their rights, the Member States should make it possible for victims to communicate electronically with national competent authorities. Victims should enjoy the possibility of using electronic tools to receive information about their rights and about their case, report crimes and to otherwise communicate with competent authorities and with support services through communication and information technologies. Victims should be able to choose the method of communication, and the Member States should provide for such communication and information technologies as an alternative to the standard methods of communication, without however replacing them completely. **The in-person method of communication, including those with the competent authorities and with support services, should still be remain available to victims, if they wish so.**

As Member States expressed the need for additional clarification regarding the language regimes by which assistance can be provided for by the helplines, the PCY proposes some additional clarifications in this regard.

(4) In order to ensure comprehensive channels of communication taking into account the complexity of victims' needs in relation to their right to access information, all victims, independently of where in the EU and in what circumstances the crime took place, should be able to access victims' helplines by using the EU-wide 116 006 telephone number or by connecting to the dedicated websites. Under such helplines, victims should be able to receive the information about their rights, emotional support and be referred to the police or other services, including other specialised helplines – if needed. **The helplines can be operated by trained volunteers capable of providing emotional support which can be understood as being an empathetic approach towards victims to make them feel accepted, safe and enable them to express themselves freely.** Such helplines should also refer victims to other specialised helplines, referred to in Commission Decision 2007/116/EC¹, such as the harmonised number related to child helpline “116 111”, missing children “116 000” and gender-based violence “116 116”. **The helplines should be available in one or more the official language or languages most used of the Member State. Member States are however encouraged to provide this services also in one other language most used in the Member State which should be determined by each Member State on the basis of objective criteria. To facilitate offering this service in an additional language, Member States should consider using modern technologies, such as the translation and interpretation applications, as well as telephone interpreting.** The helplines should operate under the general rules for victim support services and should be confidential, free of charge, in the interest of victims.

¹ Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with 116 for harmonised numbers for harmonised services of social value (OJ L 049 17.2.2007, p. 30).

- (2) the following Article 5a is inserted:

'Article 5a

Reporting of crime

Following the last COPEN meeting and the written comments on the PCY proposal in document 5418/24, the following changes are proposed:

- Paragraph 2 is deleted and moved to recital 6;
- In paragraph 3 it is clarified that this may also include accommodation centres where applicants and beneficiaries of international protection are located, as they are not always located in detention facilities;
- Paragraph 4 is adapted to be in line with reporting of crime by children to take into account the different systems in Member States.

1. Member States shall ensure that victims can report criminal offences to the competent authorities, **where appropriate and in addition to already existing methods of crime reporting**, through easily accessible, user friendly information and communication technologies. Such possibility shall include submission of evidence where feasible. **Such possibilities shall be without prejudice to national procedural rules regarding formalisation of online reporting and submission of evidence.**
2. ~~Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, that criminal offences have been committed, or that further acts of violence are to be expected, to report this to the competent authorities.~~
3. Member States shall ensure that victims can effectively report crimes committed in detention facilities. Detention facilities shall include in addition to jails, detention centres and holding cells for suspects and accused, specialised detention facilities for applicants of international protection and pre-removal centres, and **It may also include** accommodation centres where applicants and beneficiaries of international protection are located.

4. Where children **contact competent authorities to** report criminal offences, Member States shall ensure that the reporting procedures are safe, **are carried out in a** confidential **manner in accordance with national law, are** designed and accessible in a child-friendly manner and use language in accordance with their age and maturity.
5. ~~Member States shall ensure that the competent authorities coming in contact with a victim reporting crimes are prohibited from transferring personal data pertaining to the residence status of the victim to competent migration authorities, at least until completion of the first individual assessment referred to in Article 22.²;~~

Corresponding recital:

For the sake of clarity and alignment, the same wording as in the recital in VAW relating to this subject matter has been added here.

- (6) Crime reporting in the Union should be improved to fight impunity, avoid repeated victimisation and ensure safer societies. It is necessary to fight public insensitivity towards crime, by encouraging people who witness the crime to report crimes and assisting victims and by creating safer environments for victims to report crime. For victims who are irregular migrants in the Union, safe environment to report crime means reducing fear of return procedures being launched as a result of contacts with law enforcement authorities. The personal data of victims who are irregular migrants in the Union should not be transferred to the competent migration authorities at least until the completion of the first individual assessment as referred to in Article 22 of Directive 2012/29/EU. Reporting the crime and participating in criminal proceeding under Directive 2012/29/EU do not create any rights regarding the residence status of the victim, neither have any suspensive effect when determining their residence status. It is important that Member states ensure that victims which are third-country nationals, irrespective of their residence status, are not discouraged from reporting and are treated in a non-discriminatory manner as regards their residence status in accordance with the objectives of this Directive. To protect all victims from repeated violence, it is important to apply a victim-centred approach. In particular, it should be ensured that the enforcement of the return procedure under Directive 2008/115/EC of the European Parliament and of the Council² does not prevent victims from exercising their right to be heard under Directive 2012/29/EU. Member States can, in accordance with Directive 2008/115/EC, decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory and are to comply with the obligation under that Directive to take into account as far as possible the special needs of vulnerable persons during the period for voluntary departure, where such a period was granted pursuant to that Directive. All vulnerable victims, such as child victims or victims in detention, who are in a situation of intimidation, or are otherwise dependent from the offender or whose mobility is limited should be able to report crime in conditions that take into account their particular situation and in line with protocols specifically set up for this purpose. It is important that Member States encourage any person who knows about or suspects, in good faith, that criminal offences have been committed, or that further acts of violence are to be expected, to report this to the competent authorities.

² Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (*OJ L 348*, 24.12.2008, p. 98).

Article 8

Right to access victim support services

(3) Article 8 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Member States shall ensure that victims are contacted by the relevant general or specialised support services if the individual assessment referred to in Article 22 demonstrates the need for support and the victim consents to be contacted by support services or if the victim requests support.’;

(b) the following paragraph is added:

‘6. **Member States shall aim to ensure that v**~~Victim support services shall~~ remain operational in times of crisis, such as health crises, ~~significant migratory situations or other~~ states of emergency **with a view to provide for at least the victims’ basic needs.**’;

Article 9

Support from victim support services

Following comments made by Member States, the PCY proposes some clarifications, both in the article as well as through implementing a new recital, to underline that Member States have discretion to provide additional psychological support for those victims in need according to the result of the individual assesment defined in article 26a(1).

(4) Article 9 is amended as follows:

(a) in paragraph 1, point (c) is replaced by the following:

‘(c) emotional and, where available, psychological support ~~once they become aware of a status of a person as a victim~~. If the special need for **additional** psychological support has been demonstrated by individual assessment referred to in Article 22, **victims shall be referred to services able to provide additional** psychological support ~~shall be available to victims in need of such support for as long as necessary, as determined by Member States in the protocols or guidelines procedures~~ referred to in Article 26a(1),

(b) in paragraph 3, point (b) is replaced by the following:

‘(b) targeted and integrated support, including trauma support and counselling, for victims with specific needs, such as victims of sexual violence, victims of gender-based violence, including violence against women and domestic violence covered by Directive (EU) .../... of the European Parliament and of the Council³ [*on combating violence against women and domestic violence*], victims of trafficking in human beings, victims of organised crimes, victims with disabilities, victims of exploitation, victims of hate crime, victims of terrorism, victims of core international crimes.’;

(c) the following paragraph is added:

‘4. Member States shall provide the protection and specialist support services necessary to comprehensively address the multiple needs of victims with specific needs in line with the protocols **or guidelines** referred to in Article 26a(1), point (c).’

³ Directive (EU) .../... of the European Parliament and of the Council on combating violence against women and domestic violence (OJ ...).’;

New recital:

For reasons of clarity, the PCY proposes an additional recital to clarify the wording and scope of the article.

(X) If a special need for additional psychological support has been demonstrated by an individual assessment, support services should refer victims in need of such additional support to the services able to provide additional psychological support, taking into account the availability of resources and of these services.

(5) the following Article 9a is inserted in Chapter II:

'Article 9a

Targeted and integrated support services for children

The PCY proposes the following clarifications:

- The modification in paragraph 1 is an alignment with the wording used in paragraph 2.
- The reference in paragraph 2, f), is completed with the letter a) as it concerns video recording of testimonies of children.
- To make clear that the coordinated multi-agency mechanism should be available only in specific situations linked to the individual needs of a child victim, as determined by paragraph 4, it is proposed to change the reference in paragraph 4 from paragraph 1 to paragraph 2.
- The wording of paragraph 4 is adapted to highlight the particular seriousness of the harm suffered by child victims of sexual offences.

1. Member States shall take the necessary measures to ensure the availability of child-friendly targeted and integrated **support specialist** services for children to provide for age-appropriate support and protection necessary to comprehensively address the multitude of needs of child victims.
2. Targeted and integrated support services for child victims shall, **in accordance with paragraph 4,** provide for a coordinated multi-agency mechanism that includes the following services:
 - (a) the provision of information **as referred to in Article 4;**
 - (b) medical examination;
 - (c) emotional and psychological support;
 - (d) possibility of crime reporting;
 - (e) individual assessment of protection and support needs referred to in Article 22;
 - (f) video recording of testimonies referred to in Article 24(1)(**a**).
3. **Some or all of t**The services referred to in paragraph 2 **~~shall~~ may** be provided within the same premises.’;
4. **The services referred to in paragraph 1-2 shall be provided in accordance with victims’ individual needs. Particular attention shall be paid to the seriousness of harm suffered by child victims, including especially harm from sexual offences against children.**

(6) the following Articles 10a and 10b are inserted:

‘Article 10a

Right to receive assistance information and emotional support at the court premises

As explained during the COPEN of January by the COM, this article should ensure that victims are at ease and can find their way within, sometimes, complicated court buildings. Providing this type of information and support can be done by staff or volunteers. The aim is not to duplicate the work of the victim support services. Taking this into account, the PCY proposes several changes to adapt the corpus of the text, to clarify the intention of this article:

- Referral to court staff and volunteers as the responsible actors in this regard;
- the provision of information on the practical and organisational aspects of criminal court hearings (seating arrangements in the court room, how to get around the court premises, location of the cafeteria, ...);
- provision of emotional support as a basic attitude towards victims (see definition as proposed in recital 4).

A new recital has been introduced based on the revised text of this article.

Member States shall take the necessary measures to ensure that court staff or volunteers are enabled to give victims ~~organise~~ establish assistance at the court premises to provide general information on regarding organisational aspects of criminal court proceedings and as well as providing emotional support to victims, when needed, during the criminal proceedings.

New recital:

As Member States expressed concerns as to the impact and consequences of the obligations foreseen in article 10a, the PCY proposes the alignment of this recital with the changes made in article 10a to address these concerns. The PCY also proposes to create a separate recital on Article 10a, which was previously included at the end of recital 9.

(XX) **Participating in a trial can be an emotionally difficult and challenging experience for the victims. For this reason, all victims who need information and emotional support assistance at the court premises where criminal proceedings are held, should be provided with the appropriate ~~assistance and~~ information related regarding organisational aspect of criminal court proceedings to the functioning of the court and its proceedings, as well as emotional support. This can be offered by the court staff or by trained volunteers. Such assistance does not ~~necessarily~~ require the provision of additional facilities or the permanent presence of victims support services to in these court premises.**

Article 10b

Right to **request** a review of decisions taken during court proceedings

Seeing the many difficulties on the future implementation of this article into the national legal systems as flagged by Member States, the PCY proposes additional redrafts to this article.

Furthermore, the PCY acknowledges the need for further consideration of article 7.7 in future exchanges in relation to this new article

1. Member States shall ensure that victims **in accordance with their status in the criminal proceedings as defined under national law**, are informed without delay of decisions taken in court proceedings that affect them directly and have the right to **request a the** review of such decisions. Such decisions shall include ~~at least~~ decisions pursuant to the following provisions:
 - (a) Article 7(1) in relation to decisions on interpretation during court hearings;
 - (b) Article 23(3).

2. The procedural rules under which victims may request a review of decisions referred to in paragraph 1 shall be determined by national law.

Member States shall ensure that the judicial decisions on the request of such a review are taken within reasonable time.’;

Corresponding recital:

- (9) For victims to sense that justice is done and to be able to defend their interest, it is important that they are present and able to actively participate in the criminal proceedings. That is why all victims in the Union, ~~independently of~~ in accordance with their status in the criminal proceeding, which is established by the national law, should have a right to an effective remedy under national law in the event of a breach of their rights under this Directive. In addition, all victims in the Union, ~~independently of~~ in accordance with their status in the criminal proceeding, should have a right to request a review of decisions that were taken during court proceedings and affect them directly. Such decisions should include ~~at least~~ decisions on interpretation during court hearings and decisions on special protection measures available to victims with special protection needs. The procedural rules under which victims may request a review of such decisions taken during court proceedings should be determined by national law which should provide for the necessary guarantees that such a possibility of revision would not disproportionately prolong the criminal proceeding.

Article 16

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

Seeing that several Member States flagged that the implementation of paragraph 1 as proposed hereunder will pose many difficulties and that it could result in lowering the standards of the current Victims’ rights directive, the PCY proposes to delete this article and keep the current wording of article 16, §1 of the directive.

(7) ~~Article 16 is amended as follows:~~

(a) ~~paragraph 1 is replaced by the following:~~

~~**‘1. Member States shall ensure that, in the course of the criminal proceedings, where provided for under national law, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time.’;**~~

(b) ~~paragraph 2 is replaced by the following:~~

~~**‘2. Member States shall ensure that their competent authorities pay directly to the victim the adjudicated compensation without undue delay. The competent authorities shall be subrogated to the right of the victim in relation to the offender for the amount of the adjudicated compensation.’;**~~

Article 17

Rights of victims resident in another Member State

For reasons of clarity, the PCY proposes minor changes to the corpus of the article. In addition, a clarifying new recital is added to this article as regards the use of videoconferencing.

(8) Article 17 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

‘(b) to have recourse to the extent possible **in accordance with European Union and national law** to the provisions on video conferencing and telephone conference calls ~~to facilitate participation for~~ **the purpose of hearing in criminal proceedings** of victims who are resident abroad ~~in criminal proceedings.’~~

(b) the following paragraph is added:

‘4. **In accordance with Regulation (EU) 2018/1727,**⁴ Member States shall ensure that the competent authorities may request assistance from Eurojust ~~in accordance with its mandate~~ and transmit to Eurojust the information aimed at facilitating cooperation with the competent authorities of other Member States in cross-border cases ~~in accordance with Regulation (EU) 2018/1727.~~’;

New recital:

(XX) Member States are encouraged to provide for the use of videoconferencing or other distance communication technology in criminal matters to facilitate participation in criminal proceedings of victims residing abroad.

⁴ **Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, OJ L 295, 21.11.2018, p. 138.**

Article 21

Right to protection of privacy

The PCY proposes some minor changes in the wording of the article itself. Based on the last exchanges, the reference to the authorities is adjusted from judicial to competent which leaves it up to the Member States to identify which authority is responsible in this regard, based on their national system. Furthermore, based on the concerns expressed by Member States, the PCY proposes additional explanations in the recital.

As regards the measures if there would be a risk involved when sharing data of the victim, the PCY also would like to propose to the Member States an alternative option.

Member States are invited to express their preference as regards the alternative proposals:

‘3. Member States shall **take the necessary measures to ensure that, at the request of the victim or if the competent authorities assess there is-could be a risk that the victim or a third person may be exposed to threats or violence**, personal data concerning a ~~victim~~ ~~allowing the offender to identify the victim’s place of residence or to otherwise~~ **other** contact ~~details the victim in any way is~~ **are** not provided to the offender ~~either directly or indirectly~~ **unless the information is necessary for the judicial competent authorities to establish the truth or not disclosing the information would otherwise prejudice the rights of defence.**’

(9) in Article 21, the following paragraph is added:

‘3. Member States shall **take the necessary measures to ensure that, as a minimum if the competent authorities assess there is-could be a risk that the victim or a third person may be exposed to threats or violence**, personal data concerning a ~~victim~~ ~~allowing the offender to identify the victim’s place of residence or to otherwise~~ **other** contact ~~details the victim in any way is~~ **are** not provided to the offender ~~either directly or indirectly~~ **unless the information is necessary for the judicial competent authorities to establish the truth or not disclosing the information would otherwise prejudice the rights of defence.**’;

Corresponding recital:

(XX) Protecting the privacy of the victim can be an important means of preventing secondary and repeat victimisation, intimidation and retaliation. If the competent authorities, as determined by national law, assess that there could be a risk that the victim or a third person may be exposed to threats or violence, personal data concerning the victim's place of residence or other contact details should not to be provided to the offender unless the information is necessary for the competent authorities to establish the truth or not disclosing the information would otherwise prejudice the rights of defence.

Article 22

Individual assessment of victims to identify specific protection needs

To accommodate the request of several Member States during the last COPEN to have more flexibility as regards this article and to align the wording with the text of the current directive, minor changes are proposed by the PCY.

Furthermore, to align the article with other articles in the text, the wording on protocols has been adjusted and the reference to article 9 is corrected.

In addition, the reference to core international crimes has been clarified.

(10) Article 22 is amended as follows:

(a) the title is replaced by the following:

‘Individual assessment of victims to identify specific support and protection needs’;

(b) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that victims receive a timely and individual assessment, **in accordance with national procedures**, to identify **specific** support and protection needs and to determine whether and to what extent they would benefit from **special** measures provided for under Article 9 **(1), point (e) and 9a** and Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.’;

(c) the following paragraph 1a is inserted:

‘1a. The individual assessment shall be initiated **at the earliest stage possible such as at** the first contact of the victim with the competent authorities, and shall last as long as necessary depending on the specific needs of each victim. Where the result of the initial stage of the individual assessment by the first contact authorities demonstrates the need to continue the assessment, such assessment shall be undertaken **where appropriate in coordination collaboration** with the institutions and bodies depending on the stage of the procedure and victims’ individual needs in accordance with the protocols **or and procedures guidelines** referred to in Article 26a.’;

(d) paragraphs 2 and 3 are replaced by the following:

‘2. The individual assessment shall take into account:

- (a) the personal characteristics of the victim, including relevant experiences of discrimination, also when based on a combination of several grounds such as **sex**, gender, age, disability, religion or belief, language, racial, social or ethnic origin, sexual orientation;
- (b) the type or nature of the crime;
- € the circumstances of the crime;
- (d) the relationship to and the **characteristics risks emanating from** **of** the offender.

3. In the context of the individual assessment, particular attention shall be paid to:

- (a) victims who have suffered considerable harm due to the severity of the crime;
- (b) victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics;
- € victims whose relationship to and dependence on the offender make them particularly vulnerable.

In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, including violence against women and domestic violence, sexual violence, exploitation or hate crime, victims of **crimes falling within the jurisdiction of the International Criminal Court** ~~core international crime~~ and victims with disabilities shall be duly considered. Particular attention shall be paid to victims who fall under more than one of those categories.’;

€ the following paragraph 3a is inserted:

‘3a. In the context of the individual assessment, particular attention shall be paid to the risk emanating from the offender **as referred to in 2, d)**, including the risk of violent behaviour and of bodily harm, the use of weapons, involvement in a group of organised crime, drug or alcohol abuse, child abuse, mental health issues, behaviour of stalking, expression of threats or hate speech.’;

(f) paragraph 4 is replaced by the following:

‘4. For the purposes of this Directive, child victims shall be presumed to have specific support and protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article. The individual assessment of child victims shall be organised within the framework of targeted and integrated support services referred to in Article 9a.’;

(g) paragraph 6 is replaced by the following:

‘6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 8, 9 ,9a, 23 and 24.’;

(h) paragraph 7 is replaced by the following

‘7. Competent authorities shall ~~update~~ **review** the individual assessment according to the individual needs of the victim at regular intervals to ensure the support and protection measures relate to the victim’s changing ~~situation~~ individual needs situation. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.’;

- (10) All victims should be assessed in a timely, adequate, efficient and proportionate manner. It is essential to ensure that victims receive the support and protection that correspond to their individual needs. The individual assessment of victims' needs of support and protection should **last for as long as necessary, depending on victims' individual needs. It means that it should** be done in stages, **some victims will only have a contact with a police service, other victims will go through additional stages. Victims needs for support and protection may change in the course of the criminal proceedings.** Within the first stage, all victims should be assessed **at the earliest stage possible such as ~~from~~ the first contact** with the competent authorities, **for instance law enforcement and prosecution authorities** to ensure that the most vulnerable victims are identified at the very early stages of the proceeding. **The contact with helplines should not be considered as the first contact with competent authorities.** As of the next stages, victims who need such enhanced assessment should be assessed by victim support services **and where possible by** psychologists. Such services are best placed to assess the state of victims' well-being. The individual assessment should also take into account the situation of the perpetrator, who may have a history of violence, be in a possession of arms or abusing drugs and as such pose higher risks for victims. The individual assessment of victims' needs should also include the assessment of victims' needs of support, not only of protection. It is essential to identify victims who are in need of special support, so a targeted support such as psychological aid is provided to those who need it. **Member States should determine the practical organisation of the individual assessment via the protocols or guidelines as provided for in this Directive. Member States should ensure that any sensitive personal data is dealt with in accordance with the Union law on data protection, which may include provision of legislative measures if necessary.**

Article 23

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

Based on the exchanges during the last COPEN the PCY proposes the following changes to the article:

- Proposed amendment 10a stays as was discussed during last COPEN.
- To address concerns expressed by some Member States, the word sex is replaced by gender in proposed amendment 11.
- To address the concerns of the MS as to the nature of the order in point 12b, a reference is made to the applicability of national law. In addition, the PCY would like to draw the attention of Member States to the last sentence of recital 12 to further resolve the concerns on this matter.

(10a) In Article 23, paragraph 1 is replaced by the following:

'1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2, 3 and 4 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is a an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.'

(11) in Article 23, paragraph 2, point (d) is replaced by the following:

‘(d) all interviews with victims of sexual violence, gender-based violence including victims of violence against women and domestic violence covered by Directive (EU) .../... of the European Parliament and of the Council⁵ [*on combating violence against women and domestic violence*], unless conducted by a prosecutor or a judge, being conducted by a person of the same ~~sex~~, **gender** as the victim, if the victims so wishes, provided that the course of the criminal proceedings will not be prejudiced.’;

(12) in Article 23, the following paragraph is added:

‘4. ~~The following m~~Measures to ensure victims’ physical protection shall be available for victims with specific protection needs identified in accordance with Article 22(1) during criminal proceedings. **Those measures may include:**

- (a) continuous or temporary presence of law enforcement authorities **or other bodies providing physical protection in accordance with national law**;
- (b) barring, restraining or protection orders to provide protection for victims against any acts of violence, **in accordance with national law** ~~including by prohibiting or restraining certain dangerous behaviour of the offender.~~’;

Corresponding recital:

(11) As a result of the enhanced assessment of victims’ needs for protection, victims who are in need of physical protection should be able to receive it in a form adapted to their particular situation. Such measures should include the presence of law enforcement authorities or being kept away from the offender on the basis of national protection orders. Such measures may be of a criminal, administrative or civil law nature.

⁵ Directive (EU) .../... of the European Parliament and of the Council on combating violence against women and domestic violence (OJ ...).’

Article 24

Right to protection of child victims during criminal proceedings

Based on the exchanges to the last COPEN, minor changes are being proposed to the proposed wording of article 24.

(13) in Article 24, the following paragraph is added:

‘3. Where the offence involves the holder of parental responsibility, or there could be any other conflict of interest between the child victims and the holder of parental responsibility, Member States shall take into account the best interest of the child and ensure that any **relevant** act requiring consent is not conditional upon the consent of the holder of parental responsibility.’;

(14) the following articles are inserted in Chapter 5:

‘Article 26a

Protocols **or procedures guidelines** through national coordination and cooperation

To align the wording of this article with VAW, procedures is being replaced by guidelines.

Based on the exchanges during the last COPEN, the PCY proposes minor changes to reference to judicial authorities in this article to encompass all possible relevant authorities playing a role on the subject matter of this instrument in all Member States and to address the concern that judges as such should not be included.

In paragraph two, the timing for revision is no longer linked to a set timeframe.

1. Member States shall establish and implement specific protocols ~~or procedures~~ guidelines on the organisation of services and actions under this Directive by the competent authorities and other persons coming in contact with victims. The protocols ~~or procedures~~ guidelines shall be drawn up in coordination and cooperation between **relevant stakeholders such as** law enforcement, prosecution authorities, ~~judges~~ judicial authorities, detention authorities, restorative justice services and victim support services **with a view to respond to the victims' individual needs**. The specific protocols or guidelines shall aim as a minimum at ensuring that:

- (a) victims receive information that is adapted to their changing individual needs; whereas such information shall be simple and easy to understand, provided in a timely manner, repeated over time, in multiple formats including orally, in writing and digitally;
- (b) victims who are in detention **facilities or in accommodation centres where applicants and beneficiaries of international protection are located, as referred to in article 5, paragraph 3, including jails, detention centres and holding cells for suspects and accused, as well as specialised detention facilities for applicants of international protection and pre-removal centres or in other institutions, including accommodation centres where applicants and beneficiaries of international protection are located**
 - (i) receive the information about their rights;
 - (ii) can rely on facilitated crime reporting;
 - (iii) have access to support and protection in accordance with their individual needs;
- (c) individual assessment of victims' needs for support and protection as referred to in Article 22, and provision of support services for victims with specific needs, take into account the victims' individual needs at different stages of the criminal procedure.

(d) the provision of the protection and specialist support services necessary to adequately ~~comprehensively~~ address the multiple needs of victims with specific needs as referred to in Article 9(4).

2. Member States shall ensure that the protocols ~~or guidelines ~~procedures~~~~ referred to in paragraph 1 are reviewed ~~at regular intervals~~ where necessary to ensure their effectiveness, such as in case of significant changes of national law ~~and at least once every two five years.~~
3. Member States shall take the necessary legislative measures to allow for collection and sharing of information, including information containing personal data of victims between the competent authorities and victim support services to ensure access to information and appropriate support and protection of individual victims.

Corresponding recital:

(14) National protocols ~~or guidelines ~~procedures~~~~ are essential to ensure that victims receive information about their rights and about their case and that victims are adequately assessed to enable them to receive the support and protection that corresponds to each victims' individual needs that change in time. Protocols ~~or guidelines ~~procedures~~~~ should be established ~~by legislative measures~~ in a way that corresponds best to national legal orders and the organisation of justice in the Member States. This should cover regulate the actions on provision of information to victims, facilitating crime reporting for the most vulnerable victims, including those in detention and the individual assessment of victims' needs. The ~~legislative~~ measures setting up the protocols ~~or guidelines ~~procedures~~~~ should specify essential elements necessary for the processing of data including, the recipients of the personal data and the categories of data that will be processed in the context of operation of the protocols ~~or ~~procedures~~ guidelines~~. The protocols ~~or guidelines ~~procedures~~~~ should provide for general instructions on how to deal with services and actions under Directive 2012/29/EU in a comprehensive manner without however dealing with individual cases.

Use of ~~electronic means of communication~~ information and communication technologies

The PCY proposes to align the wording referencing to these communication methods throughout this instrument.

The PCY is well aware that the enumeration of relevant articles in this regard in §1 should be reviewed in view of the finalised text.

1. Member States shall ensure that victims of crime may exercise their rights provided for in Article 3a, Article 4(1), Article 5(1), Article 5a **(1) and current §4,** Article 6(1), (2), (4), (5) and (6) and Article 10b using ~~electronic means of communication~~ **information and communication technologies.**
2. Victims of crime shall not be prevented from accessing or otherwise using national systems offering the **information and communication technologies** ~~electronic means of communication~~ referred to in paragraph 1 on the basis that they are residents of another Member State.
3. Where national systems offering **information and communication technologies** ~~electronic means of communication~~ require the use of electronic identification, signatures and seals, Member States shall allow the use of notified electronic identification schemes, qualified electronic signatures, and qualified electronic seals of any other Member States as provided for in Regulation (EU) No 910/2014 of the European Parliament and of the Council⁶.

⁶ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

New recital:

(XX) information and communication technologies as referred to in Article 26b) could include, in particular, emails, internet messaging live chats, video calls and on-line portals with access to information to registered participants. Member States are free to decide which means of communication are the most suitable in relation to different provisions of this Directive. The information regarding art. 4(1) can be provided electronically in a standard format.

Article 26c

Rights of victims with disabilities

1. Member States shall ensure that victims with disabilities benefit on equal basis with others from information and communication technologies ~~electronic means of communication~~ as referred to in Article 26b of this Directive by complying with the accessibility requirements set out in Annex I to Directive (EU) 2019/882 of the European Parliament and of the Council⁷.
2. Member States shall ensure that victims with disabilities can access on equal basis with others, any procedure as well as the support services and protection measures covered by this Directive in line with the accessibility requirements set out in Annex I to Directive (EU) 2019/882.

Member States shall ensure that reasonable accommodation is provided for victims with disabilities upon request.

⁷ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

Corresponding recital:

- (16) The Union and the Member States are parties to the UN Convention on the Rights of Persons with Disabilities⁸ and are bound by its obligations to the extent of their respective competences. Under Article 13 of that Convention the States Parties are obliged to ensure effective access to justice for persons with disabilities on an equal basis with others, hence the needs to ensure accessibility and provide reasonable accommodation so that victims with disability enjoy their rights as victims on equal basis with others. **As defined by Article 2 of the UN Convention on the Rights of Persons with Disabilities, “reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.** The accessibility requirements set in Annex I to Directive (EU) 2019/882 of the European Parliament and of the Council⁹ can facilitate the implementation of that Convention and ensure that the victims’ rights laid down by Directive 2012/29/EU are accessible for persons with disabilities.

Article 26d

Remedies

Taking into account the many concerns expressed by Member States during the last COPEN on the relevance, impact and the scope of this newly proposed article when implementing this revised instrument, the PCY proposes to adjust recital 19 relating to the remedies and delete the article.

⁸ OJ L 23, 27.1.2010, p. 37.

⁹ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

Member States shall ensure that victims have an effective remedy under national law in the event of a breach of their rights under this Directive.’;

Corresponding recital:

(19) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. **On the basis of the Charter of Fundamental Rights of the European Union,** an effective remedy should be available where the rights under this Directive are undermined or refused in full or in part.

(15) the following Article 27a is inserted:

‘Article 27a

Specific obligations in relation to victims of violence against women and domestic violence

Taking into account the many concerns expressed by the Member States during the last COPEN on the risk of including this newly proposed article only referencing to specific types of victims, the PCY proposes to add a new recital that is inspired by recital 69 of the current Victims’ rights directive.

~~When Member States adopt the measures to comply with this Directive, they shall ensure that it is done without affecting the obligations under Directive (EU) .../... [on combating violence against women and domestic violence], which are applicable in relation to such victims in addition to the obligations set out in this Directive. In particular, Member States shall ensure that~~

~~(a) — the victims’ helpline as referred to in Article 3a of this Directive does not affect the operation of dedicated and specialised helplines for victims of violence against women and domestic violence as required under Article 31 of Directive (EU) .../... [on combating violence against women and domestic violence];~~

- (b) ~~the obligation to take measures pursuant to Article 5a(2) of this Directive does not affect Member States' obligation to take targeted measures to encourage the reporting of acts of violence against women or domestic violence set out in Article 16(1) of Directive (EU) .../... [on combatting violence against women and domestic violence];~~
- (c) ~~the obligation to take measures pursuant to Article 5a(3) of this Directive does not affect Member States' obligation to take specialised measures to ensure the reporting of occurrences of violence against women or domestic violence in reception and detention centres set out in Article 35(4) of Directive (EU) .../... [on combatting violence against women and domestic violence];~~
- (d) ~~the obligation to take measures pursuant to Article 5a(4) of this Directive does not affect Member States' obligation to take targeted measures under Article 16(4) of Directive (EU) .../... [on combatting violence against women and domestic violence];~~
- (e) ~~as regards victims of violence against women or domestic violence, the provisions of [Articles 18 and 19 of Directive (EU) .../... [on combating violence against women and domestic violence] shall apply in addition to the rules set out in Article 22 of Directive 2019/29, as amended by this Directive~~
- (f) ~~the protocols on individual assessment of victims' needs for support and protection as referred to in Article 26a in conjunction with Article 22 of this Directive do not affect Member States' obligations to issue guidelines and establish dedicated mechanisms for victims of violence against women and domestic violence provided for in Article 23, point (b), and Article 40(2) of Directive (EU) .../... [on combating violence against women and domestic violence].~~

Corresponding recital:

(XX) This Directive does not affect more far reaching provisions contained in other Union acts which address the specific needs of particular categories of victims, such as victims of human trafficking in trafficking in human beings, and, victims of child sexual abuse, and sexual exploitation of children, including child sexual abuse material and child pornography, victims of violence against women and domestic violence and victims of terrorism, in a more targetted manner.

Article 28

Provision of data and statistics

To accommodate the need for more flexibility, the PCY proposes minor changes to the text, in line with the comments of the Member States during the last COPEN.

(16) Article 28 is replaced by the following:

Article 28

Provision of data and statistics

1. Each Member State shall take the necessary measures to establish a system for the collection, production and dissemination of statistics on victims of crime. The statistics shall include data, **available at a central level**, relevant to the application of national procedures on victims of crime, **which may include including at least** the number and type of reported crimes and the number, the age, sex of the victims **and the type of the offence**. They shall also include **available information data** showing ~~on~~ how victims have accessed the rights set out in this Directive. **For the purposes of the statistics referred to in this provision, Member States may use data collected on the basis of relevant Union instruments.**

2. Member States shall **endeavour to** collect the statistics referred to in this Article on the basis of common disaggregation developed in cooperation with the Commission (Eurostat). They shall transmit this data to the Commission (Eurostat) every three years. The transmitted data shall not contain personal data.
 3. The European Union Agency for Fundamental Rights shall support Member States and the Commission in the collection, production and dissemination of **available** statistics on victims of crime and in reporting **available information showing** ~~on~~ how victims have accessed the rights set out in this Directive.
 4. The Commission (Eurostat) shall support Member States in the data gathering referred to in paragraph 1, including by establishing common standards ~~on counting units, counting rules, common disaggregation, reporting formats, and on the classification of criminal offences~~
 5. The Member States shall make the collected statistics available to the public. The statistics shall not contain personal data.
 6. ~~The collection of data under paragraph 1 shall not affect the dedicated data collection under Article 44 of Directive (EU) .../... [on combating violence against women and domestic violence].²;~~
- (17) Article 29 is replaced by the following:

'Article 29

Reporting by the Commission and review

By [*six years after adoption*], the Commission shall submit a report on the application of this Directive to the European Parliament and the Council. The report shall assess the extent to which the Member States have taken the necessary measures to comply with this Directive, including the technical implementation.

The report shall be accompanied, if necessary, by a legislative proposal.²;

Article 2

Transposition

1. Member States shall take the necessary measures to comply with this Directive [*by two years after the entry into force*] with the exception of the provisions necessary to comply with Article 26b which shall be adopted and published [*by four years after the entry into force*]. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President
