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WORKING DOCUMENT

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 note

Delegations will find below a Presidency note regarding the abovementioned file, in view of the JHA Counsellors meeting on 12 May.

ANNEX

At the JHA Counsellors meeting on 12 May, the Presidency will give a short debrief from the ITM held on 30 April, where provisions of Chapters 5 and 6 of the draft directive were discussed.

Based on that ITM and the last JHA Counsellors meeting discussions, the Presidency proposes tentative compromise proposals on some articles contained in Chapters 5 and 6 of the draft directive, as well as on a number of other key issues in the draft directive.

At the meeting on 12 May, delegations will be kindly asked to indicate whether, in view of reaching a global compromise, they could support these proposals.

Presidency's tentative compromise proposals

Chapters 5 and 6

Article 25 – Training of practitioners

1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims, to avoid secondary victimisation and to enable them to deal with them in an impartial, respectful, non-discriminatory, and professional manner and where relevant, also in a trauma-sensitive, gender-sensitive, disability - sensitive and child-sensitive manner. Specialised training shall be provided in relation to victims of cybercrime.

1a. In order to ensure comprehensive support and protection to victims, Member States shall develop practical guidelines concerning victims protection and support rights covered by this Directive.

2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall take the necessary measures to ensure that both general and specialist training is provided for judges and prosecutors involved in criminal proceedings and investigations with respect to the objectives of this Directive and appropriate to the functions of those judges and prosecutors. **Such training shall be based on human – rights approach and shall include the elements of the victim centred, gender, disability and child sensitive approach towards victims of crime.** ~~Such training shall be human – rights based, victim centred and gender, disability and child sensitive.~~

3. Without prejudice to the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims and to treat victims in a trauma-, gender-, **disability-** and child-sensitive manner.

4. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful, non-discriminatory, child sensitive and professional manner.

5. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable practitioners to recognise victims, to understand the needs of victims, as well as national laws and procedures related to victims' rights, in order to avoid secondary victimisation, and to ensure that victims are treated in a respectful, professional, and non-discriminatory manner.

5a. Training referred to in paragraphs 1, 2, and 3 shall include specific guidance on coordinated cooperation, in accordance with Article 26a, allowing for a comprehensive, efficient and appropriate handling of referrals among the different competent authorities.

5[d]. Training activities referred to in paragraphs 1 to 5 and 8 shall be carried out regularly. Member States shall take measures to support bodies and organisations responsible for carrying out such training activities to develop, deliver and ensure the receipt of such training activities as well as its quality and availability throughout the territory of the Member States.

Recital: Member States shall encourage the development of interdisciplinary training among the staff of the different authorities who are likely to come in contact with victims, where relevant with the cooperation of non-governmental organisations, to enhance cooperation and coordination among authorities.

Article 25a - Awareness raising and communication of victims' rights

The EP indicated that it was open to move some of the elements included in paragraph 4 in their mandate to paragraph 1 and highlighted the importance of paragraph 3 in their initial mandate, which addresses persons facing barriers to communication. On this last point, the Presidency noted that these elements were already addressed in other parts of the draft directive.

1. Member States shall take awareness-raising measures and actions, ~~such as awareness-raising campaigns~~ in order to ensure that victims are aware of their rights under this Directive**, as well as other persons likely to come into contact with victims**. These actions, including campaigns may be conducted through a variety of channels in order to ensure the delivery of information to victims **and to those other persons** in a consistent manner across the territories of Member States.

2. Member States shall provide information to the public on reporting a crime, victims' rights, available general and specialist victim support services, functioning of the justice system as well as relevant procedures and application processes ~~in an easily accessible manner, such as on a website~~**. This information should be accessible, user friendly and easily available, including on-line**. Member States shall ensure that the content of information communicated to victims is developed, where relevant, in collaboration with civil society organisations and that the content is consistent and regularly updated to ensure accuracy.

3. Member States shall aim to ensure that measures are put in place to increase the awareness of victims on where to obtain help and exercise their rights, including by signposting mechanisms promoting easy and rapid identification of places where victims may get help, or public registers of accredited support organisations.

Article 26a - Protocols or guidelines through coordination and cooperation in the Member States

The EP reiterated that their main concern was the non-binding nature of protocols and guidelines, and the optional list of issues tackled via protocols and guidelines. It particularly noted that a mandatory list is important to the EP.

1. Member States shall establish and implement specific protocols or 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 guidelines shall be advisory in nature and drawn up in coordination and cooperation between relevant stakeholders, such as central authorities, in accordance with the internal structure of or division of competences in the Member States, law enforcement, prosecution authorities, judicial authorities, detention authorities and restorative justice services and victim support services, in consultation with relevant professional organisations and civil society organisations, with a view to respond to the victims' individual needs.

~~Member States shall ensure that, they include, as a minimum, the following~~ **The protocols or guidelines shall ensure at least that:**

(a) victims receive information that is adapted to their changing individual needs;

~~(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 can rely on facilitated crime reporting;~~

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

2. Member States shall ensure that the protocols or guidelines referred to in paragraph 1 are reviewed where necessary to ensure their effectiveness, such as in case of significant changes of national law.

Recital:

Protocols or guidelines are essential to ensure that for example 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 of an advisory nature should be established in a way that corresponds best to national legal orders and the organisation of justice in the Member States. At the same time, they should remain non-binding for national authorities, allowing sufficient flexibility to adapt their implementation. These protocols or guidelines should cover 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. When it comes to the provision of information to victims, the protocols or guidelines can ensure that such information is simple and easy to understand, provided in a timely manner, repeated over time, in multiple formats including orally, in writing and digitally. With regards to victims in detention, the protocols or guidelines can specify victims' access to information about their rights, methods of crime reporting and access to support and protection in accordance with their needs. The protocols or guidelines should provide for general instructions on how to deal with services and actions under this Directive in a comprehensive manner without however dealing with individual cases. In this context, it is important that Member States take, where appropriate, the necessary 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. The setting up of the protocols or guidelines should be without prejudice to the already existing methods of cooperation and coordination among the competent authorithies and other persons coming in contact with victims in the Member States.

Article 26b – Use of information and communication technologies

The EP indicated that their main concern was the use of the term "where available" in the Council's mandate, whilst the Presidency explained the reason behind the Council's wording.

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 (4), Article 6(1), (2), (4), (5) and (6) as well as Article 10b in relation to informing victims about decisions taken in court proceedings, by using, ~~where available~~ information and communication technologies.
2. Victims of crime shall not be prevented from accessing or otherwise using, ~~where available~~, the services provided by national systems offering the information and communication technologies 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 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 Council.

Article 26c – Rights of victims with disabilities

The EP indicated that "procedural accomodation" is a term recognised by the UN, for example in the International Principles and Guidelines on Access to Justice for Persons with Disabilities besides reasonable accomodation.

1. Member States shall ensure that victims with disabilities benefit on equal basis with others from information and communication technologies 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 Council.
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 **and procedural accommodations are** ~~is~~ provided for victims with disabilities upon request.

Article 28 – Provision of data and statistics

The EP highlighted that data collection and statistic obligations are very important and that the previously adopted solutions in other directives can be departed from. It also indicated that "existing" data is not a solution found in all other recently adopted directives. Another important point for the EP is to have a "shall" clause as regards the type of data to be collected.

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, as a minimum, include the following ~~existing~~ data, available at central level, disaggregated by sex, age group (child/adult) of the victim and, where possible and relevant, relationship between the victim and the offender and type of offence. They shall also include data available at central level showing 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 and in accordance with the standards developed by the Commission (Eurostat) **in cooperation with national authorities**. 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 data showing 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.

5. The Member States shall make the collected statistics available to the public in an ~~easily~~ accessible **and user-friendly** manner. The statistics shall not contain personal data.

Other key issues

Article 9a – Targeted and integrated support services for children

4. Member States shall ~~aim~~ **strive** to ensure the provision of the services referred to in paragraph 2 within the same premises. Particular attention should be paid to the interest of the child victims, including the seriousness of harm suffered by child victims as a result of the crime.

Recital: To avoid serious consequences of victimisation at an early age, that may negatively affect victims' entire life, it is crucial to ensure that all child victims receive the highest standard of support and protection. All competent authorities should adopt a child friendly approach. Moreover, it is important that most vulnerable child victims, in accordance with their individual needs, benefit from the targeted and integrated support and protection services that include coordinated and cooperative approach of judicial authorities and social services. Without prejudice to existing national support systems, Member States are encouraged, where appropriate, to provide such support and protection services within the same premises, where this may improve accessibility, coordination, and the overall well-being of the child.

Article 13 – Legal Aid

1. Member States shall ensure that victims who have the status of parties in criminal proceedings and who do not have sufficient means to pay for legal assistance during criminal proceedings have access to legal aid**, including where applicable, for the purpose of claiming compensation,** and may apply a means test, a merits test, or both to determine whether legal aid is to be granted. Where a Member State applies a means test to assess eligibility for legal aid, it shall take into account all relevant and objective factors, such as the income, capital and family situation of the person concerned, the costs of the assistance of a lawyer and the standard of living in that Member State as well as the relationship to and dependence to the offender. Where a Member State applies a merits test, it shall take into account the seriousness of the criminal offence, the complexity of the case and the seriousness of the harm suffered by the victim as assessed in Article 22, paragraph 3 of this Directive.

The procedural rules under which victims have access to legal aid shall be determined by national law.

2. Notwithstanding paragraph 1, Member States shall **aim to** ensure that ~~children victims~~ **certain categories of victims, such as children, as defined under national law,** who have the status of parties in criminal proceedings, are entitled to legal aid in all cases.

Recital: **The right to legal aid is essential to guarantee access to justice and effective participation for victims who have the status of parties in criminal proceedings. Therefore, Member States should provide legal aid for victims who do not have sufficient means to pay costs and expenses in order to ensure their access to justice.** In applying the right to legal aid, Member States are encouraged to grant legal aid to victims of gender-based violence, terrorism and human trafficking irrespective of a means or a merits test.

Article 16 - Compensation

1. Member States shall ensure**, where appropriate**, that in the course of criminal proceedings~~, where appropriate,~~ victims are entitled to obtain a decision on compensation by the offender within a reasonable time.

2. Member States shall ~~take the necessary~~ **have** measures ~~to ensure, at the request of the victim,~~ **in place to support the victim**, **including through execution measures, in order for** ~~that~~ the awarded compensation ~~is~~ **to be** paid by the offender without undue delay.

3. ~~Where the offender fails to fulfil his obligation to pay the adjudicated awarded compensation to the victim within a reasonable time, or~~ **I**f the execution of the awarded compensation is not possible within a reasonable time, **or where the offender fails to fulfil his obligation to pay the awarded compensation to the victim** ~~within a reasonable time~~ **without undue delay**, Member States shall ensure that ~~victims have access to compensation mechanisms~~ **at least** ~~as regards~~ victims of **serious and** violent intentional crimes [**can make use of compensation mechanisms**] **OR [can receive compensation from relevant authorities]** ~~in accordance with Article 12(2) of Directive 2004/80/EC on compensation to crime victims.~~ The maximum amounts payable by the compensation mechanism may be limited. Such mechanisms shall not substitute the obligation of the offender to pay the ~~adjudicated~~ **awarded** compensation.

4. In applying paragraph 3, Member States may have recourse to the mechanism provided in Article 12(2) of Directive 2004/80/EC on compensation to crime victims.

Article 18a - Additional right to protection

Member States shall ensure that access to support and protection measures under this Directive may be granted to a victim who suffered ~~additional~~ harm from glorification of serious **criminal** offences, **including deprivation of dignity,** ~~including, at least,~~ **such as public provocation to commit a terrorist**~~m~~ **offence**~~s~~ as defined under Article 3 of Directive 2017/541, or paying tribute to offenders of such crimes.

Recital: Glorification of serious criminal offences as defined under national law, including of terrorism offences **as defined under Article 3 of Directive 2017/541** or paying tribute to the offender of a serious criminal offence, can result in deprivation of victims' dignity and cause ~~additional~~ suffering **or harm** ~~for~~ **to** victims **resulting in standalone victimisation, for which victims should have access to support and protection measures**. Such acts can render victims particularly vulnerable to secondary victimisation, repeat victimisation, intimidation and retaliation. In this context, it should be recalled that public provocation to commit a terrorist offence comprises, inter alia, the glorification of terrorism, constitutes a criminal offence under Directive 2017/541 on Combatting terrorism, whereas public incitement to any acts of racism or xenophobia or publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes constitute criminal offences under Framework Decision 2008/913 on Combatting Racism and Xenophobia. This Directive does not require Member States to criminalise glorification of serious criminal offences nor the criminalisation of hate speech or hate crime. **At the same time, the Council Conclusions on improving support and recognition of victims of terrorism from 4 December 2023 include a valuable list of best practices and measures to better protect victims of such crimes.** For the purposes of the provision concerning the glorification of crimes, the notion of "victim" should be understood in accordance with the definition laid down in Article 2 of this Directive.

Article 21(3) - Right to protection of privacy

3. ~~Without prejudice to the rights of defence,~~ Member States shall ensure that, upon assessment by the competent authorities ~~ex officio or based on a request of the victim~~ **that not disclosing** personal data concerning the victim's place of residence or other equivalent contact details, **such as phone number and email address, would prejudice the rights of defence, such data are not disclosed** ~~are not provided~~ to the offender.

Recital: **Member States shall ensure that personal data concerning the victim's place of residence, or other equivalent contact details, such as telephone number or e-mail address, are not disclosed to the offender either directly or indirectly unless it is necessary in the exercise of the offender's right to defence.** In determining whether ~~the victim's place of residence or other equivalent contact details such as telephone number or e-mail address~~ **such personal data** should be provided to the offender ~~or not~~, the competent authority should, in its assessment of the needs to reveal the data to ensure the exercise of the right of the defence, **with due respect to Article 7 of Directive 2012/13/EU in order to preclude any prejudice to the rights of the defence**. **Against this background,** the competent authority should assess the risk of threat, damage or harm that the victim ~~or a third person~~ might be exposed to **as a result of providing offender with such personal data**. **Member States are also encouraged to ensure that, to the extent that is necessary to protect the privacy of the victim, competent authorities may decide not to publish victims' personal data included in judgements or decisions. This directive does not interfere with national constitutional rules regarding public access to information.**

Article 10b - Right to information on decisions taken during court proceedings

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 a decision taken in court proceedings that affect them directly. Member States may provide the possibility for victims to request a review of decisions pursuant to Article 23(3).

2. Where victims may request a review of a decision under Article 23 (3), the procedural rules for such a review shall be determined by national law.

Decisions under Article 23(3) and any consideration of a review of such a decision shall not unreasonably prolong the criminal proceedings.

Article 26d – Remedies

Option 1

In accordance with national rules, Member States shall ensure that victims have an effective remedy **as described** under national law in the event of a breach of their ~~procedural~~ rights under this Directive~~, at least regarding the rights contained in Article 4 and 6~~.

Option 2

1. ~~In accordance with national rules,~~ Member States shall ensure that victims have an effective remedy **in accordance with Article 47 of the Charter of Fundamental Rights of the European Union** under national law in the event of a breach of their ~~procedural~~ rights under this Directive~~, at least regarding the rights contained in Article 4 and 6~~.

2. This Article shall not preclude Member States from relying on national rules and procedures, such as different forms of redress proportionate to the nature and seriousness of the violation, as long as the effective exercise and the essence of the right to an effective remedy is not prejudiced.