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WORKING DOCUMENT

From: To:	Presidency 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 19 May.

At the JHA Counsellors meeting on 19 May, the Presidency will give a short debrief from the ITM held on 15 May. In this ITM, co-legislators will discuss Articles 13, 25, 25a and 26a. Most importantly, however, the aim of the meeting is to identify and approximate each institution's position on key political priorities. At this stage of the negotiations, and in view of the possible last political trilogue to be held on 16 June, the negotiating teams are working on elements which would form part of a possible compromise package to be agreed upon at this trilogue.

In this context, the Presidency note below focuses on the main political issues identified throughout the negotiations with the Parliament and aims at presenting both the EP's positions, as well as the Presidency's suggestions as to the way forward on each of these issues. The proposals aim to address these issues in a form of a possible global compromise package, which is thereby submitted to delegations.

At the meeting on 19 May, delegations will be kindly asked to indicate whether, in view of reaching a global compromise, they could support the Presidency's proposed approach.

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Presidency's suggested compromise package

Article 3a - Victims' helpline

The EP insists on ensuring that telephone helplines are provided in officials languages of the Member States as well as an additional language. In addition, the EP indicated that websites and online applications should be available in additional languages, including languages understandable to victims, including through embedded automated translation tools. Finally, a strong recital on minority languages to be used for helplines is important to the EP. The Presidency understands that it has no mandate to go beyond the General approach as regards the obligation to provide helplines in official languages. In order to reach a compromise, it proposes to oblige Member States to provide helplines through ICT in additional languages to the official ones.

Tentative draft

1. Member States shall take the necessary measures to establish ~~easily~~ **easy to use,** accessible, user friendly, secure, 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 relevant services, including general and specialist support services and/or specialised specialist helplines if needed.
2. Member States shall ensure the provision of helplines referred to in paragraph 1 through a telephone helpline reachable via the EU harmonised number "116 006", which may operate in addition to any existing national numbers, and shall provide such services also through other secure and accessible information and communication technologies, ~~including~~ **such as** online applications ~~and~~ **or** websites.

2a. Member States shall ensure that, in addition to the EU harmonised number referred to in paragraph 2 for domestic calls, the helplines shall be reachable via a dedicated number for international calls for victims who suffered harm in a country other than their country of residence. **Such international calls are not required to be free of charge.**

3. Member States shall take appropriate measures to ensure the availability of the services referred to in paragraphs 1 and 2 in the official language or languages of the Member States as determined by national law. Member States shall strive to ensure the provision of those services in at least one other language most used in the Member State.

3a. When the services referred to in paragraph 1 are provided through information and communication technologies, Member States shall ensure their availability in a language that victims can understand, such as through the use of translation and interpretation technologies.

4. Helplines may be set up by public or non-governmental organisations and may be organised on a professional or voluntary basis.

4a. Member States shall take the necessary measures to ensure that helplines provide quality, accessible support to victims during adequate operating hours. Those helplines shall be operated by appropriately trained persons.

Recital

Helplines should be operated securely, ensuring that information, and notably data, or information provided by the victim, is not exchanged in a way allowing access without proper authorisation. Without affecting national procedures, appropriate security measures should be implemented to prevent unauthorised access by any party.
It is important that helplines are reachable not only through domestic calls under the harmonised number 116 006, but also via calls from abroad, in particular for victims who suffered harm in a country other than their country of residence. This should be ensured e.g. by provision of additional number that can be called from abroad to connect the victim with the helpline they need to reach in order to seek relevant assistance.

Proposed addition to Recital 4 concerning paragraph 4a (quality of the support provided by helplines): Member States should ensure that support provided by such helplines is without prejudice to the right of victims to receive information on their rights and on their case and to otherwise communicate with competent authorities and with other general or specialist victims' support services through appropriate communication and information technologies. The helplines should be operated by adequately trained persons, including volunteers, to ensure a high level of service and work in a victim-sensitive manner, in line with existing standards of quality support.

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Article 8(6) – Providing services in times of crisis

The Presidency believes the EP could make a concession by accepting the Council's position as regards the need to align this provision with the Directive on combating violence against women and domestic violence.

6. Member States shall aim to ensure that specialist support services remain **fully** operational for victims in times of crisis, such as health crises, humanitarian situations or other states of emergency.

Article 9(3)(b) - Sexual and reproductive healthcare services

While the EP insists on expanding this provision towards ensuring explicitly access to abortion care, at least in the form of a recital, the Presidency understands there is no mandate from the Council in this regard. It would nevertheless be helpful to understand whether delegations could support a reference to abortion in a recital. The Presidency proposes therefore to align with the wording of the Directive on combating violence against women and domestic violence, and understands that a majority of delegation could support it in a spirit of compromise.

(b) targeted and integrated support, including trauma support and counselling as well as ~~access to~~ **information on and, where appropriate, referral to** comprehensive medical care services, including sexual and reproductive healthcare services, in accordance with national law, 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 Council [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, and victims of crimes falling within the jurisdiction of the International Criminal Court.

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Article 9a – Targeted and integrated support services for children

The Presidency believes the EP could ultimately be ready to make a concession as regards the obligatory use of the so-called Barnhaus model (all services provided within the same premises), although it would constitute a major departure from what seems to be one of the key political objectives of the EP. The EP therefore insists on at least an obligation on the Commission to evaluate the situation in Member States as regards the use of this provision and its potential impact on the support provided to child victims. It would also require from the Council a significant concession to the EP elsewhere.

4. Member States shall ~~strive to~~ **consider** ensur**ing** 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.

4a. The European Commission and the Council shall inform the European Parliament and the Council of the state of implementation of this model across Member States two years after the deadline for implementation of this Directive.

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.

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Article 13 – Legal Aid

The Presidency believes that the Council and the EP could tentatively agree on paragraph 1 of this Article. In order to alleviate some concerns, it is proposed to make clear that compensation claims relate to criminal proceedings. The EP still insists in paragraph 2 on an obligation to provide legal aid irrespective of the means or merits test for certain categories of victims. Those categories would be at the discretion of Member States to define, although EP strongly suggests exemplifying children or disabled persons as deserving such protection.

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 **in those proceedings**, 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 certain categories of victims who have the status of parties in criminal proceedings**,** as defined under national law, such as children **or disabled persons**, are entitled to legal aid**.**

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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. **Irrespectively, given the particular vulnerability of certain categories of victims, such as children or disabled persons, Member States should provide legal aid without a recourse to means or merits test to certain categories of victims, to be defined in national law.** ~~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.~~

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Article 16 – Compensation

The Presidency stresses the importance of this article as an enabler for reaching an overall global compromise with the EP. The text below aims at further clarifying the 3-steps mechanisms proposed by the Presidency, including the interplay between paragraph 3 and existing compensation mechanisms, in particular in situations where a victim had already benefited from a compensation mechanism before a final compensation decision in the proceedings has been made.

1. Member States shall ensure, where appropriate, that ~~in the course of criminal proceedings~~ victims are ~~entitled~~ **able** to obtain a decision on compensation **in the course of criminal proceedings** ~~by the offender within a reasonable time~~.
2. Member States shall have measures in place to support the victim, ~~including~~ **such as** through execution **or enforcement** measures, ~~in order~~ ~~for~~ **aimed at facilitating the payment of** the awarded compensation ~~to be paid~~ by the offender without undue delay.
3. ~~If 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 without undue delay,~~ Member States shall ensure that at least victims of ~~serious and~~ violent intentional crimes can ~~make use of~~ **have access to** compensation mechanisms, **such as mechanisms provided in Article 12(2) of Directive 2004/80/EC on compensation to crime victims, in particular** if the **payment** ~~execution~~ of the awarded compensation from the offender is not possible ~~within a reasonable time~~, or **the measures referred to in paragraph 2 were unsuccessful.**

4. The maximum amounts payable by the compensation mechanism may be limited, **especially if the victim had already benefited from the compensation mechanism before the compensation has been awarded.** Such mechanisms shall not substitute the obligation of the offender to pay the awarded compensation **to the victim or, where applicable, to relevant authorities.** In applying paragraph 3, Member States may use the same mechanism provided in Article 12(2) of Directive 2004/80/EC.

Recital

In order to ensure effective protection of the rights of victims of crime, Member States should guarantee that, where appropriate, victims are able to obtain a decision on compensation by the offender in the course of criminal proceedings. Once such a decision is made, the awarded compensation should be paid by the offender without undue delay. For the purpose of assessing delay, time shall be calculated from the last day of the deadline for final payment, and a delay is considered "undue" where it exceeds what could reasonably be expected given the circumstances of the case.

The awarded compensation referred to in this Directive is the compensation awarded after the decision on compensation has become final. Where payment of the awarded compensation by the offender is not possible, or where the offender fails to fulfil their obligation, Member States should ensure that at least victims of violent intentional crimes have access to compensation mechanisms, such as those provided under Article 12(2) of Directive 2004/80/EC on compensation to crime victims. If compensation had been paid to the victim from such a mechanism prior to the decision on the awarded compensation is made, the competent authorities should not be required to repay or forfeit the amount received once the awarded compensation is paid. Member States may establish maximum limits for payments from such mechanisms. Member States may also provide that the advanced compensation can be taken into consideration in calculating the compensation by the State under Directive 2004/80/EC. However, these mechanisms shall not substitute the offender's obligation to pay the awarded compensation, which remains in force.

PUBLIC

Member States should have in place appropriate enforcement measures to support victims in obtaining the awarded compensation. Such enforcement measures may include, for example, the seizure of assets, enforcement by bailiffs, garnishment of income or public payments, or other civil or criminal procedures ensuring execution of the compensation.

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

The EP's main concern is the non-binding nature of protocols or guidelines, and the optional nature of the list of issues tackled via protocols and guidelines. In order to address this concern, the Presidency suggests a flexible wording on the nature of protocols, that can be adapted to national orders. A mandatory list is important to the EP in exchange for possibly admitting the non-binding nature of the protocols or guidelines. The wording proposed is a partial alignment with the wording of the Directive on combatting violence against women and domestic violence. Finally, the EP would like to make a reference to coordination of referrals in the recitals, linked to the provision of para 1(d).

1. Member States shall establish and implement specific protocols or guidelines, **binding or non-binding in nature depending on national law,** on the organisation of services and actions under this Directive ~~by~~ **of** 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.

The protocols or guidelines shall ~~ensure at least that~~ **provide guidance on how**:

(a) ~~victims receive~~ **all the necessary** information **is provided to victims in line with this Directive** 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~~ **the reporting of criminal offences as set out in Article 5a of this Directive is carried out**;

(c) **the** individual assessment of victims' needs for support and protection as referred to in Article 22, and **the** provision of support services for victims with specific needs, **is carried out,** take~~e~~**ing** 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, **including coordination of referrals.**

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~~, **and can be binding or non-binding in nature,** allowing sufficient flexibility to adapt their implementation **to Member States' legal orders**. 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~~ **it is important to** 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 **reporting of crimes,**

including for victims **deprived of liberty or whose liberty is restricted** ~~in detention~~, the protocols or guidelines ~~can~~ **should** specify victims' access to information about their rights, methods of crime reporting and access to support and protection in accordance with their needs. **With regards to how the protection and specialist support services are provided to victims, it is important that the protocols or guidelines address the coordination of referrals of victims.** 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~~ **can build upon** the already existing methods of cooperation and coordination among the competent authorities and other persons coming in contact with victims in the Member States.

Article 22 – Individual assessment

The Presidency believes that in order to maintain the wording of the Directive on combating violence against women and domestic violence in Article 9(3)b, the EP would need a reference to gender identity in the provision defining the characteristics to be taken into account when the individual assessment is being made. It noted that a majority of Member States could support this introduction.

2. The individual assessment shall take into account:

(a) the personal characteristics of the victim, including relevant experiences of discrimination, also when based on intersectional grounds, such as ~~sex,~~ gender, age, disability, resident status, religion or belief, language, racial, social or ethnic origin, **gender identity** and sexual orientation;

(d) the relationship to and the risks emanating from the offender.

Article 23 - Right to protection of victims with specific protection needs during criminal proceedings

3. (c) measures to avoid unnecessary questioning concerning the victim's private life, including the person's sexual orientation, **gender identity** or past sexual conducts, not related to the criminal offence; and

Article 10b – Right to review of / Right to information on decisions taken during court proceedings

The Presidency believes that in exchange for maintaining a provision of remedies, the EP could concede its position as regards the right to review and delete the article entirely with an additional, below-mentioned in Article 23(3), being a mirrored provision to existing art. 7(7).

Victims may challenge a decision not to receive specific protection measures pursuant to paragraph 3. The procedural rules for such a challenge shall be determined by national law.

Article 26d – Remedies

The EP's has indicated a strong preference to maintain the wording proposed by the Commission, which reaffirms the applicability of Article 47 of the Charter as regards the rights provided under the Directive. In an attempt to bridge the positions, the Presidency presents below a new drafting based on a reference to article 47 of the Charter.

1. Member States shall ensure that victims have **adequate** ~~an effective~~ remed~~y~~**ies under national law to ensure effective legal protection,** 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 rights under this Directive~~ **in particular where acts or omissions producing legal effects vis-à-vis them may entail a breach of their rights under this Directive**.
2. This Article shall not preclude Member States from relying on national rules and procedures, such as different forms of **incidental** 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.

PUBLIC

Article 21(3) – Right to privacy

The Presidency believes that there is support expressed by a majority of delegations to include a provision whereby the non-disclosure of personal data is a default option while always subject to an assessment by the competent authority against the background of the offender's right to defence. This principle is important to the EP in view of reaching a broader compromise.

3. Member States shall ensure that ~~upon assessment by the competent authorities~~ that ~~not disclosing~~ personal data concerning victim's place of residence or ~~other equivalent contact details, such as~~ **victims' telephone** number and email address ~~would prejudice the rights of defence, such data are not disclosed~~ **is not provided** to the offender **unless the competent authorities consider [that the information is relevant to the crime or] that not providing the data would otherwise prejudice the rights of defence.**

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 ~~such~~ personal data **concerning the victim's place of residence or victims' telephone number and email address** should be provided to the offender, the competent authority should, in its assessment of the needs to reveal the data ~~to~~ **should** ~~ensure the~~ **take into account 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 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.

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