Council of the European Union
General Secretariat

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Interinstitutional files:
2023/0250 (COD)

Brussels, 03 June 2025

WK 7241/2025 INIT

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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 5 June.

ANNEX

At the JHA Counsellors meeting on 5 June, the Presidency will provide a short debrief on the ITM held on 22 May and scheduled for 3 June. During these ITMs, the co-legislators aimed to revisit each Article with a view to clarifying the current state of negotiations. The outcome of these meetings will also be reflected in a four-column table, which will be circulated following the ITM on 3 June.

Most importantly, the meetings served as an opportunity for the institutions to clearly reassess and rearticulate their positions on key political priorities. At this advanced stage of negotiations, and in view of the possible final political trilogue foreseen on 17 June, negotiating teams continue to focus on elements that could form part of a potential compromise package, to be agreed upon at the trilogue.

In this context, the Presidency note below concentrates on the main political issues identified throughout the ongoing negotiations with the European Parliament. It seeks to present both the EP's positions and the Presidency's suggestions on the way forward for each of these issues. These proposals are intended to address the outstanding matters in the form of a possible global compromise package, which is hereby submitted to delegations for their consideration. The Presidency is fully aware of the Council's positions on the matters outlined below, which have been discussed extensively within the Council. However, in order to reach an agreement in principle, it will be necessary to accommodate some of the European Parliament's proposed amendments. The Presidency believes that in the course of negotiations the European Parliament has made a number of concessions in the context of which the Presidency encourages the Council to consider the compromise proposals listed below.

Delegations will also be invited to examine the four-column table with a view to discussing and potentially endorsing certain proposals developed jointly by the co-legislators.

At the meeting on 5 June, 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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<u>Presidency's suggested compromise package</u>

Article 3a - Victims' helpline

The issue of the languages provided by the helpline remains a key concern for the European Parliament. However, the Presidency believes that placing the focus on ensuring access through modern communication technologies constitutes a constructive and balanced compromise.

In line with the most recent comments from Member States, paragraph 3a has been limited to a reference to paragraph 1(a) and (c), namely the obligation to provide victims with appropriate information and to refer victims to relevant services.

1. Member States shall take the necessary measures to establish 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 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, such as online applications ~~or~~ **<u>and</u>** 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~~ **widely understood** in the Member State.

3a. When the services referred to in paragraph 1**(a) and (c)** 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 and 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

In line with the most recent comments from Member States, the Presidency has removed the word "fully", acknowledging the concerns expressed by delegations.

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

The European Parliament continues to strongly insist on expanding this provision in order to ensure explicit access to abortion care. However, the Presidency understands that the Council does not have a mandate to address the issue of abortion, including in a recital. As a possible compromise, the Presidency proposes to maintain the wording as set out in the Directive on combating violence against women and domestic violence in the operative part, and include a recital on sexual and reproductive healthcare, in order to move towards the Parliament.

(b) targeted and integrated support, including trauma support and counselling as well as 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.

Recital
For victims of sexual violence, such as rape, access to sexual and reproductive healthcare services, such as emergency contraception, post-exposure prophylaxis treatment, testing for sexually transmitted infections **[or access to safe and legal abortion care in line with national law]** is of vital importance and should be provided by the Member States. This is without prejudice to the Member States´ policies on the scope of sexual and reproductive healthcare for the general population.

Article 9a – Targeted and integrated support services for children

As already indicated at the previous meeting, the Presidency considers that the European Parliament may ultimately be willing to show flexibility regarding the mandatory application of the so-called Barnahus model. The European Parliament has therefore insisted, at the very least, on an obligation for the Commission to assess the situation in the Member States concerning the implementation of this provision and its potential impact on support provided to child victims. As part of the compromise, an expanded version of Article 29 on Reporting by the Commission and review has been developed, which would now appear as set out below. It should be underlined that this represents a significant concession on the part of the European Parliament, given that this was one of its key political priorities. Additionally, the European Parliament consider the words "shall consider" as not sufficiently reflecting the importance of the matter.

4. Member States shall consider ensuring 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.~~

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 specifically assess the way the Member States implemented Article 9a(4). The Commission shall take into consideration the findings of the European Union Agency for Fundamental Rights and Eurostat in that report.**

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

As already indicated at the previous meeting, the Presidency considers that the Council and the European Parliament could, in principle, reach a provisional agreement on paragraph 1 of this Article.

With regard to paragraph 2, the Presidency — fully aware of the concerns raised by Member States and taking into account all comments received — has included a direct reference to a means test, indicating that the victim should not have sufficient means. While the identification of the specific categories referred to in this paragraph would be left to the discretion of the Member States, the European Parliament continues to insist on explicitly mentioning children or persons with disabilities as deserving of the protection provided under this provision.

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 **by a lawyer** 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 ensure that certain categories of victims who have the status of parties in criminal proceedings [**and who do not have sufficient means],** as defined under national law, such as children or disabled persons**,** are entitled to legal aid.

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.

Article 16 – Compensation

The proposal for this provision on compensation, as set out below, appears to have received support from Member States during the JHA Counsellors meeting held on 28 May. However, it should be noted that the European Parliament has not expressed support for the current wording. For the Parliament, this remains one of the most important political points and constitutes a key element of the overall package deal. In light of the above, delegations will be invited to re-examine the provision and indicate whether they could show further flexibility in their positions in order to facilitate progress.

1. Member States shall ensure, where appropriate, that victims are able to obtain a decision on compensation in the course of criminal proceedings.
2. Member States shall have execution or enforcement measures in place, aimed at facilitating the payment of the awarded compensation by the offender without undue delay.
3. Member States shall ensure that at least victims of violent intentional crimes can have access to national compensation schemes, such as the schemes provided in Article 12(2)

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of Directive 2004/80/EC on compensation to crime victims, in accordance with the rules on the functioning of those schemes. Access to national compensation schemes may be provided before the compensation is awarded, or ~~in particular~~ if the payment of the awarded compensation from the offender is not possible, or the measures referred to in paragraph 2 were unsuccessful.

4. Without prejudice to the functioning of the national compensation schemes, the amounts paid from the compensation schemes may be limited, ~~especially~~ **including** if the victim had already benefited from the compensation ~~mechanism~~ **schemes** 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

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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.
Member States should have in place appropriate enforcement measures to ~~support~~ **help** 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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Alternative compromise suggestion in order to reach a global compromise with the EP:

(…)

3. In relation to victims of violent intentional crimes that have not received the awarded compensation from the convicted offender within a reasonable time and the measures referred to in paragraph 2 of this Article, were unsuccessful within a reasonable time, Member States shall advance at least a maximum amount of the awarded compensation to the victim as defined under national law. Such advanced payment shall not substitute the obligation of the offender to pay the awarded compensation and Member States shall maintain the right to recuperate the advanced compensation from the convicted offender.
4. Member States may provide that any compensation received by the victim through the application of Directive 2004/80/EC or any other compensation schemes may be deducted from the amount of compensation to be advanced to the victim under paragraph 3. 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.
5. In applying paragraph 3, Member States may use the same mechanism provided in Article 12(2) of Directive 2004/80/EC.

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

The European Parliament continues to express significant concerns regarding the non-binding nature of protocols or guidelines. However, in the spirit of compromise, the Presidency believes that the version proposed below — which does not differ substantially from the one presented

in the most recent document — could represent a balanced compromise between the Parliament and the Council. At the same time, in exchange for this concession, the European Parliament has proposed the reintroduction of paragraph 3 concerning the collection and sharing of information.

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 ~~of~~ **to be followed by** the competent authorities and other persons coming in contact with victims. The protocols or guidelines shall be 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 provide ~~guidance~~ **instructions** on how:

(a) all the necessary information is provided to victims in line with this Directive that is adapted to their changing individual needs;

(b) 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, taking 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 is provided, including coordination of referrals.~~ **the cooperation between general and specialist support services is carried out, including targeted and integrated support services for child victims as referred to in Article 9a.**

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.

3. Member States shall ensure the 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.]

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Recital

Protocols or guidelines 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 of should be established in a way that corresponds best to national legal orders and the organisation of justice in the Member States 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, 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, the protocols or guidelines 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 **should** take, where appropriate, the necessary **legislative** measures to allow for collection and sharing of information **in accordance with Regulation (EU) 2016/679 and respecting the will of the victim**, including information containing personal data of **the** victim~~s~~ between the competent authorities and victim support services to ensure access to information and appropriate support and protection of ~~individual~~ **the affected** victim~~s~~. The protocols or guidelines 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.

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Article 22 – Individual assessment

The European Parliament continues to insist on the inclusion of the term "gender identity" in Articles 22 and 23 as part of the global compromise package.

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, **including gender identity,** age, disability, resident status, religion or belief, language, racial, social or ethnic origin, 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, including gender identity** or past sexual conducts, not related to the criminal offence; and

Article 21(3) – Right to privacy

The Presidency believes that the proposal set out below reflects the support expressed by Member States at the previous meeting. However, in order to reach a global compromise, the Presidency presents an alternative text without which it would be difficult to find an agreement with the EP.

3. Member States shall ensure that, upon assessment by the competent authorities of the need for protection of the victim and the rights of defence, personal data concerning the victim's place of residence or other equivalent contact details, such as phone number and email address, is not provided to the offender in accordance with Article 7 paragraph 2 of the Directive 2012/13 EU.

Alternative compromise suggestion in order to reach a global compromise with the EP:

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3. Member States shall ensure that personal data concerning victim's place of residence or other equivalent contact details, such as telephone number and email address, is not provided to the offender unless the competent authorities consider that not providing the information would otherwise prejudice the rights of defence.

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Recital In determining whether personal data concerning the victim's place of residence or ~~victims' telephone number and email address~~ **<u>other equivalent contact details, such as phone number and email address</u>,** should be provided to the offender, the competent authority should, in its assessment of the needs to reveal the data, should 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.

Article 26d – Remedies

The Presidency, taking note of the concerns expressed by Member States and the indication that this provision constitutes a red line for some, currently sees limited room for manoeuvre regarding the wording of this Article.

At the same time, bearing in mind the importance of this Article for the European Parliament, the Presidency once again invites Member States to consider whether some flexibility could be shown with regard to this provision and what solution could be proposed as a compromise on this Article. The inclusion of this provision in the text of the Directive appears to be of key importance for the European Parliament. Alternatively, in exchange for deleting art. 26d the EP could consider accepting a revamped art. 10b on the right to review, which would have to

include at least 3-4 explicitly identified rights subject to such a review. The Presidency understands there is no support among Member States for such a proposal at this stage.

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Alternative compromise suggestion in order to reach a global compromise with the EP:

Article 26d – Remedies

1. Member States shall ensure that victims have an effective legal remedy 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. ~~Without prejudice to judicial discretion,~~ the invocation of a legal remedy by a victim ~~shall not~~ **is not required to** have suspensive effect ~~in~~ **during** the criminal proceedings, ~~unless otherwise provided by national law~~ **as long as the effective exercise and the essence of the right to an effective remedy is not prejudiced.**

2. The procedure for invoking a legal remedy shall be determined by national law and such remedy may be invoked before ~~administrative, civil or criminal courts depending on~~ **any competent courts in accordance with** national law. The form and type of remedy available to victims shall be determined by national law and shall be 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.