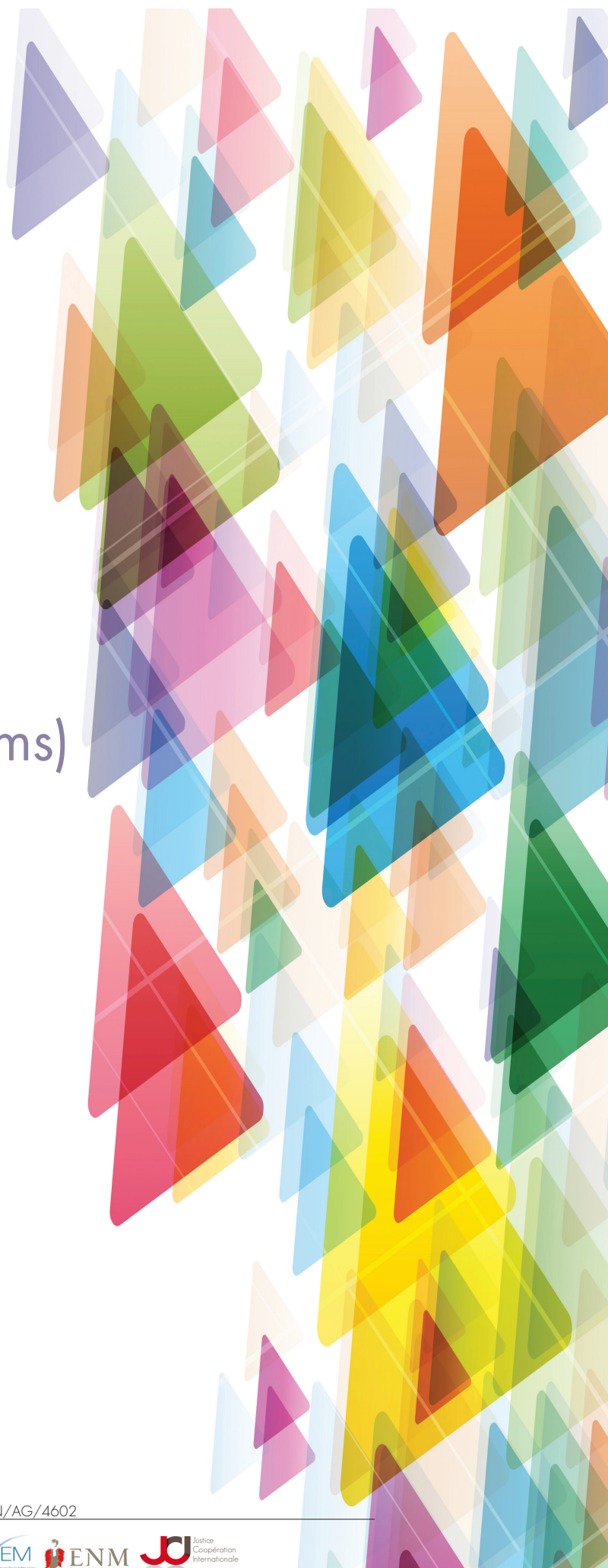




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# EVVI (Evaluation of Victims)



in coopération with

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The guidelines were developed in the framework of the European project EVVI (EValuation of Victims), *évaluation personnalisée des victimes* implemented by the French Ministry of Justice in close co-operation with the French Victim Support and Mediation Institute (INAVEM), the French National School for the Judiciary (ENM), the Crown Prosecution Service (United Kingdom), the Polish Ministry of Justice (Poland), the 'Secretaria General de la Administracion de Justicia' (Spain), the 'Associação Portuguesa de Apoio à Vítima' (Portugal), and 'GIPJCI - Justice Coopération Internationale' (France).

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It is a sad reality that victims of crime can be reluctant to report their victimisation to law enforcement authorities. For a variety of reasons, victims of crime may be unaware of their rights, or where to turn to for support and assistance. This in turn may result in feelings of increased isolation, lead to heightened vulnerability, or raised anxiety levels caused in part by the unfamiliarity of the processes triggered by the criminal event. It is essential that appropriate services and public bodies offer all victims of crime the necessary support, advice, assistance and protection from repeat victimisation.

The Directive of the 25th October 2012, establishing minimum standards on the rights, support and protection of victims of crime, must be transposed by all Member States by the 16th November 2015. The Directive contains a number of new provisions, the content and scope of which have to be carefully examined before being effectively implemented in the domestic law of European Member States.

Article 22 of the Directive deserves particular attention by reason of the novelty of its content. It provides in its first paragraph that each victim shall receive “a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation”. To date, individual Member States legislative frameworks trace different evolutionary perspectives in terms of victims’ rights. Such diversity fostered constructive debates between the experts chosen to participate in the present project. This served to highlight that a difference in approach by individual Member States is not incompatible with harmonised standards in the implementation of Article 22 of the Directive.

The EVI Project (EValuation of Victims) started in January 2014. The basis of the project was to establish a group of experts (two per partner Member States) who would meet on a regular basis to exchange experiences for the purpose of developing a questionnaire for the individual assessment of victims and an accompanying good practice guide. The project included a study visit to London, in co-operation with the Crown Prosecution Service (CPS). The aim of the working visit was to outline the current working practices in England & Wales in relation to the treatment of victims through the criminal justice process. This included detail about the legislative framework relating to special measures, the initial law enforcement victim assessment, an outline of the support offered to victims outside the criminal justice system, the ongoing assessment undertaken during the criminal proceedings, an explanation of the special measures available at the Courts and the victim’s right to review a prosecutor’s decisions.

- [The French actors](#)

The project was led by the French Ministry of Justice, via two departments within the General secretariat. These were the Department responsible for access to law, justice and victim support (Service de l’accès au droit et à la Justice et de l’aide aux victimes – SADJAV), with the assistance and support of the European and International Affairs Department (Service des affaires européennes et internationales – SAEI). The SADJAV, which was founded in 2002, offered its expertise in the fields of access to law, legal aid and victims’ support, whilst the SAEI provided its support and breadth of experience in the management of these types of projects and the comparative European perspectives.

The project was also supported in France by a national federation of victim support associations, the French Victim Support and Mediation Institute (INAVEM). This partner was fundamental to the successful implementation of the EVI Project. The fundamental missions of INAVEM, consist in driving, coordinating and promoting victim support and joining partnership agreements which further these objectives. The federation is comprised of 130 different victim support associations, involving 1500 employees and volunteers. They run 760 victim assistance offices (in courts, legal advice centres, police stations, hospitals, etc.) where approximately 300 000 victims find support. These INAVEM victim support associations are also present at court, have developed and adapted their practices, sometimes innovatively, to best support victims. These practitioners also developed the «situational assessment» of victims, which shed an interesting light on the individual assessment elaborated during the project.

Another key partner of the EVI project was the public interest group “Justice Coopération Internationale” (JCI). Mandated by the French Ministry of Justice it aims to promote legal and judicial co-operation within the framework of multilateral programs implemented by the European Union and other international donors. In this project funded by the European Commission, Justice Coopération Internationale provided Member States with logistical, administrative and financial support.

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The National School for the Judiciary (ENM), where French judges and prosecutors are trained, has also taken part in the EWJ Project by hosting the final conference which outlined the findings of this project.

- [The Member States involved](#)

The Member States approached to become part of this project were specifically chosen with a view of representing the existing diversity of legal systems within the European Union. The participation of Member States with very different practices enabled the comparison of different definitions of the concept of victim, within differing domestic legal contexts. The contrast in attitudes enriched the debates and discussions, and facilitated the development of a common approach and expectation of the minimum standard or working practice. The partner Member States are Spain, Poland, Portugal and the United Kingdom. They form on a small scale, a representative sample of the diverse judicial systems: Common Law, Romano-Germanic Law and mixed legal systems.

The United Kingdom, represented by the Crown Prosecution Service<sup>1</sup>, is well advanced in terms of assessing victims' protection needs and implementing a methodology to assess victims' vulnerability. For obvious reasons, this partner, who has been a source of inspiration and reflection for the other States, organised a study visit in London for two days. This provided the opportunity to understand how victims and witnesses were dealt with at each step of the criminal justice process in the United Kingdom, and to meet the various agencies responsible for victim and witness care in England and Wales.

Poland, represented by the Ministry of Justice, is an instigating country in the adoption of the Victims' Directive and has already led projects co-financed by the European Commission, particularly within the context of the European "prevention of and fight against crime" programmes.

Spain, represented by the Ministry of Justice, and particularly by the General Secretariat on the Administration of Justice, is very involved in combating violence against women and has already worked in co-operation with victims' support associations to develop new tools and processes to improve the forms of assistance available to victims.

The Portuguese Association for Victim Support (APAV) – founded in 1990 – provides victims of crime with free and confidential services, such as psychological and financial assistance, counselling and information. The association is very active in European and international forums such as Victim Support Europe, the European Forum for Restorative Justice, the World Society of Victimology, the International Association for Volunteer Effort, the Fundamental Rights Agency Platform and even the European Network against Racism.

It is through open discussion and the sharing of successful innovative practices in partner Member States that a template questionnaire was devised for the purposes of facilitating the practical implementation of the Victim's Directive. The template questionnaire has been designed to be a working tool for justice practitioners to facilitate the individual assessment of victims – to enable practitioners to identify specific protection needs and support measures, as required.

The good practice guide was presented in detail during a training conference held at the National School of the Judiciary on the 23rd April 2015. Representatives of Member States of the European Union, members of the judiciary, judges, prosecutors, professionals and representatives of the Commission, the European Parliament and of the European Judicial Training Network attended the conference.

The project was funded under the European Commission «Criminal Justice» program (JLS/2009/JPEN/AG). All participating Member States wish to thank the European Commission for enabling such an inspirational way of implementing some of the provisions of the Victims' Directive.

<sup>1</sup> - Responsible for prosecuting criminal offences in England and Wales.

Since the 1970s, cultural, social and political developments have allowed victims' rights to be progressively more established in jurisdictions across the European Union. Non-governmental organisations can take pride in having greatly influenced the evolution and recognition of these rights, which also developed with the impulse of socio-political movements, such as the women's movement for example. Whilst European governments have gradually recognised the rights of victims of crime in their domestic legislation, the standard of rights available to victims of crime has also attracted the attention of European Institutions. This has yielded a number of different EU instruments, including the Council's Framework Decision 2001/220/JHA.

Under this Framework Decision, Member States are under an obligation to guarantee that the dignity of victims be respected and their rights recognised throughout the proceedings. However, criticisms of the shortcomings of the Framework Decision and its limited implementation by EU Member States has led to the development of the Directive 2012/29/EU of the European Parliament and of the Council dated 25th October 2012, establishing minimum standards on the rights, support and protection of victims of crime (hereafter referred to as the Directive or Victims' Directive).

The Victims' Directive is based on the 2001 Framework Decision on the standing of victims in criminal proceedings. However the Victims' Directive is a legally binding instrument that will benefit from direct effect after the transposition deadline of the 16th November 2015.

It is to be noted that Denmark hasn't adopted the Victims' Directive. Consequently, the 2001 Council Framework Decision referenced above, remains applicable to Denmark even after the transposition deadline for the Victims' Directive has passed for the other 27 Member States (Recital 71 of the Preamble of the Victims' Directive).

The 2001 Framework Decision was implemented by Member States to different degrees but the Victims' Directive goes a step further. In the wider context of measures set out in the Budapest Roadmap on victims<sup>2</sup>, the Directive aims to strengthen the rights of victims of crime, so that any victim can rely on the same basic level of rights, whatever their nationality and wherever in the EU the offence takes place.

All victims have the right to effective access to justice as laid down in Article 47 of the EU Charter of Fundamental Rights. Therefore the Victims' Directive can be seen as a major step forward for victims of crime. However, these rights will only become a practical reality upon transposition, if victims are aware of the existence of support and the mechanisms which exist to help them make use of it.

The main objective of the Victims' Directive is to ensure victims' particular support needs are addressed, and this is to be achieved by way of an individual assessment (see below), and a participatory approach towards the provision of information, support, protection and procedural rights.

Article 22 of the Directive, entitled "individual assessment of victims to identify specific protection needs", highlights a key aspect of the Victims' Directive, which is the requirement to approach victims individually and on a case-by-case basis. It highlights the need for an individual assessment to identify specific needs, such as the need for special measures in the course of criminal proceedings, or the bespoke approach to child victims (as per Articles 1, 23 and 24 of the Directive).

The objective of the Evaluation of Victims (EVI) project has been to assist Member States in the practical implementation of the requirements of Article 22, in accordance with national procedures. In particular, to develop a practical tool which will facilitate the individual assessment of victims and enable the identification of specific protection needs.

2 - Resolution dated 10th June 2011, on a roadmap for strengthening the rights and protection of victims, particularly in criminal proceedings.

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This handbook has been designed with practitioners in mind, to encourage an effective and coherent application of the Victims' Directive throughout the EU. This will be achieved through the use of an individual assessment template questionnaire, aimed at identifying the specific protection needs of victims and whether (and/or to what extent), they would benefit from special measures in the course of criminal proceedings in light of their particular vulnerability to secondary and repeat victimisation, intimidation and retaliation. For some countries, the template questionnaire provided may only be helpful in so far as it completes what already exists to meet the Victims' Directive standards. But, for other countries, it may encourage new working practices reliant on the questionnaire.

This handbook and the questionnaire have therefore been designed to be as practical as possible.

In the next chapter, the handbook provides a general overview and contextual examination (I) of the legislation in the partner Member States and an analysis of the scope of the relevant articles in the Victims' Directive. Thereafter, it specifically focuses on the requirements for the individual assessment (II) and the template questionnaire (III), before finally examining suggested measures (IV) to address the specific protection needs of victims.





The EVVI project is the result of joint efforts made by representatives of (by alphabetical order) France, Poland, Portugal, Spain and the United Kingdom. To better understand the design of the template questionnaire for use in the individual assessment, it is necessary to consider the national and European legislation in force in partner Member States (A) and the interpretation of some of the articles of the Victims' Directive (B).

### A. Legislation related to the evaluation of victims in partner Member State

The transposition of the Directive is at different stages of implementation in the Member States involved in this project.

The United Kingdom is the only partner Member State that has already implemented Articles 22 and 23 of the Victims' Directive – achieved in part through the (revised) Code of Practice for Victims of Crime (the Victims' Code), published on 10th December 2013 and which applies in England and Wales, and the provisions of existing legislation<sup>3</sup>. Other partner Member States are working on implementation. On the 25th October 2013, for example, the Spanish government approved a draft Organic Law for Victims of Crime, for the purpose of meeting victims' needs in the most comprehensive way possible, not only from a legal point of view but from a social one as well. In Portugal, certain measures of Article 23 already exist within the legal framework.

#### 1. The victim's status within the framework of criminal proceedings and their influence on civil proceedings

Even if the notion of "victim of crime" does not necessarily benefit from a legal definition in several partner Member States (Portugal, Poland and France), all partner States use the term in broadly the same way.

The specifics of the Common Law systems of the United Kingdom (which includes the separate jurisdictions of England and Wales, Scotland and Northern Ireland), is that victims are not parties to the criminal proceedings, and thus cannot take legal action in the same way some of their continental counterparts.

Otherwise, in all partner Member States, victims can testify (give evidence), during the proceedings and/or at the trial. In all cases, they can also file a civil action.

In France, victims can be "partie civile" (civil party). This status involves, in particular, the assistance of a lawyer ("avocat"). He or she can be present throughout the proceedings (whether public or private) because victims are fully part of the proceedings. If the victims aren't at the trial (whether physically present or represented), it will be presumed that they have abandoned their request to be recognised as victim, unless a civil action is filed during the course of the investigation or a registered letter is sent directly to court.

In Poland, a specific status is provided for victims of domestic violence which allows them to have access to free medical, psychological, legal and social assistance and family advice.

In all partner Member States, victims have access to complete information about their rights, support, assistance and any compensation they are entitled to at every stage of the process. In Portugal and Poland, the prosecution service provides this information. In Spain, the United Kingdom and France, information is provided either by the authorities (including investigators and the investigating judge) or the criminal justice agencies and civil servants, depending on which step of the criminal process one examines. In France for instance, one of the main missions of INAVEM associations is to give victims information about their rights. In the United Kingdom, police officers play a major role because they are usually the first contact point for victims.

In all partner Member States, a range of communication tools already exist in relation to victims' rights. Information can be provided orally but also in writing. The use of electronic resources and websites are becoming more mainstream and developed.

3 - e.g. the Youth Justice and Criminal Evidence Act 1999.

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For example, initial information for victims of crime is provided on the official websites of the Ministries of Justice of Poland, the United Kingdom and France. Moreover, the United Kingdom has a leaflet version of the victims' code, an audio guide and a YouTube video aimed at the young.

For full and complete information about the difference in the status of victims in European Member States, the reader is invited to consider Chapter 1 of the European Union Agency for Fundamental Rights report of 2014 entitled 'Victims in the Criminal Justice System: a diversity of concepts & legal frameworks'.

## 2. Current assessment of the victims' specific protection needs

In Spain, Portugal, Poland and France, individual assessments or evaluations were not systematically carried out at the time of drafting this handbook. However, this does not preclude the French authorities from assessing a victim's need on a case by case basis. Hence, if the magistrate in charge of an investigation deems it necessary, he or she can carry out additional investigations enabling the assessment of a victim's vulnerability (medical, psychological, psychiatric expert opinion, etc.). The victim, who has filed a civil action, or his or her lawyer, can also request that additional investigations be carried out. At the hearing stage, the Tribunal can order various measures to enlighten the court, for example a medical opinion on the extent of an injury or psychological impact, to rule on loss suffered by the victim and in cases where the victim's vulnerability constitutes an aggravating circumstance of the crime, this can result in higher sentencing.

The United Kingdom is the only partner Member State that already has a specific protection needs assessment for victims', and this is conducted by police officers. Depending on the circumstances of the case and/or the individual victim, there may also be further assessments by specialist officers (e.g. in Domestic Violence (DV) cases) and/or by staff in the Witness Care Unit (WCU)<sup>4</sup>. In addition, special measures are available for vulnerable and intimidated witnesses (this includes victims who are witnesses), to help them give their best evidence in Court<sup>5</sup>.

In England and Wales an assessment will be made at the time of reporting but a victim may be (re)assessed at any stage up to and after the proceedings are concluded. The police also refer all victims to victim support services, unless the victim elects not to receive these services. Risk assessments (such as those conducted for domestic violence victims), will be revisited in response to changes in circumstances (such as an offender's release from custody) and may be renewed at any stage in the proceedings, thereby ensuring that the victim's safety is paramount at all times.

In Spain, Title III of the draft Organic Law for Victims of Crime deals with the evaluation of the particular protection needs of victims, transposing in greater detail Articles 22 and 23 of the Directive. Victims must be evaluated on an individual basis to establish their protection needs during legal proceedings, thus identifying where assistance is needed and what specific protection needs are required. The Victims of Crime Support Offices (which is a free public service set up by the Spanish Ministry of Justice), decides whether this assessment is carried out by identifying who is particularly vulnerable and by putting in place protective measures to avoid victimisation.

To encourage a broader understanding of different practices and to show how assessments are dealt with by the Member States partner to this project, the next section focuses on the assessment process (a) in each partner Member State and examines the respective provisions for access to support and protection measures (b).

4 - WCUs are joint police and CPS staffed units which have been set up across England and Wales to provide information and support to victims and witnesses in cases processing through the criminal justice system.

5 - The police and Witness Care Units (WCU) are required to undertake the needs assessments in accordance with the duties outlined in the Victims' Code.

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### a) The assessment process

In the United Kingdom, the police will carry out an assessment once the victim has reported the crime and obtained a crime reference number. Needs assessments and special measures assessments tend to be conducted by the Police Constable/Detective Constable attending a location agreed by the victim, such as home address, place of work, police station (etc.). Assessments relating to physical risk are signed off by a police supervisor. Threats to life assessments are completed by an Inspector. Victims' support services may also carry out a more detailed assessment, if the victim consents for his or her details to be passed on by the police.

The length and depth of the assessment may vary depending on the victims' personal circumstances and the nature of the offence(s). The methods do not change in principle but the level of risk (e.g. whether the victim is high, medium or low risk), the circumstances of the offence, and the complexity of the evidence that they will be providing may result in additional discussions taking place at a higher level of seniority and/or in early special measures consultations with the Crown Prosecution Service (CPS) (for victims in England and Wales).

In Spain, the evaluation is carried out most of the time by the Victims of Crime Support Offices but can also be carried out by the police and by forensic medics. Specific protocols regarding the coordination have been planned through one coordination point for all participants involved in the evaluation process. The methods used for carrying out the assessment differ depending on the victim's characteristics, the consequences or damages suffered by the victim, and the expressed desires of the victim.

Turning to the financial impact of the individual assessment, in the United Kingdom any costs are calculated in police staff time and are borne by individual police forces. Similarly, the Crown Prosecution Service (CPS) funds the costs of special measures meetings and (as joint providers of WCUs) both agencies fund the cost of any additional needs assessment by the WCU for victims attending court as witnesses. Where a particular victims' service conducts a detailed assessment, then that service will bear the financial cost of doing so. However, many victims' organisations receive funding from the Government in order to provide such services.

In Spain & France, the State assumes the cost of the assessment.

### b) Access to support and protection measures

All partner Member States' national legislations provide special measures to support and protect victims such as:

- victims interviewed in rooms specially designed or adapted for this purpose;
- victims interviewed by, or with the participation of, appropriately trained specialists;
- all questioning of victims of sexual violence, gender violence or violence in close relationships (if the hearing is not conducted by a judge or a prosecutor) carried out by a person of the same sex as the victim, if this is the wish of the victim and without prejudice to the criminal proceedings.

Special measures are also provided for children who are always presumed to have specific protection needs due to their vulnerability in accordance with the Victims' Directive. Support and protection measures are laid down by the national laws. They are implemented either by the person who conducts the preliminary proceedings or by a judge.

Victims cannot appeal if special measures are refused, except in Spain and Portugal.

## B. Interpretation of some of the Articles of the Victims' Directive

The EVI project was designed to target the harmonised transposition of Article 22 of the Directive and accordingly, this section focuses on the terminology used in the Article (1), an examination of the purpose of the individual assessment described therein (2), and a study of Articles 23 and 24 of the Directive as referenced (3).

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## 1. Article 22 terminology

### Who is a victim ?

Article 2 defines a victim as :

- **a natural person** who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence ;
- **family members** of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death ;  
«Family members» means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victims.
- «Child» means any person below 18 years of age.

### What is the «individual assesment»?

It is a **personalised evaluation** taking specifically into account the personal characteristics of the victim, the type or nature of the crime and its circumstances.

The individual assesment (cf. infra. 2) will be conducted according to the wishes and with the close cooperation of the victim. It can be adapted according to the nature of the crime or degree of harm.

The victim's needs and/or perception may **change over time**. Where there is a change in circumstance it may be necessary to review the assesment and the measures in accordance with national law.

### What is a timely assesment ?

L'évaluation personnalisée doit être conduite le plus tôt possible après le signalement de l'infraction.

However it is recognised that in some circumstances this is not appropriate e.g. if the victim is traumatised or injured or does not understand the questions for any reason. If this is the case, then arrangements should be made to conduct the assesment **as soon as practicable** thereafter.

If it is not possible to conduct the individual assesment, any risks to the victim should still be addressed.

### Who conducts the assesment ?

A police officer would normally conduct the assesment. The competent authority or entity may differ according to the stage of criminal proceeding (pre-trial or trial stage).

Depending on the type of victim and/or the nature of the crime, a different **person, appropriately trained**, may assist with communication with the victim (psychologist, doctor, Non Governmental Organisation, social worker, victim support services (etc) as designated by Member States in accordance with national law.

The police officer or competent authority or entity will still need to ensure that appropriate information is gathered to inform the assesment for special measures and to assess any risk posed to the victim.

### What is a repeat or secondary victimisation ?

**Repeat victimisation** relates to a victim suffering from more than one crime over a period of time either by one or multiple offenders.

For instance, it could be repeat violence in a close relationship or disability or hate crimes committed against people due to their vulnerability.

**Secondary victimisation** is victimisation that occurs not as a direct result of the criminal offence but as a result of the response of public or private institutions to the victim.

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## 2. Purpose of the individual assessment

Article 22 §2 and Recital 56 of the Preamble of the Victims' Directive state that the individual assessment shall, in particular, take into account:

- *the personal characteristics of the victims;*  
Namely: his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offenders and previous experience of crime.
- *the type or nature and the circumstances of the crime;*  
Such as: whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.

The purpose of the assessment is to identify specific protection needs and to determine whether and to what extent the victim would benefit from special measures. Specific protection needs of the victim relate to vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

Special measures (cf. infra. IV. Suggested measures page 33) are listed under the articles 23 and 24 (child victims).

NB: child victims are automatically considered to have specific protection needs (see § 4 Article 22 of the Directive).

## 7 CHARACTERISTICS OF THE INDIVIDUAL ASSESSMENT:

- 1- The individual assessment is broad and from two different perspectives:
  - regarding the type, nature or circumstances of the offence : all victims, no matter which type of offence,
  - regarding the victim his/herself: all victims, no matter their procedural status (witness, participant, plaintiff...)
- 2- The individual assessment should assess the specific protection needs of the victim for each phase of the criminal proceedings: special measures may begin just after the victim makes a complaint or when the authorities initiate the criminal proceedings (and not before). The protection measures will have no minimum length as they will be related to the requirements of the criminal proceedings.
- 3- The individual assessment should be, according to Article 22, "timely" i.e. carried out at the earliest opportunity, in order to identify the risk of secondary and repeat victimisation, of intimidation and of retaliation. This is a major innovation of the Directive and aims at identifying as quickly as possible a victim's specific needs.
- 4- The individual assessment should be carried out in close cooperation with the victim, taking into account his or her wishes, including if he or she doesn't want to benefit from special protection measures. Special protection measures can't be effective without the consent of the victim; in some cases, the individual assessment may therefore be very short.
- 5- The individual assessment is individual and adaptable:  
its extent may vary according to the seriousness of the offence or to the degree of apparent harm suffered by the victim. Each person reacts differently when faced with an offence and only a personalised evaluation can highlight a victim's specific vulnerabilities. The Directive favours a case-by-case approach, without creating priority categories or a hierarchy of victims. Some fundamental elements will nevertheless be taken into account:
  - the personal characteristics of the victim (such as his or her age, gender and gender identity or expression...);
  - the type or nature of the offence (such as domestic violence);
  - the circumstances of the crime (such as organised crime, situation of dependency between the offender and the victim).

Child victims shall be presumed to have specific protection needs (Article 22 §4).

Moreover, Recital 57 lists a certain number of offences (terrorism, human trafficking, organised crime, domestic violence, sexual violence, gender-based offences...) where there should be a strong presumption that victims will benefit from special protection measures.

- 6- The individual assessment aims to identify vulnerable victims i.e. "particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation" (Article 22 §1).

This particular vulnerability will provide the grounds for the relevant authorities to determine whether a victim with specific protection needs may or may not benefit from special measures in the course of criminal proceedings. There is a necessary link between the protection provided following the individual assessment and the criminal proceedings in so far as Recital 58 provides that "the victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure".

- 7- The individual assessment isn't fixed and should be updated throughout the criminal proceedings to reflect as closely as possible the victim's situation, which may change after the first individual assessment.

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### 3. Articles 23 and 24 of the Directive

#### Article 23

This new Article is devoted to the “Right to protection of victims with specific protection needs during criminal proceedings”. It applies when specific protection needs have been identified for a victim as a result of the individual assessment.

However, there may be some circumstances which justify that a recommended special measure is not actually put in place. This may be the case where there are operational or practical constraints (e.g. unavailability of a specific police officer, extraordinary event or circumstance beyond the control of authorities such as a strike, riot, earthquake, flooding etc.). It may also be the case where there is 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.

Accordingly, the provision takes into account individual situations where due to exceptional circumstances it is not possible to provide the particular protection measures identified.

Victims with specific protection needs identified as a result of the individual assessment can exercise their rights:

- without prejudice to the rights of the defence;
- in accordance with rules of judicial discretion;
- unless exceptional circumstances (as referenced above) occur; and
- as long as they don't conflict with good administration of justice.

Article 23 of the Directive lists the special measures that should be available during criminal investigations (§2) and during court proceedings (§3) to victims with specific protection needs identified following the individual assessment (cf. infra. IV. Suggested measures page 25).

#### Article 24

Recital 19 of the Preamble of the Victims' Directive provides that if the victim is a child “the child or, unless this is not in the best interests of the child, the holder of parental responsibility on behalf of the child should be entitled to exercise the rights set out in this Directive”. The emphasis is therefore put on protecting child victims, even by means of representation, to implement the Directives' rights.

Moreover it is suggested in Recital 60 of the Preamble of the Victims' Directive, that the child may need a guardian or an appointed representative and that this role would preferably be performed “by the same person or by a legal person, an institution or an authority”.

Article 24 § 1 c) adds that in the situations where there might be a conflict of interest between the child victim and the holders of parental responsibility, where the child victim has the right to a lawyer, he or she has the right to legal advice and representation in his or her own name.

Article 24 § 1 a) and b) deal with additional special measures to those provided in Article 23 (cf. infra. IV. Suggested measures page 25).

The rights of the child are an overriding interest and even where the age of the victim is uncertain but there are reasons to believe that the victim is a child, the victim shall be presumed to be a child for the purposes of the Victims' Directive.

Furthermore the measures listed in Article 24 are included in the Human Trafficking (Directive 2011/36/EU) and Child Sexual Exploitation (Directive 2011/92/EU) Directives. Accordingly, structures should already be in place which meet the requirements of the Victims' Directive.

Finally, it is important to emphasise that measures to protect child victims must be adopted in their best interests by taking into account the assessment of their individual needs.







The individual assessment of victims is designed to identify specific protection needs. This section focuses first on the practicalities of conducting assessments (A) before then considering the process (B).

### A. Practicalities

The individual assessment of victims should **be conducted at the earliest opportunity**.

In certain cases, victims may not be capable of providing the information (e.g. seriously injured victims or very young children...). In such cases, a relative, a parent, a support worker or other suitable person may be able to provide the information. People who are emotionally upset for instance may also need more time and professional help.

Where it is not possible to complete the individual assessment at all, practitioners may also need to obtain information from other sources to assess any immediate risk.

The individual assessment is not fixed. It should **be updated (as appropriate) as circumstances change**.

It can be updated both through the initiative of public institutions and/or by the victim.

Victims should be encouraged to contact the authorities if their circumstances change.

The assessment may also be repeated during the course of proceedings, as appropriate in each individual case. Good practice suggests that service providers should **continually follow up the individual needs assessment** to ensure that the services offered are amended and adjusted in line with the victim's recovery and their changing needs.

It is important that the person conducting the assessment considers the suitability of the location. For example, it may not be appropriate to conduct the assessment at the location of the offence or in other locations where the victim does not feel comfortable to speak freely.

The **specific needs of the victim should be taken into account** (e.g. age, gender etc.) so as to ensure that the victim feels as comfortable as possible. For instance, a separate room might be appropriate to insure privacy. For child victims, their home or child protection centres with an integrated and multidisciplinary approach might be well placed to conduct such individual assessments.

**A victim may wish to be accompanied by a person of their choice**. However, it is important to consider whether this is appropriate in all cases (as per Article 3 §3) – particularly for cases of organised crime, violence in close relationships or sexual offences where the victim may be under undue pressure to provide a particular account to the authorities.

Particular care should be taken when assessing victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims.

### B. Process

It is important that there is a case-by-case approach towards victims.

The procedures for implementing the individual assessment must be determined by each Member State in accordance with its national law, but this guide outlines some best practices.

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Victims will be asked a detailed set of questions to determine whether they are particularly vulnerable to secondary and repeat victimisation, to intimidation and/or to retaliation during criminal proceedings; and to evaluate whether, and if so what type of measures are appropriate.

A template questionnaire (cf. Appendix 9 page 58) has been developed to assist in this process. It may need to be adapted by each Member State to reflect their national processes.

Where Member States already have risk assessment processes in place they intend to retain, they should review their processes to ensure that they are consistent with the requirements of Article 22 of the Directive. Member States may also wish to use or adapt the template questionnaire for other measures or processes.

The assessment suggests a two-step process (which can be combined):

- To determine whether a victim has specific protection needs (i) depending on the personal characteristics of the victim, the type or nature of the crime, the relationship between the victim and the offender and the circumstances of the crime;
- To determine if special protection measures (ii) should be applied and what these should be (as listed in Articles 23 and 24).

Child victims are always presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation (Article 22 §4). The assessment for children would thus consist of determining whether and which of the protection measures listed in Articles 23 and 24 would need to be put in place for each individual child.

The individual assessment should be carried out for all victims of all criminal offences. However, the Directive allows for a certain degree of flexibility with the level of detail within the assessment depending on the severity of the crime and the degree of apparent harm the victim has suffered.

Victims may not wish to benefit from any protection measures. Nevertheless the victim's wishes do not preclude the authorities from taking action if this is necessary in the interest of justice or to protect any person from harm. In the event of a victim being dissatisfied with the assessment or with the measures offered, each Member State will determine whether there is a procedural consequence and/or whether remedies should be offered, in accordance with national law.

To avoid further distress to the victim, special care should be taken when using the template questionnaire to ensure that the victim is not repeatedly asked the same questions.

When conducting the assessment, the conductor of the assessment should be clear that it is about identification of specific protection needs or special measures..

L'évaluation personnalisée doit tenir compte de tous les autres facteurs affectant la réaction de la victime The individual assessment should take into account all other factors affecting the victim's reaction to the crime and recovery. Recital 58 provides that "the victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure".

Factors such as gender, age, maturity, ethnicity, language skills, relationship/dependency between the victim and the offender, previous experience of crime, etc., may be captured through completion of the template questionnaire but some information may need to be gathered from other sources (e.g. police records...) to provide a comprehensive picture of the individual victim's needs.



The questionnaire (cf. Appendix 9 page 58) has been designed in two parts:

The **first part** to capture information about:

- the victim's personal characteristics;
  - personal vulnerability; and
  - risks and fear of harm;
- so as to identify specific protection needs or the need for a more detailed evaluation.

The **second part** is a more detailed assessment to determine the level of risk faced by the victim and whether and to what extent the victim should benefit from special measures in the course of criminal proceedings, for those victims highlighted as at a greater risk of repeat or second victimisation, of intimidation or retaliation.

In many cases, victims may not need to be assessed using the second part of the template questionnaire. Some victims will not have any specific protection needs or their particular needs may be apparent from the outset. For others, an in-depth assessment may be required to identify their specific needs and to determine whether, and if so which, measures would be of benefit in addressing them.

The first part of the template questionnaire has identified eight types of specific offences (taken from the Directive, Article 22 §3) and three circumstances in which victims are more likely to have special protection needs.

Where the victim falls within any of these categories, the second part of the template questionnaire (more detailed assessment), should be completed to determine whether and to what extent the victim may benefit from special measures in the course of criminal proceedings. Part two should also be completed if appropriate, taking into account any identified vulnerability.

Even where part two of the template questionnaire is not relevant to the individual victim, the evaluator should still identify the needs of the victim under that section.

The template questionnaire is for guidance only and it is important that the information requested therein is elicited by a discussion with the victim, rather than formulaic questioning.

The next section provides a more detailed description of the assessment provided by part one of the template questionnaire (A) and examines the more detailed evaluation provided for in part two (B).

### **A. Part I of the template questionnaire: initial questionnaire**

It is essential to ask for the victim's consent when conducting the individual assessment, whether in the initial questionnaire or in the detailed evaluation. Indeed, making sure the victim agrees that the assessment takes place and, after completion, dating and signing the document for accuracy, limits the risk of the victim disputing the content and provides a clear basis on which the evaluator can suggest protection and/or referral needs.

It is possible that the personal characteristics of some victims (e.g. age, gender, ethnicity, health disability, communication difficulty, etc.) or the type, nature and circumstances of the crime, mean they are at greater risk of suffering harm.

The first part of the template questionnaire aims therefore at collecting the relevant information about the personal characteristics of the victim. General information (1) must be gathered to assess personal vulnerability (2) and identify risks and fear of harm (3).

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## 1. General information

The first name, surname, gender, date of birth (or reported age) are obviously essential to identify who is being assessed. But where and how to reach the victim (i.e. phone, email address, nominated contact point) may also be key elements to take into account.

The socio-professional status can also have a bearing on how a crime is subjectively perceived by the victim, how they respond and what action it is feasible for them to take in the particular situation. It may also have a bearing as to when the victim is available (e.g. working pattern/hours...)

Lastly, nationality contributes to identifying specific protection needs (e.g. due to language, custom etc.).

## 2. Personal vulnerability

The victim may be at a greater risk of suffering harm if he or she is a child, is pregnant or suffers from a mental or physical disability, for example.

It is also important to identify which language is the victim's mother tongue and whether he or she has difficulty speaking and/or reading or has other communication difficulties (e.g. a partially deaf person). Psychological and/or economic violence for instance are more likely to take place if the person is in an unfamiliar culture, has language difficulties and/or cannot grasp the implications of what is said/written.

Asking whether the person being assessed has previously been a victim of crime, especially in the past twelve months, can provide important information as to whether the victim is at a greater risk of repeat victimisation.

Whether the person has children or not, the number of children they have and/or whether a social worker or another agency is involved with their family, can indicate whether there is further help available to assist them in coping with the consequences of the crime and/or in identifying risks of potential negative pressure. The latter may apply where the individual has five young children and no job and is therefore economically dependent on the suspect.

A direct question about other vulnerabilities, such as health problems, alcohol or drug dependence (etc.), may broaden the assessment, even where the answer given by the individual is misleading or obviously incorrect.

## 3. Risk and fear of harm

The individual assessment should be concluded in the last section of part one of the template questionnaire, by collecting data about:

- the type or nature of the crime (eight types of specific offences);
- the circumstances of the crime (three questions).

The template questionnaire focuses on eight specific types of offence taken from Article 22 §3 of the Directive: human trafficking, violence in a close relationship, hate crime, organised crime, gender-based violence, sexual violence, child abuse or exploitation, terrorism.

Whether the victim has a personal connection with the suspect, the victim fears further harm from the suspect, and/or whether the suspect has previous offending history against the victim, are three key factors which have a bearing on whether the victim is more likely to have special protection needs.

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The “identified needs” should be described at the end of part one if a different evaluator is to assess part two but the recommendations regarding the victims’ specific protection needs should always be recorded and explained at the end of the questionnaire (page 6 of the template questionnaire). This applies even if only part one was relevant to the victim.

After completing part one of the template questionnaire, it should be possible to identify any specific protection needs that are appropriate to the victim, given his or her personal characteristics.

In addition, part one will also identify other relevant needs such as communication or mobility issues and what support is already in place.

Best practice would be to complete part one and part two of the questionnaire, (when required), at the same time. However, where this is not possible, any delay should be kept to a minimum.

Where a delay occurs, care should be given to put in place interim protection measures, as necessary before carrying out the detailed evaluation in part two.

## **B. Part II of the template questionnaire: detailed evaluation**

The detailed assessment in part two contains a series of questions that are designed to establish if and how the victim could benefit from special measures. The second part should be completed once a particular vulnerability to secondary and repeat victimisation, to intimidation and/or to retaliation has been identified.

Please note that part two of the template questionnaire is a detailed evaluation to be filled in:

- if the evaluator considers it appropriate, taking into account any identified vulnerability;
- if any of the questions relating to the type or nature of the crime(s) or to the circumstances of the crime(s) were answered positively.

Once again, it is important to ask for the consent of the victim before filling in a detailed evaluation, particularly as it might not be conducted by the same evaluator.

It is important that the assessor considers the relevance of each question to the individual victim and the circumstances. Victims should be spared repetitive questioning if it becomes clear that only certain questions are relevant to their individual case.

The number of positive answers does not necessarily correlate with the level of risk presented by the victim’s particular vulnerability to secondary and repeat victimisation, intimidation and retaliation. For example, a victim may still be at high risk even if he or she only answered “yes” to one question.

The second part of the template questionnaire is a detailed evaluation based on the current situation of the victim (1), the offence history (2) and questions about the suspect (3).

---

## 1. Current situation

Thirteen Yes/No questions are suggested in the template questionnaire:

- |    |  |
|----|--|
| 1  | Has the current incident resulted in an injury (clarification needed if that is the case)?                             |
| 2  | Is the victim frightened?  |
| 3  | Does the victim have someone to support him or her (relatives, friends, community resources e.g. cultural, religious)? |
| 4  | Does the victim feel isolated?   |
| 5  | Is the victim feeling depressed or having suicidal thoughts?   |
| 6  | Is the victim in contact with the suspect (clarification needed if that is the case)?                                  |
| 7  | Does he or she try to intimidate the victim?   |
| 8  | Does the victim live with the suspect?   |
| 9  | Is there any conflict over financial issues?   |
| 10 | Is there any conflict over children?   |
| 11 | Has the suspect ever committed acts of violence against others within the family or against pets?                      |
| 12 | Is the victim still able to access his or her personal documents, money...?  |
| 13 | Is the victim free to move around in and/or leave his or her house?  |

These questions may of course lead to other questions that aren't suggested, just as some questions may not be applicable to individual victims/cases.

They also limit the risk of the evaluator forgetting to ask something that could lead to important information being provided, or which could be essential to the determination of whether, when and how to protect the victim.

## 2. Offence history

Six additional questions may be asked:

- |   |  |
|---|--|
| 1 | Has the suspect ever threatened or committed acts of violence against the victim (clarification needed if that is the case)? |
| 2 | Has the suspect ever used a weapon against the victim (clarification needed if that is the case)?                            |
| 3 | Has the victim ever filed a complaint against the suspect?   |
| 4 | Has there been an escalating series of incidents?  |
| 5 | Are other persons potentially at risk (clarification needed if that is the case)?  |
| 6 | Has the victim been threatened by any other person (clarification needed if that is the case)?                               |

These questions are only relevant when the suspect has been identified and they are most likely to be useful in situations where the victim and suspect are known to each other.

Where this is not the case, the next set of questions will be important.

## 3. Suspect

Nine other questions might be asked:

- |   |   |
|---|---|
| 1 | Is the suspect identifiable?  |
| 2 | Is the suspect a child (under 18 years old)?  |
| 3 | Does the suspect have access to weapons (clarification needed if that is the case)?                               |
| 4 | Has the suspect ever been convicted of any offence against the victim (clarification needed if that is the case)? |
| 5 | Are there any outstanding court orders against the suspect (clarification needed if that is the case)?            |
| 6 | Has the suspect ever been convicted of any serious offence (clarification needed if that is the case)?            |
| 7 | Does the suspect have/has problems with drugs and/or alcohol (clarification needed if that is the case)?          |
| 8 | Does the suspect have/has the suspect had mental health problems (clarification needed if that is the case)?      |
| 9 | Has the suspect ever threatened or tried to commit suicide?   |

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As above, these questions will not necessarily cover all aspects of the victim's situation. Accordingly, the evaluator should also consider any additional information relating to the victim and the suspect.

Asking for the victim's point of view on what support he or she requires during criminal proceedings will always be useful, as whether realistic or not, the victims' views will assist in accurately identifying which specific protection measures are needed and/or in fine tuning measures considered to be most relevant and effective for the individual concerned.

Once again, it is essential that the victim dates and signs the assessment, certifying that the information given reflects the victim's view of his or her situation. If the victim refuses to sign the assessment, this fact and any reasons given for their refusal should be recorded by the evaluator.

Following completion of part two of the questionnaire, the evaluator should have a detailed understanding of the level of risk of secondary and/or repeat victimisation, of intimidation and of retaliation presented by the victim. The evaluator should also be in a position to assess whether and to what extent special measures would be useful to address the identified specific support needs and the steps required to facilitate their implementation. The evaluator will thus explicitly address the victim's protection needs (needs related to the victim's protection and/or related to improving the quality of the evidence), identify what measures are appropriate and any support referral needs (i.e. to counselling, legal services, victim support service, community services...).

In all cases, best practice would suggest that all professionals involved in the individual assessment process:

- work together to complete the evaluation process (questionnaires, referrals...);
- are properly trained regarding how to explain the purpose of the individual assessment, (i.e. why it exists and its objective), to the victim in a respectful, tactful and professional manner.







The protection of victims will only be effective if special measures are taken not only in the course of criminal proceedings (A) but if they also address the wider protection and restorative needs of victims (B). In order to address both issues it may be necessary to share the information contained in the assessment with others (C).

### A. Special measures in the course of criminal proceedings

Articles 23 and 24 of the Victims' Directive list different measures available during criminal investigations and court proceedings for victims with specific protection needs, answering three core questions: where (1), who (2) and how (3).

**Where?:** special measures relating to the location

- Interviews with the victim being carried out in premises designed or adapted for that purpose;

**Who?:** special measures relating to the people dealing with specific victims

- interviews with the victim being carried out by or through professionals trained for that purpose; for example, professionals working with child victims should receive specialised training in how to communicate with young victims of crime and how to identify and limit the risk of re-victimisation;
- all interviews with the victim being conducted by the same person/s unless this is contrary to the good administration of justice;
- all interviews with victims of sexual violence, gender-based violence or violence in a close relationship, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced. [NB: this provision does not relate to prosecutors or judges];
- in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities should appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family.

**How?:** special measures relating to implementation

- the use of appropriate communication technology:
  - if the victim is heard in a courtroom to avoid direct visual contact between victims and offenders including during the giving of evidence;
  - if the victim may be heard in the courtroom without being present;
  - if the victim is a child that is interviewed in a criminal investigation, all interviews with the child victim may be audio-visually recorded and such recorded interviews may be used as evidence in criminal proceedings;
- the protection of privacy thanks to:
  - measures to avoid unnecessary questioning concerning the victim's private life not related to criminal offence ;
  - measures allowing the hearing to take place without the presence of the public.

These measures aim at avoiding, as much as possible, any further trauma caused by interviews, visual contact with the offender/s and/or by the criminal proceedings themselves.

The Directive recognises that there may be operational or practical constraints that impact on the use of these measures - for example, an urgent need to interview the victim.

Practitioners should check what measures are available in their own Member State.

Good practice suggests that the above measures should be offered to all victims of crime, not just victims recognised as having specific protection needs. However, ensuring the measures are effective will require a shift in the standard practices and working routines of criminal justice professionals, along with the adaptation and upgrading of appropriate facilities.

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## B. Measures to address specific protection needs

This section should be adapted by each Member State to reflect the availability of support measures. But it may be used by Member States' to adapt national laws, develop new protection measures or make improvements to existing measures. In any case, the Victims' Directive imposes that certain categories of victims must benefit from measures to address specific protection needs.

In short, the recommendations which can be made by the evaluator regarding the victim's needs assessment cover two aspects – both mentioned in the template questionnaire:

- the victim's protection needs (needs related to the victim's protection and/or related to improving the quality of the evidence); and
- the support referral needs (counselling legal services, victim support service, community services...).

By definition, assessment on an individual or case-by-case basis means that it is impossible to contemplate all possible measures to address specific protection needs or to specify the particular type or types of response required by Member States.

### 1. Training

It is fundamental that all professionals (police officers, judges, prosecutors, lawyers, counsellors, social workers, members of NGOs, etc.) working with victims with specific protection needs receive specialised training to a level appropriate to their contact with victims as stated in Article 25 of the Victims' Directive. The training should help professionals, at their own level, to recognise and deal with victims with specific protection needs, evaluate the impact of crime on victims, recognise coping strategies and how to identify and limit risk of re-victimisation, so as to ensure the best possible outcome for the victim at the time when the assessment is conducted.

Some victims – whether due to the circumstances or the nature of the crime itself, because of their age or a disability, or because they are a victim of a particular type of offending such as domestic violence or terrorism for instance – have obvious specific protection needs. Whereas for other victims, it will not necessarily be their age or the nature of the offence that will justify specific protection needs but their particular vulnerability. It is impossible and inappropriate to have a pre-conceived opinion or a chart or other measure that would systematically eliminate certain types of victims.

Each victim must be carefully assessed so as to identify his or her specific protection needs. This requires a good understanding of specific protection needs and how different types of victims behave when faced with traumatic experiences. Ensuring such understanding amongst evaluators, will ensure high quality evidence-taking and reduce the stress on the victim during the assessment and while the necessary measures are being implemented. Furthermore, the ability to select the appropriate measure/s (or to suggest one measure is more suitable than another), requires a good knowledge of existing legislation, support programmes, facilities and the services offered by professionals in different fields. Given that such analysis is required on a case-by-case basis such knowledge will ensure the response provided it is tailor made to meet the victims' needs.

Bearing in mind the fact that a crime can impact on various aspects a victim's life – from their physical, mental or emotional health, to their financial security – it is essential to identify the particular impact on each victim. All victims should be handled with impartiality, respect and professionalism and in a non-discriminatory manner.

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In some instances, it may be useful to refer a victim to a medical or psychological expert as well as to an appropriate victim support service, if this meets the victims' needs. The earlier a victim's needs are appropriately taken into account the better. Providing proper support at an early stage for a person who has been a victim of crime can significantly reduce the impact of the offending – not only for the individual but also for their close relatives and/or society as a whole (i.e. absence from work, loss of earnings, support required by relatives, health care and/or social services). That is why it is important to ensure that in addition to the victim's needs, and where appropriate, the individual assessment should also address what (if any) support is required by their family, in accordance with Article 8 of the Victims' Directive.

## 2. Legal protection

**Legal protection may arise by way of precautionary measures** such as the pre-trial detention of the suspect, victim relocation, police escort, restraining orders, weapon confiscation, electronic monitoring/control systems (e.g.: CCTV, panic alarm, ankle tag/bracelet), (etc.).

Measures to address specific protection needs may also aim at **making the justice process less traumatic**, whether at the initial complaint stage, through the investigation phase, during the trial or after the sentence. Examples of these measures are: avoiding delays, practical measures to minimise the number of statements taken from children, allowing the victim to be accompanied by a person of his or her choice, carrying out the necessary medical examinations, ensuring protection of privacy, avoiding victim/offender contact where necessary, reimbursing expenses, and/or giving appropriate information about their rights.

### a) Physical and psychological protection needs

As above, in order to identify specific protection needs, the individual assessment will inevitably involve asking questions about a victim's personal matters (as highlighted in the template questionnaire). It is vital that appropriate measures are taken to protect the privacy of the victim, but also, that questions are tailored as required to reveal if the victim is isolated or vulnerable. All questions should be asked in a language that the victim understands.

Victims may have been exposed to: sexual abuse, physical violence, threats, emotional manipulation, detention or restriction of movement, drug abuse, alcohol abuse or repeated harassment, among other offences. Frequent consequences for victims of such offending are: infectious disease (including sexually transmitted diseases), unwanted pregnancy, fear, anxiety, insecurity, mistrust, low self-esteem, isolation, dependency, submission, absences, memory loss and/or feelings of guilt, shame or aggression towards themselves or other people.

Depending on the victim's characteristics, the nature of the offence and the answers provided, special measures should be adopted as appropriate and in proportion to the issues – identified, such as the victim being interviewed by a person of the same gender (in sexual abuse, rape cases) or in a place where the victim cannot meet the offender, recording a child victim's interview, putting the victim in contact with a lawyer to ensure their rights, providing suitable protection to ensure the victims' safety, ensuring temporary logistical and/or economic help or contributing to recovery by recommending a psychologist.

**Psychological protection** will require a psycho-social analysis of the victim, comprising an analysis of the victims' vulnerability (risk factors, protective factors), psychological counselling with the appropriate level of information, or psychological treatment (which may include advice on relaxation techniques, coping/problem solving skills and methods for strengthening self-esteem).

Even where a victim is not prepared to file a complaint, a support plan may still be necessary – for example so as to counteract development of Stockholm syndrome, to address fear of acts of retaliation, conflicts of loyalty, or feelings of guilt (etc.).

**Physical protection** might be ensured by means of a self-protection plan, establishing or strengthening home based care, web-based technology, or installing a specific camera or phone system. Member States should make sure that interim accommodation (e.g. a hostel or a refuge) is available for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and/or of retaliation.

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## b) Support referral needs

Article 8 (and Recitals 37, 40, 62 and 63) and Article 9 (and Recitals 38, 39 and 40) give a detailed description of what is entailed by the right to access support services and what type of support should be provided as a minimum.

It is not necessary to quote these articles extensively here, but it is important to underline that the right to support is one of the core rights of the Victims' Directive. It should ensure that victims, and their family members where appropriate, have access to confidential support services free of charge and as soon as possible, no matter whether the offence has been reported or not. In this matter, Member States have a degree of flexibility as to the provision of specialist support which may be delivered by governmental or non-governmental organisations, on a professional and/or voluntary basis.

The measures are chiefly related to [social protection](#), such as legal aid, economic support, NGOs' assistance such as sheltered accommodation, medical and psychological counselling as well as telephone helplines and other essential services. Referrals are most often led by the police but, depending on the particular Member State, they may not necessarily be formalised. In some Member States the police will automatically refer victims to a relevant victim support organisation when a crime is reported.

A [coordinated network of victim assistance](#) is recommended, to ensure that where appropriate, a victim's disparate needs can be suitably addressed by a range of support services. Such a network will also ensure that a proper follow-up can take place. The specialised service/trained professional in charge of the individual assessment should plan how to coordinate with other services, to cover each victim's specific needs and how they may evolve during the proceedings. Collaboration and coherence between the police, prosecution agencies, judicial authorities and victim support organisations is fundamental when dealing with a victim's case, to ensure efficiency and minimize the impact on the victim. Consideration of the relationship between victims, perpetrators, children and their wider social environment is crucial when assessing victims' needs.

The Victims' Directive states that the rights set out therein should not be made conditional on the legal residence status of the victim or the victim's citizenship or nationality.

Funding the required structures and support services will inevitably be an issue for all Member States and there are several options, such as the general Member State budget, the creation of a compensation fund for victims or a fine (or levy) payable by the offender/s, to finance a victims' fund, (etc.).

## c) Special protection needs for certain types of victim

Victims of violence in close relationships may be in need of special protection measures, as stated in Recital 18 of the Preamble of the Victims' Directive.

Where violence is committed in a close relationship, i.e. "by a person who is a current or former spouse, or a partner or other family member of the victim" the impact of the offence will be compounded by additional mental and/or moral distress. For these victims, the offence will often be longstanding and repeated, it will also be aggravated by the fact that the perpetrator is in a position of trust, thereby inducing both physical and psychological trauma. In addition, the offence will often take place in/on private property, and in the absence of independent witnesses, resulting in evidential issues. The risk of secondary and repeat victimisation, of intimidation or reprisals connected to the violence in such circumstances is particularly high. Violence in close relationships should therefore be dealt with by Member States with special care.

Specific training, as mentioned above, is important as is the provision of specialised units to deal with women victims of violence. This would ensure the appropriate support (including post-traumatic support) is available as and when needed.

All special measures – such as being interviewed by a person of the same gender, recording all depositions/statements or another measure to minimise the number of statements taken from the victim, and access to free medical examinations – should be available.

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Member States could also organise awareness-raising campaigns to help fight against these forms of violence, consolidate action plans and prevention programmes and/or improve the handling of such complaints. Research has shown that imposing physical distance between the offender and the victim (thereby distancing the violent offender) using measures such as protection orders, forced removal from the household, or providing the victim with sheltered accommodation are highly effective.

In Portugal, a law protecting women victims of domestic violence was enacted in 1991, but its implementation was difficult, because such crimes were not a major concern at the time.

Spain is a pioneer country in matters of protection of victims of domestic violence and has inspired several Member States. Spanish laws in 2003, 2005 and 2009 have enacted immediate protection measures such as support telephone hotlines, specialised courts, and electronic supervision devices, soon followed by France, Italy and the United Kingdom. The Spanish police have also benefited from extended powers enabling them to protect victims until sentence is formally passed.

After several years of pilot projects, France has generalised through its law of the 4th August 2014, a mechanism called "telephone serious danger" ("TGD: téléphone grave danger") which enables a victim who may be under life-threatening danger to have a geo-localised telephone, linked to a hotline with a direct connection to the police who can immediately intervene to protect the victim and arrest the offender. Courts can also render emergency injunctions to expel the offender and order absence of contact with the victim. Prosecutors can also take temporary protection orders.

The United Kingdom has also experimented, in three different police areas, with measures forbidding access to offenders who shared a household with the victim, for a period of up to 28 days.

As demonstrated above, by highlighting a specific type of offence, such as domestic violence and creating bespoke tools to respond to the particular impact and collateral issues raised, victims can be better protected. Likewise, victims of terrorism (Recital 16 of the Preamble), organised crime, human trafficking, gender-based violence (defined in Recital 17 of the Preamble), sexual violence, exploitation and/or hate crime, can also benefit from special attention, and more tailored support and protection.

### C. How to share the information given in the assessment?

The individual assessment is completed with the victim's consent. An individual assessment that is not communicated to the appropriate agency/support service would clearly be a waste of time. It should therefore be forwarded to the relevant criminal justice and/or judicial authorities.

Two major questions arise from this: the first is who can keep a copy of the information in the assessment, and the second is who can have access to it.

The adversarial principle aims at respecting the rights of the defence in respect of the equality of arms. This essential principle, which derives from the European Convention for the Protection of Human Rights and Fundamental Freedoms, explains why the individual assessment should be included in criminal proceedings and be accessible to the different intervening parties in the proceedings such as judges, prosecutors, lawyers (barristers or solicitors), police officers or any person authorised to consult the content of the case.

The adversarial principle may however conflict with other rights stated in the Victims' Directive such as the right to protection of privacy. One should limit a victim's exposure to the risk of secondary victimisation or repeat victimisation, intimidation or retaliation. Member States should therefore regulate on the data protection of the assessment's content and the transmission of it.

Article 21 of the Directive provides that Member States shall ensure that competent authorities may take, during the criminal proceedings, appropriate measures to protect the privacy of victims and of their family members. Member States will thus determine how, when and to whom the information shall be disclosed in accordance with their national law.

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For child victims, disclosing their identification may lead to even greater trauma, especially if the information is available to/used by the media. However, in some exceptional circumstances, such as where children are missing or abducted, or they are at risk of forced marriage, honour crimes or genital mutilation, identification may be justified in the interests of the child's safety.

Disclosure of background information relating to a victim and their personal life, whether they are an adult or child, is a matter of proportionality. Where national legislation permits the disclosure of the contents of the individual assessment with the defence or the defendant, victims should be made aware of this fact at the time they are asked for their consent to the assessment.



This good practice handbook is a practical tool for practitioners dealing with victims of crime.

The template questionnaire should be treated as a living tool to facilitate the identification of special protection needs as per Article 22 of the Victim's Directive. It has been specifically designed to be easily assimilated and adapted by a wide variety of practitioners working in the different legal systems composing the European Union. As a consequence, the questionnaire is quite lengthy. However, it is important to bear in mind that some of the information being sought may actually be obtained before the assessment, e.g. when the complaint is made or during the course of any related investigation. Accordingly, it is essential that the professionals using the template questionnaire bring it to life, by adapting the content and making it accessible to each individual victim as required.

Ultimately, no matter how explicit the Directive or of any related good practice guidelines, what matters most is that the victim and their rights are recognised by other human beings throughout the European Union, at a time which is likely to be difficult, unfamiliar and in many cases highly traumatic. It is with this clear principle in mind that this good practice handbook and the accompanying template questionnaire are presented to Member States for their consideration.







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## 1. Timeline of the project

<b>Workstream 1</b> – <i>Overview of national legislations and analysis of existing practices in partner Member State</i>	
<b>Schedule</b>	<b>Activities</b>
30 <sup>th</sup> January 2014	1. Kick off meeting of the Working Group (Paris, France)
24 <sup>th</sup> - 25 <sup>th</sup> April 2014	2. Study visit about methods of assessments already in place in that Member State (London, United Kingdom)
<b>Workstream 2</b> - <i>Drafting of the questionnaire and analysis in each partner State by the relevant people in charge of the implementation of the Directive</i>	
<b>Schedule</b>	<b>Activities</b>
5 <sup>th</sup> June 2014	3. Feedback meeting of the Working Group and drafting of a victims' assessment template questionnaire (Paris, France)
July - October 2014	4. Analysis of the questionnaire in each partner State by the relevant people in charge of the implementation of the Directive (police officers, judges, prosecutors, professionals in the field of assistance to victims) (in each partner Member State)
<b>Workstream 3</b> - <i>Development of a good practice guide and a training conference</i>	
<b>Schedule</b>	<b>Activities</b>
18 <sup>th</sup> - 19 <sup>th</sup> November 2014	5. Meeting of the Working Group for the analysis of the results of the questionnaire and development of a handbook
23 <sup>rd</sup> April 2015	6. Training conference for professionals from Member States and representatives of the European institutions and the European Judicial Training Network
24 <sup>th</sup> April – 30 <sup>th</sup> April 2015	7. Collaborative conception of a document in hard copy and electronic format including the presentation of legislation, identification of best practices, remaining challenges and recommendations at the end of the final conference

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## 2. Articles 22, 23 & 24 of the Directive establishing minimum standards on the rights, support and protection of victims of crime of 25th October 2012

### Article 22

#### Individual assessment of victims to identify specific protection needs

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:

- (a) the personal characteristics of the victim;
- (b) the type or nature of the crime; and
- (c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; 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, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific 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.

5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

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 23 and 24.

7. 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.

### Article 23

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

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 and 3 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 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.

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2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):

- a) interviews with the victim being carried out in premises designed or adapted for that purpose;
- b) interviews with the victim being carried out by or through professionals trained for that purpose;
- c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;
- d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:

- a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;
- b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;
- c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and
- d) measures allowing a hearing to take place without the presence of the public.

#### Article 24

##### Right to protection of child victims during criminal proceedings

1. In addition to the measures provided for in Article 23, Member States shall ensure that where the victim is a child:

- a) in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings;
- b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;
- c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

The procedural rules for the audiovisual recordings referred to in point (a) of the first subparagraph and the use thereof shall be determined by national law.

2. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child.

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### 3. Survey of national legislation - questionnaire for partner Member States – France

*Has your State already transposed the European Directive n°2012/29/EU of 25 October 2012, in particular articles 22 and 23? (If so, what is the nature of the adopted texts (legislative, regulatory, etc.)?*

No.

*What is your definition of the concept, 'a victim of crime'?*

The concept of victim isn't legally defined in French law even if it does appear in several articles of the Penal Code and the Code of Criminal Procedure. The concept of "a victim of crime," is more commonly related to civil law which opens up the right to compensation to anyone who has personally suffered harm directly caused by a voluntary or involuntary act of a criminal nature.

*What is the status of the victim, as set out in the criminal procedure framework? What rights do they have? Does this status have any influence on civil procedure and if so please explain?*

The victim can file a civil action at any stage of the procedure, right up to the day of the hearing. For an action to be admissible, it simply requires the circumstances on which the case is based, to allow the judge to acknowledge the possible existence of the alleged harm and a direct relationship to this as shown by a violation of the criminal law (serious offence, indictable offence, or petty offence).

Civil law status allows the victim different rights. Exercise thereof is carried out over three distinctive phases: before, during and after legal proceedings.

#### 1. Before legal proceedings:

During the investigation phase led by the procureur de la République (Public Prosecutor at the tribunal de grande instance) and pre-trial phase (led by the investigating judge), the civil party can:

- 1) be assisted by a lawyer;
- 2) heard by the investigating judge or by experts in the presence of a lawyer, unless they have specifically waived this right;
- 3) request that certain evidence be taken only in the presence of a lawyer, for example: travelling to a crime scene, witness examination or other civil party examinations, interrogation of the person presumed responsible for the violation, etc.;
- 4) have access to the file of the proceedings and obtain copies through their lawyer;
- 5) take part in the investigation by requesting to be present at certain investigative procedures: witness examination and examination of other external parties involved in the proceedings, confrontations, travelling to the crime scene, expert intervention, etc.; if the investigating judge does not rule on this request within a period of one month, they can refer it to the Investigation Chamber;
- 6) ask the investigating judge proceed with all acts allowing him to evaluate the alleged crime or gather information related to the victim's personality;
- 7) ask the investigating judge to rule on the next stage of the proceedings within a certain time frame: refer the case to the courts or dismiss the case, for lack of or insufficient evidence for example. If the judge does not pass a ruling within a one month period, the case can be referred to the presiding judge of the Investigation Chamber (the court of appeal for decisions made by the investigating judge);
- 8) be present throughout the proceedings, whether public or private, as they are an integral part of the proceedings. It should be noted that in the case of the civil party being absent, it is presumed that they have abandoned their request, unless a civil action was filed during the course of the investigation or a registered letter was sent directly to the court;

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## 2. During proceedings:

The victim:

- 1) can be present throughout the proceedings, whether public or private, as they are an integral part of the proceedings: if they are not present, it will be presumed that they have abandoned their request, unless a civil action is filed during the course of the investigation or a registered letter is sent directly to the courts;
- 2) has the right to be represented and assisted by a lawyer;
- 3) can call witnesses or oppose certain witness hearings;
- 4) can question witnesses and the accused through the presiding judge of the court or tribunal;
- 5) can ask that investigative procedures be carried out, to establish the truth;
- 6) can file submissions (written remarks) about the technical aspects of the proceedings, the law and / or the facts about the case, to which the judge must answer;
- 7) can, before the cour d'assises (court of assizes), obtain free copies of written records establishing the criminal offence, written witness declarations and expertise reports and obtain copies of other documents of the proceedings, at his own expense; before the tribunal correctionnel (criminal court) and the tribunal de police (name given to a 'tribunal d'instance' when a criminal case is being heard), they cannot have direct access to documents: they must firstly ask for permission from the prosecutor and the copies will be at his own expense;
- 8) can request damages in compensation for losses incurred, as well as request that the person found guilty be ordered to pay him a sum of money to cover expenses incurred during proceedings (e.g. lawyer's fees).

## 3. After proceedings:

Once the decision from the première instance (court of first instance) has been rendered, the civil party has ten days after its delivery to appeal. They can also lodge an appeal against the Court of Appeal's judgment 5 days after its delivery.

Finally, they can, under certain conditions, benefit from compensation procedures and/or assistance in recovering damages in compensation for losses incurred.

### *What information do victims have regarding their rights? By whom is it issued and by what means?*

All victims are informed of their rights:

- to obtain compensation for the harm suffered;
- to file a civil action;
- to file a civil action, if so desired, assisted by a lawyer;
- be helped by a victim support association or by a relevant public body;
- if conditions are fulfilled, bring a claim before the Compensation Board for the victims of crime;
- request a protection order (for victims of domestic violence).

Victims who file a civil action receive additional information, depending on their status.

This information is provided orally, as well as in written format (with a receipt of delivery together with the contact details of the victim support associations), by the investigation services (« victims » are in turn registered with the investigation services), the Victims of Crime Support Office, and the investigating judge for victims that have filed a civil action.

Victims of Crime Support Offices are made up of representatives of the victim support associations, who have been appointed as a result of signed agreements between legal authorities and relevant associations. Their objective is to provide the victim with information, assistance and guidance throughout the entire legal proceedings and this is presently being pushed out to all tribunals.

### *Is there an evaluation carried out with regards to the victim's particular need for protection?*

At present there is no systematic evaluation carried out with regards to the victim's need for protection. However, on a case by case basis, if the magistrate in charge of the investigation deems it necessary, he may carry out additional investigations allowing for the assessment of a victim's vulnerability (medical, psychological, psychiatric expertise, etc.).

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The victim, who has filed a civil action, or his lawyer, can also request that additional investigations be carried out. Finally, at the hearing stage, the tribunal can order such measures, for example to rule on loss suffered by the victim, or in the case where the victim's vulnerability constitutes an aggravating circumstance of the crime, resulting in higher sentencing.

*What provision for accompaniment and protection does the victim have access to, in particular under Article 23 of the Directive?*

For several years now, public policy on victim support, put in place by the Ministry of Justice reinforced the rights of victims in criminal proceedings and put in place provision for the accompaniment and protection of victims, as faithful as possible to the facts, throughout the entire legal proceedings right up to the day of ruling.

The Ministry of Justice's objective has been met thanks to the mobilization of the associations for the support of victims present throughout the country. To date, 167 approved associations offer support in over 1500 offices, including 140 Victims of Crime Support Offices located within tribunaux de grande instance (French court of first instance in civil and criminal matters). This is a multidisciplinary service that is free and confidential, providing special guidance on rights, psychological assistance, social issues and, if required, referrals to specialised services.

Furthermore, specific measures have been put in place for victims of human trafficking providing access to pleasant and safe accommodation and within the framework of the national safety action plan (Ac-sé), access to psychological assistance undertaken by medico-psychological centres, psychologists practicing within associations for the support of victims and specialised associations (authorised and subsidised by the State). Material assistance is also provided in the form of a payment for allocation temporaire d'attente (temporary waiting allowance) by the Pôle emploi (unemployment benefit agency) depending on place of residence, as well as financial assistance or other assistance (transport, clothes, etc.) provided by specialised associations (authorised and subsidised by the State).

Finally, within the framework of trials carried out since 2009, under the jurisdiction of several courts, victims of domestic violence, the group most exposed to the risk of repeated victimization can, on agreement by the Public Prosecutor, be given an alert device that has an emergency button which when pushed, connects them to teleassistance company. The victim is therefore immediately identified by the operator, who in the case of danger alerts the competent police department or gendarmerie. Furthermore, this device has a pre-programmed number that connects to the local victim support group. This protective device will shortly be made widely available.

Furthermore, the investigation services have meeting rooms adapted to juvenile victims (furniture for children, toys, decoration adapted for children: bright colours, posters); specific rooms also exist in hospitals of certain medico-judicial units. Juvenile victims of serious crimes (sexual violence, human trafficking, etc.) have a systematic audiovisual recording of their statements.

It is also possible to carry out the victim's hearing or confrontation with the suspect by videoconference, regardless of the victim's age. These measures are ordered by the magistrate to whom the inquiry has been referred or by the tribunal.

*Who approves the implementation of these measures and according to what criteria?*

The parquet (Public Prosecutor's Office), or the investigating judge within the framework of the judicial investigation, according to the provision of Article 41 paragraph 7 of the Code of Criminal Procedure can contact a victim support association, " so that the victim of the crime is given assistance."

*Do the victims have the right to appeal if a request for protection is refused?*

No.

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## 4. Survey of national legislation - questionnaire for partner Member States – Poland

### *What is your definition of the concept 'a victim of crime'?*

In addition to the definition of a victim within the meaning of the Code of Civil Procedure, there is a separate definition concerning domestic violence, contained in the Act of 29 July 2005 on the prevention of domestic violence, which allows us to create the definition of a victim of domestic violence.

According to the Act, domestic violence should be understood as a one-off or repeated intentional action or omission that violates the rights or personal interests of close relatives and partners of the named people, as well as others cohabiting or living in a joint household, especially where this exposes people to the danger of loss of life and/or health, affects their dignity, physical integrity and/or freedom, including sexual freedom, causing harm to their physical or mental health, as well as causing suffering and moral damage to people affected by violence.

### *What is the status of the victim in the framework of criminal proceedings and/or civil proceedings and what are their rights?*

Alongside the rights arising from the possible status of the injured party / party to criminal proceedings or civil proceedings, victims of domestic violence have rights, inter alia, under the Act of 29 July 2005 on the prevention of domestic violence, irrespective of participation in the court proceedings or preliminary proceedings, i.e. the right to free assistance, in particular in the form of:

- 1) medical, psychological, legal, social, professional and family advice;
- 2) crisis intervention and support;
- 3) protection against further abuse, by preventing those wielding violence from using the premises jointly occupied with other members of the family, and prohibition of contacting and approaching the injured party;
- 4) ensuring safe shelter for persons affected by domestic violence in a specialized support centre for victims of domestic violence;
- 5) medical examination to determine the cause and type of bodily injuries resulting from the use of violence in the family and issuance of a medical certificate in this regard;
- 6) provision of assistance in obtaining housing for persons affected by domestic violence who do not have legal title to an apartment occupied jointly with the perpetrator of violence.

### *How do the victims receive information about their rights, and who issues it?*

In the form of instructions, including written instructions, at various stages of civil and criminal proceedings, by the prosecuting authorities.

Victims of domestic violence can take advantage of free legal information in Specialist Support Centres for Victims of Domestic Violence and in non-governmental organizations, including those supported out of the state budget, offering assistance to victims of domestic violence.

Victims of crime may seek information about their rights on the internet – information is available on the websites [www.ms.gov.pl](http://www.ms.gov.pl) (including the 'Domestic Violence' tab) and [www.pokrzywdzeni.gov.pl](http://www.pokrzywdzeni.gov.pl). The Ministry of Justice, in cooperation with the Ministry of Labour and Social Policy, has also issued an extensive document, Information for people affected by domestic violence, describing the rights of the injured parties in both civil and criminal proceedings, and a list of the basic rights of a social nature. This Information has been disseminated, inter alia, in courts, and also posted in electronic format on the websites of both ministries.

### *Which support and protection measures does the victim have access to, under Article 23 of the Directive?*

Article 23 - Right to protection of victims with special needs in terms of protection during criminal proceedings:

1. Without prejudice to the rights to defence and in accordance with the rules of judicial discretion, Member States shall ensure that victims with special needs with regard to protection, benefiting from special measures established as a result of an individual evaluation provided for in Article 22



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2. The following measures are made available to victims with special needs for protection within the scope defined in accordance with Art. 22 Paragraph 1 during the preliminary proceedings:

- a) victims are interviewed in rooms specially designed or adapted for this purpose;
- b) victims are interviewed by, or with the participation of, appropriately trained specialists;
- c) all interviews of victims are conducted by the same people, unless this is contrary to the proper functioning of the justice system;
- d) all questioning of victims of sexual violence, gender violence or violence in close relationships (if the hearing is not conducted by a judge or a prosecutor) is carried out by a person of the same sex as the victim, if this is the wish of the victim and without prejudice to the criminal proceedings.

Procedures for interviews of specific witnesses / victims of crime, contained in the Code of Criminal Procedure:

- the interview is carried out by court;
- in a session;
- with the participation of a psychologist;
- participation of other parties is provided for;
- appointment of a defence lawyer is mandatory.

Article 147 § 2a - mandatory registration of the interview

Article 185a. § 1 - principle of a single interview for a witness, who at the time of the interview is under 15 years of age:

- violence or unlawful threat
- XXIII – against freedom
- XXXV – against sexual freedom and morality
- XXVI – against family members and guardians
- important to the outcome of the case

Article 185a. § 4 - principle of a single interview for a minor witness, who at the time of the interview has reached 15 years of age:

- violence or unlawful threat
- XXIII – against freedom
- XXXV – against sexual freedom and morality
- XXVI – against family members and guardians
- fear of the negative impact of the interview on the witness's mental state

Article 185b. § 1 - principle of a single interview for a witness, who at the time of the interview is under 15 years of age:

- violence or unlawful threat
- XXV – against sexual freedom and morality
- XXVI – against family members and guardians
- important to the outcome of the case.

Article 185b. § 2 - principle of a single interview for a minor witness, who at the time of the interview has reached 15 years of age:

- violence or unlawful threat
- XXV – against sexual freedom and morality
- XXVI – against family members and guardians
- under Article 177 § 1a of the Code of Criminal Procedure
- fear of the negative impact of the interview on the witness's mental state

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Article 185b. § 2 - principle of a single interview for a minor witness, who at the time of the interview has reached 15 years of age:

- violence or unlawful threat
- XXV – against sexual freedom and morality
- XXVI – against family members and guardians
- under Article 177 § 1a of the Code of Criminal Procedure
- fear of the negative impact of the interview on the witness's mental state

Article 185c. § 2.

Interviewing the victim (of rape) as a witness.

- is carried out by court
- in a session,
- at which the prosecutor, defence lawyer and the victim's representative are entitled to attend
- a psychologist may participate

Article 185d. § 1. Interviews pursuant to Articles 185a-185c are carried out in suitably adapted premises in or out of court.

Until 27 July 20165 [sic], every single interview of the victim / witness has to take place in a friendly/pleasant interview room.

Certified friendly/pleasant interview rooms.

In Poland, 76 entities received 'friendly interview room' certificates.

*Who decides to grant these measures and according to which criteria?*

#### **Preliminary proceedings**

Under the law, interviews of victims are carried out in special rooms in the situations described in items 1 and 3 on page 1, and the victim does not submit an application in this matter.

In the situation described in item 2, the person conducting the proceedings decides whether to conduct the interview in this manner, and may seek expert opinion as to the advisability of the use of said method.

The participation of a psychologist in interviews of victims in the situations described on page 1, items 1 and 2, is mandated by law.

The participation of psychologists in interrogations of victims in other situations is carried out in the preliminary proceedings and is decided upon by the person conducting the preliminary proceedings. There is nothing to prevent the victim (or their representative) from submitting a motion in this regard.

The aggrieved party may submit a motion to have a psychologist of the same sex in the situation described in item 3 on page 1, if an expert psychologist participates in the [interview].

#### **Court proceedings**

The decision on whether to conduct the interview of the victim in the absence of the accused and the avoidance of irrelevant questions rests with the presiding judge.

The court issues a decision regarding whether the court hearing is to be held in camera.

*Do victims have the right to appeal if a request for protection is refused?*

In preliminary proceedings, the victim may not appeal decisions on the described protection measures.

In court proceedings, the victim may appeal the decision of the Presiding Judge to the entire composition of the court. An order regarding whether a hearing should be held in public is not subject to appeal.

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## 5. Survey of national legislation - questionnaire for partner Member States – Portugal

*Has your State already transposed the European Directive n°2012/29/EU of 25 October 2012, in particular articles 22 and 23? (If yes, what is the nature of the adopted texts (legislative, regulatory, etc.)?*  
The Portuguese State has not yet transposed Articles 22 and 23 of the Directive.

Nevertheless, certain measures of Article 23 already exist within the Portuguese legal system: point 3, paragraphs a) and b) of Article 23, part of the 93/99 law of 14 July (law for the protection of witnesses), and in paragraph d) of the same Article, provided by Article 87 n° 1 of the Code of Criminal Procedure.

*What is your definition of the concept, 'a victim of crime'?*

The definition of victim does not exist in the Portuguese legal system and the term "victim," only appears in a few rare articles of the Code of Criminal Procedure. On the other hand, the most commonly used term is "offended," defined as the interested party that the law is specifically designed to protect.

*What is the status of the victim, as set out in the criminal procedure framework? What rights do they have? Does this status have any influence on civil procedure and if so please explain?*

During criminal proceedings, the victim is almost always invited to testify. However, apart from the status of witness, if the victim desires to register a claim for criminal compensation against the alleged offender of the crime, they can file a complaint. In this case, the victim submits a claim of compensation together with relevant evidence corresponding to the harm suffered.

If the victim desires to have a more participatory role in the proceedings, they can file a civil action. The civil party collaborates with the public ministry and, thanks to this status; the victim can have a more active role in the proceedings. For example, the civil party can object to the temporary suspension of proceedings or actively participate in the proposal for the notification of injunctions required to advance proceedings. Furthermore, they can request the diligences that they deem necessary; ask for the case to be examined, in the case of disagreement with the public ministry at the end of the investigative phase, appeal decisions, etc. To file a civil action the victim must be accompanied by a lawyer and pay judicial tax.

*What information do victims have regarding their rights? By whom is it issued and by what means?*

According to Article 247 of the Code of Criminal Procedure, it's the role of the public ministry that he belongs to, to provide this information.

It's therefore up to the ministry to provide the victims with contact details of victim support associations. The public ministry also provides guidance on the victim's right to file a criminal complaint; the legal consequences that this might induce and the procedure available to the victim to file a claim for compensation against the accused within the framework of the criminal procedure. They should also inform the victim that they can request legal aid if they do not have the necessary financial means to cover the cost of the proceedings. The public ministry is furthermore responsible for providing information to victims of violent crimes and domestic violence about the possibility of referring the case to the Commission for the protection of victims to claim compensation. Finally and particularly in the case where the accused is considered especially dangerous, the public ministry must inform the victim of any decisions or circumstances that modify their situation, such as release from prison on parole or escape from prison.

This rule however is not systematically applied. The victim is however always informed of the procedure to file a claim for compensation against the accused within the framework of the criminal procedure. Regarding the other points, there is still not a homogenous policy in place that guarantees that every victim of crime filing a complaint receives the information mentioned above.

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*Is there an evaluation carried out with regards to the victim's particular need for protection?*

There is no specific procedure in place to carry out this evaluation. When the question of a possible need for protection arises, the authorities make a decision based on their knowledge of the facts and circumstances related to the case, on their experience and on their conviction for evaluating the needs and if required, they take the measures deemed most appropriate. Concerning domestic violence, the Ministry of Justice and the police for public safety work together to define a procedure of risk evaluation, that allows for the accurate evaluation of the needs to protect women who are victims of such violent crimes. This procedure however, is still not operational.

*What provision for accompaniment and protection does the victim have access to, in particular under Article 23 of the Directive?*

Certain measures of Article 23 already exist within the Portuguese legal system; point 3, paragraphs a) and b) of Article 23, part of the 93/99 law of 14 July (law for the protection of witnesses), and in paragraph d) of the same Article, provided by Article 87 n° 1 of the Code of Criminal Procedure. Furthermore, other measures exist in particular with regards to the right to be accompanied and protected, for example provided by teleassistance which specifically concerns victims of domestic violence.

*Who approves the implementation of these measures and according to what criteria?*

Protective measures provided by the law for the protection of witnesses are exceptional in nature and as such can only be applied when they are deemed essential and adapted to the protection of people to achieve proceedings' objectives:

- a victim's hearing without visual contact and/or with voice distortion is decided by the judge (the investigation judge or the court, depending on the phase of the proceeding that is underway) based on facts and circumstances indicating the possibility of intimidation or a high risk of intimidation;
- the use of teleconferencing – only possible in the case of a crime being trialled before a collegiate tribunal or a jury (in short, the most serious crimes, liable to more than five years of prison) or when the witness is particularly vulnerable. The judge decides on the issue of protection when there are serious reasons justifying specific protection.

The decision of a closed court hearing is taken by the judge, based on precise facts and circumstances indicating the possibility of a public that could seriously harm people's dignity, public moral or the normal development of proceedings. In general, human trafficking cases or acts contrary to sexual freedom or self-determination are closed court hearings.

*Do the victims have the right to appeal if a request for protection is refused?*

With the exception of a few circumstances, but unrelated to the subject in question, it is possible to appeal against any legal decision.

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## 6. Survey of national legislation - questionnaire for partner Member States – Spain

*Has your State already transposed the European Directive n°2012/29/EU of 25 October 2012, in particular articles 22 and 23? (If yes, what is the nature of the adopted texts (legislative, regulatory, etc.)?*

On 25<sup>th</sup> October 2013, the Spanish government approved a Draft Organic Law for Victims of Crime, with the aim of meeting victims' needs in the most comprehensive way possible, not only from a legal point of view but a social one as well. Such a law would be not only restorative in nature, within the criminal procedure framework but morally speaking, would also reduce traumatic effects that their emotional condition might cause, independent of developments during proceedings.

This statute enables Spain to catalogue the rights of victims into one legislative text, thereby transposing the Directive n° 2012/29/EU and at the same time meeting the needs of the Spanish people. The text will be sent to the Consejo de Estado (Advisory Council to the government) and once approved as draft law by the Consejo de Ministros (Cabinet of Ministers), it will be sent to the Congreso de los Diputados (Parliament) where it will become Organic Law. The status of Organic Law, affecting the fundamental rights of the people, will need to be approved by a majority vote at parliament.

Thus, in Title III of the Statute, articles 19 to 26 transpose articles 22 and 23 of the Directive n° 2012/29/EU, addressing questions related to the protection and evaluation of victims rights, as well as the specific protective measures for certain groups of victims.

Enclosed is the text of the Draft Organic Law for Victims of Crime, as currently set out and requested.

Furthermore, we are developing a Regulation for Victims of Crime Support Offices where evaluation procedures, specialized assistance, and protection for certain groups of vulnerable victims can be regulated. This will be facilitated by a coordinated network, as will information on the possibility of applying for Restorative Justice, including the possibility of doing so with a specific focus on mediation.

*What is your definition of the concept, 'a victim of crime'?*

The State's regulatory Draft Organic Law for Victims of Crime encompasses a broad meaning of 'a victim of crime' that includes victims that have suffered directly and indirectly from a crime. A direct victim is considered to be any physical person who has suffered harm or damage, of a personal or material nature, in particular physical or psychological damage, emotional or economic damage caused as a direct result of a criminal offence.

In the case of death or disappearance of the person directly harmed by the crime, indirect victims are considered to be the spouse or the person linked to the victim by an emotional bond, biological children or their children, parents and certain relatives under their responsibility. All of the aforementioned people will benefit from the rights recognised by this law.

We equally aim to identify juvenile victims who find themselves caught up in gender violence, in order to guarantee them access to services of assistance and support, as well as adopting protective measures to facilitate essential recovery. Furthermore, cross-border victims and witness victims are taken into account.

*What is the status of the victim, as set out in the criminal procedure framework? What rights do they have? Does this status have any influence on civil procedure and if so please explain?*

The Draft Organic Law ensures that the victim enjoys a status appropriate to their rights and specific needs during legal proceedings. Thus, every victim has the right to protection, information, support, assistance and attention, as well as active participation in the legal proceedings, whether it be by carrying out legal action or through testifying.

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Furthermore, the victim will be treated with respect, professionalism, in an individualized and non discriminatory manner from the first point of contact with authorities, while measures of assistance, support and restorative justice are being put in place, throughout proceedings and for an appropriate period of time following the result of the case, independent of the result of the case and whether the identity of the offender is known or not.

The status of a victim of crime also establishes the civil action resulting from the crime, which in Spain is referred to the same judge in charge of the legal proceedings, maintaining the same status of rights for the victim. Furthermore, the framework of protection commences from first contact with authorities and remains in place throughout the duration of legal proceedings, including after case completion, in accordance with Article 8 of the Directive nº 2012/29/EU.

However, a crime victim is recognised as such and is treated respectfully, professionally, in a non discriminatory manner with an individualized sensitive approach, regardless of whether or not they have legal residency in Spain.

*What information does your criminal procedure have on the right of victims, who are they issued by and by what means?*

In the regulatory Draft Organic Law of the Statute of Crime Victim, Article 5 establishes that all victims have the right to receive timely information adapted to their set of circumstances, personal conditions and nature of the crime committed and harm and damage suffered, from the first contact with authorities and civil servants, including on the scheduled day of ruling.

All civil servants and authorities, who undertake roles related to victims, are obliged to inform them of their rights. This information is thereby provided by Victims of Crime Support Offices, the police, the Ministerio Fiscal (Public Prosecution Service) and by the Secretario Judicial (Court clerk) for actions brought before a judge. This information will be kept up-to-date during every procedural phase to ensure that the victim can exercise their rights.

The following information will be specifically provided: available measures of assistance and support, including medical, psychological or material assistance.

Where appropriate, this would be extended to include information about how to obtain alternative housing; initiate legal proceedings, the procedure that precedes filing for legal proceedings and provide evidence to the authorities in charge of the investigations; the process used to secure legal advice and legal defence and in this case, the required conditions for obtaining free legal representation; request protective measures and in this case, the process involved; evaluate their right to compensation and in this case, the procedure involved to make a claim; interpretation and translation services available; support and auxiliary communicative support available; the procedure used in the case of victims residing outside of Spain; lodge motions against decisions considered to be in breach of their rights; contact details of the authority in charge of implementing legal proceedings and the process for communicating with them; available services for restorative justice, in cases where it be legally possible; the requirements for obtaining reimbursement for legal costs and in this case, the process involved to make a claim and if desired, be notified of certain decisions.

*Is there an evaluation carried out with regards to the victim's particular need for protection?*

As previously explained in reply to the first question, Title III of the Draft Organic Law for Victims of Crime, deals with the evaluation of the particular protective needs of victims, transposing in greater detail Articles 22 and 23 of the Directive n1 2012/29/EU.

Victims must be evaluated on an individual basis to establish their protective needs during legal proceedings thus identifying specific assistance and protective needs.

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Assistance is provided during the following phases: orientation, information, intervention and monitoring of areas that commonly have repercussions as a result of the crime, such as legal, psychological and social.

Individual evaluations that effectively establish the risk of secondary or repeated victimization, intimidation or reprisals by the offender, must be carried out as soon as possible to meet the protective needs of all victims. The exact nature of such measures should become apparent during the evaluation process, bearing in mind the victim's wishes.

Following on from this, two types of evaluations exist: assistance and actual protection.

The evaluation for assistance and evaluation of victims with special protective needs are carried out in Victims Support Offices. Evaluation methodology varies depending on the severity of the crime and the characteristics of the victim, in order to establish the following measures: a) level of support or psychological assistance required b) accompaniment to trial or judicial proceedings, c) information about psycho-social support available and how to obtain referral to them if the victim so desires; d) special measures of support and e) referral to specialized support services.

Protective measures aim to provide efficacy against reprisals, intimidation, secondary victimization, physical harm or aggressions against human dignity during questioning and while testifying, including physical protective measures, among others, like the use of separate rooms in Court houses, to avoid offender/victim contact and any other contact that existing circumstances might require, at the discretion of the legal authorities involved.

To avoid secondary victimization in particular, efforts are made to take the victim's statement as soon as possible following the complaint to reduce the number of statements and medical evaluations to the minimum required amount and ensure the victim's right to be accompanied not only by a representative of the proceedings, but by a person of their choice, unless otherwise justified.

The adoption of measures and access to certain services are preceded by a personalized evaluation of the victim's needs to establish their specific protective needs and eventual special measures required. Said measures must be updated throughout the duration of the legal proceedings and when subsequent circumstances so require.

Specific protective measures are adopted in accordance with the person's character, the crime and related circumstances, the severity and extent of damages or the victim's vulnerability. Thus, together with reference to current legislation specialized in the field, we can include concrete protective measures for collective bodies, for whom special legislation does not exist, in particular juvenile victims of abuse, exploitation or child pornography, victims of human trafficking, the physically challenged and other collectives, like crimes with multiple sufferers and resulting in catastrophic effects.

If so,

o At what stage of the proceedings does it take place?

During the investigative phase, prosecution and sentencing.

o Who authorizes this evaluation, based on what set of criteria?

The evaluation of the victim's need for assistance is carried out by the Victims of Crime Support Offices, by identifying victims that are especially vulnerable and putting in place protective measures to avoid victimization. Protective measures are established, during the investigative phase, by the Juez de Instrucción (Investigating judge) or by the judge for violence against women, without prejudice to the evaluation and provisional rulings that the Fiscal (Public Prosecution Service) must carry out and adopt, during investigative enquiries, procedures subject to the Organic Law of Juvenile Criminal Procedure or police officials who are involved in the initial investigative phase. This also applies to the prosecution phase, to the judge or court where the case is tried.

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o What type of evaluation is used and who carries it out (questionnaire/telephone interview/face to face meeting/home visit, etc.)?

As previously explained, it is the role of the Victims of Crime Support Offices to carry out the evaluation for assistance, identify especially vulnerable victims and put the appropriate measures in place to assist the victim. This evaluation can also be carried out by the police and by forensic medics.

It is also the judge's role to carry out the evaluation of the victim's needs and establish the protective measures required, in accordance with case circumstances, as well as the different sources of information at his disposal. In order to carry this out, specific protocols regarding coordination have been planned through one coordination point, for all participants involved in the evaluation process and monitoring of adopted actions.

It involves measures which firstly guarantee the life of the victim, their physical and psychological integrity, freedom, safety, sexual integrity and freedom, as well as adequately protect their privacy and dignity, particularly when at the statement stage or when testifying during the trial, thus avoiding the risk of secondary or repeated victimisation. The evaluation will take the victim's personal characteristics into consideration, the nature of the harm suffered, the severity of the damages caused and the risk of the crime being repeated. Regulations will establish proceedings, documentary evidence and evaluation management and changes.

o Is the victim's opinion (for or against) taken into account? Is this linked to the authority that carries out the evaluation?

The evaluation of the protective needs of the victim will always include the needs highlighted by themselves, as well as their expressed wishes. In the case of juvenile victims or the physically challenged, in need of special protective measures, evaluations will take onboard their opinions and interests. In this way, the victim's opinion will be evaluated, which in under no circumstances means they will be binding.

Victim assistance includes monitoring and measures of protection and assistance. Therefore, any change that is of relevance to the circumstances that the personalised evaluation of a victim's needs would have been based upon, will result in their evaluation being brought up-to-date, thereby changing the protective measures that they would have been originally granted.

o Does the evaluation methodology differ according to the nature or severity of the crime (or any other criteria)?

Naturally, the methodology differs according to the nature and severity of the offence. The victim's characteristics will also be taken into account, as well as the nature of the crime, the consequences or damages suffered by the victim, as a result of the crime, and the expressed desires of the victim.

o Do the victim support associations take part in the evaluation?

The Victim Support Association does not participate directly in the evaluation. That said, public authorities do foster cooperation with professional bodies specialized in the treatment, personal attention and protection of victims. Such bodies are encouraged to contribute to the evaluation systems in place for the functioning of regulations, measures and other instruments adopted, for the protection and assistance of victims.

*What are the financial implications associated with this evaluation and who finances it?*

It is up to the State to cover costs; however it is presently difficult to say exactly what this amount corresponds to given the intervention of multiple professional collective bodies (state security bodyguards, forensic medics, physiologists, Public Prosecutors, judges, administrative staff of the Justice Dpt. etc.

*What provision for accompaniment and protection does the victim have access to, in particular under Article 23 of the Directive?*

The protective measures regulated under the Draft Organic Law for Victims of Crime, in accordance with the provisions of Article 23 of the Directive 2012/29/EU are:

1- During the investigative phase of the proceedings, the following protective measures can be adopted: statements are taken in specially designated rooms; given by professionals who have received special training; given by the same person who takes the statement, carried out by a person of the same sex if requested by the victim.



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2- During the prosecution phase, the following measures can be adopted:

a) Measures that avoid visual contact with the victim; b) Measures that guarantee that the victim can be heard without being present in the courtroom; c) Measures that prevent unnecessary questions being asked in relation to the victim's private life; d) Oral Hearings without the presence of the public.

3- In the case of juvenile victims and the physically challenged, requiring special protection, in addition to the aforementioned measures, the following can be applied: a) Statements received during the investigative phase are recorded by audiovisual means and can be reproduced during the trial; b) Statements can be taken by experts.

Furthermore, the Fiscal (Public Prosecution Service) will request the appointment of legal defense from the judge or court for juvenile victims, so that they are represented during investigative and legal procedures when there is a conflict of interest with the parents, those exercising parental power or tutors.

In addition, there exist other mechanisms of accompaniment and protection different from those mentioned in Article 23, like protection orders, in the case of domestic violence and interim measures of protection, among others. Such protection orders include a measure that guarantees maximum safety when faced with risky situations.

*Who approves the implementation of these measures and according to what criteria?*

It is the role of the judges to approve the implementation of these measures and as such the judiciary and law enforcement bodies.

*Do the victims have the right to appeal if a request for protection is refused?*

All legal decisions taken within the Criminal Procedure framework, are subject to the general appeal system, as set out in the Criminal Procedure Act, which allows for the right to appeal against a judge's decision of refusing a request for protection.

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## 7. Survey of national legislation - questionnaire for partner Member States – United Kingdom

*Has your State transposed European Directive no. 2012/29/EU of 25 October 2012, in particular Articles 22 and 23? If so, what is the nature of the adopted provisions (law, regulation, other)?*

The Code of Practice for Victims' of Crime (also known as the "Victims' Code") sets out the information and support that victims of crime are entitled to in England and Wales. A copy of the Victims' Code is attached. It sets out that a victim is entitled for an assessment of their needs by the police, so that they can work out what help or support they might need. This will help identify whether the individual is at risk of harm requiring protection and/or falls into one of the three categories of victim who may need enhanced support. The three categories are: victims of the most serious crime; persistently targeted victims and vulnerable or intimidated victims.

The police refer the individual to victims' services (voluntary organisations) who may do a more detailed assessment on behalf of the police, unless the victim asks not to be referred

There are a range of special measures in place in England and Wales to support victims and witnesses to give their best evidence and to help reduce some of the anxiety of attending court.

*How do you define the notion of victim of crime?*

Le Code des victimes en Angleterre et au pays de Galles indique qu'une «victime» est :

The Victims' Code in England and Wales sets out that a 'victim' is:

- o A person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by criminal conduct
- o A close relative of a person whose death was directly caused by criminal conduct
- o Close relatives refer to the spouse, the partner, the relatives in direct line, the siblings and the dependants of the victim. Other family members, including guardians and carers, may be considered close relatives at the discretion of the service provider

*What is the victim's status within the framework of criminal proceedings and what rights do they have? What influence, if any, does this status have on civil proceedings?*

England and Wales, Scotland and Northern Ireland operate common law jurisdictions where victims are not parties to criminal proceedings. As such, in accordance with recital (20) of the Directive, the role of the victim is that of a witness, whose participation at any hearing would be in accordance with prosecutorial discretion. However, victims can participate in criminal proceedings by submitting a Victim Personal Statement (or a Victim Impact Statement in Scotland).

The Victims' Code explains in detail the support and information victims' are entitled to at every stage of the process. The Code is also written in plain English which makes it easier for victims' to understand their entitlements. In addition, the Code provides a process map of a victim's journey through the criminal justice system which also highlights what their rights are during criminal proceedings.

*What information do victims have about their rights, by whom is this information given and by what means?*

In England and Wales, a new Victims' Code came into force on 10 December 2013. It sets out the information, support and services that victims can expect to receive from criminal justice agencies in England and Wales at every stage of the process. The new Victims' Code is written in plain English with victims of crime as the target audience.

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There are a range of materials in place to communicate the Victims' Code effectively so victims of crime understand what they are entitled to. This includes a leaflet version for adults, a leaflet version for children, an EasyRead guide for people with communication difficulties, an audio guide and a YouTube video aimed at young people. These are available to view on Gov.uk:

<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>.

The police are the first point of contact for victims' to receive information about their rights following the report of a crime. This includes what victims' are entitled to during and after the police investigation, guidance on victim personal statement and support available from victims' services. Under the Victims' Code the police are required to provide all victims with the "information for victims of crime" leaflet or refer the victim to a website which contains the same information within 5 working days of the victim reporting the crime. The information for victims of crime leaflet can also be found on Gov.uk:

<https://www.gov.uk/government/publications/leaflet-for-victims-reporting-a-crime-resource-for-police-forces>.

In addition, all criminal justice agencies, including the police, Crown Prosecution Service (CPS) and Her Majesty's Court Service (HMCTS), provide information on victim's rights. Some police forces are giving out the various Victims Code leaflets whilst others will signpost victims to their websites. The CPS has a dedicated victim and witness section on its website which provides victims with the relevant information.

*Are victims' specific protection needs assessed?*

Yes, attending officers complete a needs assessment.

There may be further assessments by specialist officers depending on the case (e.g. Domestic Violence (DV)) and also by the witness care unit.

Special Measures are available for vulnerable and intimidated witnesses (including victims who are witnesses) to help them give their evidence.

Paragraphs 1.4 and 1.5 of Chapter 1 of the Victims' Code set out the entitlement to, and requirements of, individual assessments for all victims, which meets Article 22 of the Directive. The assessment by the police determines whether the victim falls into one of three priority categories of victim deemed most in need owing to the nature of the crime or their personal circumstances: victims of the most serious crime, the most persistently targeted and vulnerable or intimidated victims. Victims falling within the three priority categories are entitled to an enhanced service under the Victims' Code, such as quicker updates on the status of their case. The needs assessment also determines whether the victim may be eligible for special measures when giving evidence at court in accordance with the Youth Justice and Criminal Evidence Act 1999 (YJCEA).

If so,

- At what point in the proceedings?

An assessment will be made at the time of reporting but a victim may be (re) assessed at any stage up to and after the proceedings are concluded.

The police will carry out an assessment of the victims needs after a crime has been reported. The police call handler will establish whether the person is in any immediate danger and prioritise the call accordingly. Either the initial attending officers or those obtaining the statement from the victim will conduct the assessment. If the statement cannot be obtained immediately an assessment would be still be made regarding any immediate risk the victim may be in so that safeguarding measures can be put in place.

At this stage, the police will also identify whether the victim is entitled to an enhanced service under the Victims' Code. If the victim is deemed vulnerable or intimidated, the police will explain special measures to them and record the victim's views on what they feel would best assist them to give evidence. If the victim provides consent, the police will refer them onto victims' services for a more detailed assessment.

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For domestic violence (DV) victims, risk assessments will be important through all stages of proceedings to ensure that the victim's safety is paramount at all times. Other multi-partnership agencies and groups may also address victim risk and safety (such as MARACs based at Specialist Domestic Violence Courts).

Specialist support services, such as Independent Domestic Violence Advisers (IDVAs) will also provide assistance with regards to continuous risk and safety assessments and support at all stages of proceedings, including where cases may not be charged and those which may be discontinued.

Special measures considerations are also recommended to be made at the earliest opportunity for DV victims, but we are aware that victims may request special measures at late stages, or possibly, where there is a real prospect of retraction or withdrawal, special measures may be offered to maintain a DV victim's engagement.

The information gathered by the police is shared with Witness Care Units, who will further discuss special measures with the victim as part of the detailed needs assessment, and Crown Prosecution Service prosecutors who will then decide whether or not to make a special measures application to the court.

The joint police and CPS Witness Care Units (WCUs), provide information and support to victims and witnesses whose cases go to court. Witness Care Officers (WCOs) provide a single point of contact and will conduct a detailed needs assessment with the victim to ensure they have access to tailored support. The WCU will also ensure that the victim is provided with accurate, timely and relevant information as their cases progresses through the criminal justice system.

- Who decides whether this assessment is carried out and according to what criteria?

Under the Victims' Code all victims are entitled to a needs assessment regarding their entitlements under the Code and provision of special measures. The assessment of special measures is governed by the YJCEA, in particular sections 16-21. Separate assessments around potential physical risks are also used where appropriate such as 'DASH' and threat to life assessments.

The police and Witness Care Units are required to undertake the needs assessments set out above in accordance with the duties outlined in the Victims' Code.

- Who carries out this assessment and how (standard questionnaire, phone interview, meeting, home visit, etc.)?

The police will carry out an assessment once the victim has reported the crime and obtained a crime reference number. Needs assessments and special measures assessments tend to be conducted by the PC/DC attending a location agreed by the victim, such as home address, place of work, police station etc. Assessments relating to physical risk are signed off by a supervisor. Threats to life assessments are completed by an Inspector.

Victims' support services may also carry out a more detailed assessment, if the victim consents for their details to be passed on by the police.

- Is the victim's opinion (for or against) taken into account? Is the authority carrying out the assessment bound by this opinion?

The opinion of the victim is taken into account but is not binding.

The Crown Prosecution Service decides whether to make a special measures application for the victim, but will take into account the views of the victim.

Special measures meetings between the witness and the prosecutor are one of the opportunities for assessment of victim's needs - although these are only held in a limited number of cases and it is likely that some assessment of the victim's needs has already taken place in order to identify the need for a special measures meeting. Vulnerability as well as the severity of the crime/harm are factors that influence whether or not such a meeting takes place.

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- Do the methods used for carrying out the assessment differ depending on the nature or the severity of the crime (or any other criteria)?

In England and Wales, all victims are entitled to an assessment of their needs from the police to help ascertain the level of help and support the victim will need. The length and depth of the assessment may vary depending on the victims' personal circumstances and the nature of the offence(s).

The methods do not change in principle but the level of risk (e.g. whether the victim is high, medium or low risk) and the complexity of the evidence that they will be providing may result in additional discussions taking place and at a higher level of seniority, such as early special measures consultations with CPS.

- Do victim support associations take part in this assessment?

If the victim provides consent, the police will refer the victim's details to victims' services to carry out a more detailed assessment. They do not routinely take part in the majority of cases but may be consulted if the victim is receiving support from them, such as in domestic violence or sexual assault cases.

*What is the financial cost of this assessment and by whom is it borne?*

The main cost of the initial assessments would be in staff time and this would be borne by the individual police forces.

Similarly, the CPS will fund the costs of special measures meetings and Witness Care Units will fund the cost of an additional needs assessment for victims attending court as a witness.

If victims' services conduct a more detailed assessment, then that victim organisation will bear the financial cost of doing so. However, many victims' organisations receive funding from the Government in order to provide such services.

*To what support and protection measures, in particular within the meaning of Article 23 of the Directive, do victims have access?*

Special Measures are available for vulnerable or intimidated witnesses (including victims who are witnesses) in England and Wales to help them give their best evidence. These include video recorded evidence, evidence by live link, screens around the witness box and the use of an intermediary to assist in communication. The Crown Prosecution Service decide whether to make a special measures application for the victim, but will take into account the views of the victim. The court makes the final decision on whether a witness is eligible, and which special measures should apply.

Sections 16 – 33 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) sets out which special measures are available and the eligibility criteria.

Additionally, a UK Protected Person Service (UKPPS) was launched on 27 September 2013 to provide better coordination and standards of service to protected persons, including witnesses, across the UK. The service's centralised core sits in the National Crime Agency, though delivery is through regionally based teams.

The primary rule regarding children and special measures is that for all child witnesses there is a presumption that they will give their evidence in chief by recorded interview and any further evidence by live link unless the court is satisfied that this will not improve the quality of the child's evidence. A child witness may 'opt out' of giving their evidence by either recorded interview or by live link or both, subject to the agreement of the court. If the child witness opts out, there is a presumption that they will give their evidence in court from behind a screen. If the child witness does not wish to use a screen they may also be allowed to opt out of using it, again subject to the agreement of the court.

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In addition to the measures in sections 16-33 of the YJCEA further protection is provided by the following provisions:

Section 34 YJCEA prohibits the cross-examination in person by defendants of complainants in sexual cases.

Section 35 YJCEA prohibits the cross-examination in person by unrepresented defendants of certain 'protected witnesses' (child complainants and other child witnesses)

Section 36 YJCEA permits the court to make an order prohibiting the cross-examination in person by a defendant of a witness where the prohibitions in sections 34 and 35 do not apply (such as for certain categories of intimidated witnesses)

Section 46 of YJCEA enables courts to make a reporting direction in relation to adult witnesses which prohibits any matter relating to the witness to be included in any publication during the lifetime of the witness if it is likely to lead members of the public to identify the individual as a witness in criminal proceedings

Section 51 YJCEA provides that live links may be used.

Section 39 of the Children and Young Persons Act 1933 enables the court to impose reporting restrictions to protect the identity of child victims, witnesses and defendants.

#### *Who decides whether these measures are implemented, and according to what criteria?*

As outlined above, the court makes the final decision on whether a witness or victim who is a witness is entitled to special measures and which measures should apply. The criteria are set out in sections 16-33 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA).

The YJCEA lists a number of factors that the court must, or should, take into account when assessing whether the witness qualifies for any of the special measures. The factors include:

- the nature and alleged circumstances of the offence;
- the age of the witness;
- the social and cultural background and ethnic origins of the witness;
- any religious beliefs or political opinions of the witness;
- the domestic and employment circumstances of the witness; and
- any behaviour towards the witness on the part of the accused, their family or associates, or any other witness or co-accused (this may be particularly relevant in cases of domestic violence).

Under section 19 of YJCEA, once the court has determined that a victim/witness is eligible for special measures the court must determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and if so determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence.

In doing so, the court must consider all of the circumstances of the cases, including:

- any views expressed by the witness; and
- whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

#### *Can victims appeal if protection measures are refused?*

Victims cannot appeal if the court refuses an application for special measures. However, the Crown Prosecution Service may make another application for special measures on the witness' behalf.

#### *How can your national system be improved specifically concerning implementation of articles 22 and 23 of the Directive?*

As part of the transposition of the EU Victims' Directive, the UK will consider whether improvements to existing practice are needed in accordance with Articles 22 and 23 of the Directive. The UK is keen to learn more about how other EU Member States intend to transpose the Directive as part of this work.

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Our system could be improved by streamlining the application process for special measures – making most applications orally at an early stage, so that victims can be better informed in advance of what special measures have been agreed. There are also arguments for automatic eligibility for special measures for all witnesses.

In respect of Article 23 2(d) [Interviews with victims of sexual violence...being conducted by a person of the same sex as the victim, if the victim so wishes], it is not clear whether the police would routinely offer gender choice but they would endeavor to comply where possible.

Police and Crime Commissioners (PCCs) have indicated that they would see key improvements in implementation in a number of areas:

- Better child specific provision for young victims
- Better links between Criminal Justice Agencies and health provision to ensure that the long term counselling needs of victims of serious crimes, and the physical and sexual injuries of victims of serious violent and sexual crimes are better supported
- Better data and information sharing on victims between criminal justice agencies

More continuity between victims and witness services where a victim may also be a witness and in order to prevent re-victimisation/future victimisation.

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## 8. Study visit – 24<sup>th</sup> & 25<sup>th</sup> April 2014, Crown Prosecution Service, London, United Kingdom

### Contextual elements

The study visit took place on April 24<sup>th</sup> – 25<sup>th</sup>, 2014 in London and brought together representatives from the five member States involved in the EVVI Project: United Kingdom, Spain, Portugal, Poland and France.

The experts involved were Chrissy TSERTIS, Sam THOMPSON, Kristel POUS (UK), Adela CHINCHILLA, Belen ORDONEZ (Spain), Rosa SAAVEDRA, Frederico MARQUES (Portugal), Marzena KRUK, Jacek TOPOROWSKI (Poland), Sandra DESJARDIN, Aurélia SCHAFF, Audrey NESPOUX and Marylène LADRIL (France).

The aim of the visit of the participants was to present existing legal solutions as well as practical aspects of victim's risk assessment in United Kingdom. The visit served also to make an overview of the English legal system.

### First day of the meeting – 24<sup>th</sup> of April 2014

The first day's meetings were organised at the Crown Prosecution Service Headquarter.

David BATES (from ACPO – Association of Chief Police Officers) presented the police interaction with the victims (how a crime is reported, the support offered to victims, risk assessments undertaken by the police and the material provided to the Crown Prosecution Service to identify victims' and witness' needs). He highlighted several issues: Police organisation, needs assessments, victim Code responsibilities, evidential assessment, special measures, Police interview and safeguarding assessment.

Samantha THOMPSON (International Division of the Crown Prosecution Service) made a presentation on Witness Care Units (WCU), an innovative approach introduced in 2005, designed to ensure that victim's and witness needs are respected. WCU was also designed to ensure that victim's and witnesses attend and give their best evidence at court and that community confidence in CJS increases. WCU's are staffed by trained specialists from the police and the Crown Prosecution Service - known as witness care officers (WCOs). WCOs provide information and support to victims and witnesses whose cases go to court.

She also presented the evolution of the Crown Prosecution Service commitments to victims of crime, including the revised Code of practice for victims of crime and new Victim Liaison Units. Over the last 20 years, there has been a significant change in the understanding of the rights of victims in the Criminal Justice System (CJS). Victims are now rightly treated with much more respect, dignity and recognition, because if there is no victim there is no trial. Victim's voice is indispensable to justify legal action against the offender.

Kristel POUS, liaison magistrate to France, made a presentation on special measures, including how a special measures application is made. Indeed, many witnesses experience stress and fear when attending court and giving evidence. The Youth Justice and Criminal Evidence Act 1999 (YJCEA) introduced a series of provisions (Special Measures) to help certain victims and witnesses give their best evidence in court and to relieve some of the stress associated with giving evidence. Only those victims and witnesses who are vulnerable or intimidated are eligible for Special Measures (section 16 & 17 YJCEA). The court must be satisfied that the Special Measures or combination of Special Measures is likely to maximise the quality of the witness's evidence before granting an application. The measures provided can be: screens, live links, evidence given in private, removal of wigs and gowns by judges and barristers, video-recorder interview (in case involved children, it is always done, as soon as possible to get as much information as possible. It could be very painful to repeat again and again in case of most serious crimes), examination of the witness through an intermediary, aids to communication, video recorded cross examination (currently being piloted), etc.



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Alison SAUNDERS, Director of Public Prosecutions since November 2013 explained that victims are one of the three priorities she gives to the CPS. It is indispensable to help them to go through the process. Many questions necessarily arise usually requiring a quick response, for example: what the victims want to do? Do they need any special measures? Do they want some assistance? Victim liaison units play a major role to help victims. They communicate with them, are able to act with aggressive victim, prepare victims for the Court and teach them how to talk to people in the Court.

This meeting led the participants to the presentation of 'Going to Court DVD' and to a discussion of what is available at Court. A step by step guide to being a witness is an interactive, multilingual, animated on line guide designed especially to help prosecution and defence witnesses understand their role in the court process. It is an easy to follow animation seen through the eyes of a witness/victim. It explains what to expect throughout the court process and follows the journey a witness/victim makes from making a statement right through the criminal court process and after the trial. It has separate routes for prosecution and defence witnesses to follow at their own pace and witnesses can also take a tour of a magistrates', Crown and youth court. There is a frequently asked questions section at the end. The DVD has been developed in conjunction with a number of criminal justice partner agencies including the Defence Lawyers, CPS, Police, Victim Support, Witness Service, The Law Society, Judiciary, who all fully support this initiative.

#### Second day of the meeting – 25<sup>th</sup> of April 2014

The second day, experts went to Southwark Crown Court to meet His Honour Judge Price, Victim and Witness Liaison Judge. In light of its long Court Experience, His Honour Judge Price provided an overview of his work and the assistance provided to victims and witnesses.

Dawn PENFOLD, Service Delivery Manager of the Victim liaison units in the Southwark Crown Court outlined provisions available at Court to victims and witnesses such as victim waiting rooms, videoconference room, children's play area, etc. Participants also had the opportunity to attend a trial.

A meeting was arranged with specialists from the Witness Care Unit explained more fully their role: deliver a more customer focused service through the creation of dedicated WCUs, reduce the rate or cracked and ineffective trials through improved witness attendance at courts, enable more witnesses to give their best evidence, provide support to victims and witnesses, assisting them through what can be a daunting Criminal Justice Process, increase victim and witness satisfaction and improve public confidence.

The participants welcomed the way the study visit had been structured. The study visit was a unique opportunity to exchange professional experience with colleagues from Spain, Portugal, Poland, United Kingdom and France and to see the good practices in their countries.

## 9. Template questionnaire

File number:  
Nature of the offence:  
Date of the offence/last offence:  
Assessment Date:

### EVVI Project - Draft - questionnaire

(CONFIDENTIAL WHEN COMPLETE)

Victims' assessment for special measures

*Initial questionnaire of victim*

**NOTE:**

THE QUESTIONS CONTAINED WITHIN THIS NEEDS ASSESSMENT ARE FOR GUIDANCE ONLY AND SHOULD NOT BE READ OUT IN QUESTIONNAIRE STYLE TO THE VICTIM.

THIS QUESTIONNAIRE AIMS TO DETECT POSSIBLE RISKS OF SECONDARY AND REPEAT VICTIMISATION, INTIMIDATION AND RETALIATION AS WELL AS TO DETECT VICTIMS' SUPPORT AND COMMUNICATION NEEDS.

THE RECOMMENDATIONS SECTION AT THE END OF THE DOCUMENT SHOULD BE COMPLETED FOR ALL CASES

The victim agrees for an evaluation to take place:  Yes  No

#### PERSONAL CHARACTERISTICS OF THE VICTIM

##### General information

Last name: .....

First name: .....

Gender: .....

Date of birth/reported age: .....

##### Contact:

Address: .....

E-mail address: .....

Phone number: .....

Lawyer/contact person: .....

Socio-professional status (may select more than one response):

- Employed
- Unemployed
- Retired
- Student

Specific observations (clarify if necessary): .....

Nationality: .....

**Personal vulnerability**

- Child
- Pregnant
- Disability (please clarify):
  - Mental
  - Physical

Victim of a crime in the past twelve months?

- Yes (please clarify and assess if the victim still has problems with that victimisation) .....
- Yes  No

Mother Tongue: .....

Difficulty speaking:

- Yes (clarify if necessary) .....
- No

Difficulty reading:

- Yes (clarify if necessary) .....
- No

Other communication difficulties (please clarify): .....

Dependant children:

- Yes (number: ... age: .....
- No

Are you (or your children) supported by a social worker or other agency?

- Yes  No
- If yes, which? .....

Other vulnerabilities (please clarify, i.e. health problems, alcohol, drug dependence, ...) .....

**3 - RISKS AND FEAR OF HARM**

Type or nature of crime (may select more than one response)

- |   |  |
|---|--|
| <input type="checkbox"/> Human trafficking                | <input type="checkbox"/> Gender-based violence       |
| <input type="checkbox"/> Hate crime                       | <input type="checkbox"/> Sexual violence             |
| <input type="checkbox"/> Organised crime                  | <input type="checkbox"/> Child abuse or exploitation |
| <input type="checkbox"/> Violence in a close relationship | <input type="checkbox"/> Terrorism                   |

Circumstances of the crime

Does the victim have a personal connection with the suspect?  Yes  No

Does the victim fear further harm from the suspect?  Yes  No

Does the suspect have previous offending history against the victim?  Yes  No

I hereby certify that the information given above is accurate.

Date : .....  
Signature of victim:

Identity of the evaluator: .....

Identified needs (to be completed if a different person is completing the rest of the document): .....

File number:  
 Nature of the offence:  
 Date of the offence/last offence:  
 Assessment Date:

### Victims' assessment for special measures

#### *Detailed evaluation*

Please fill this section if:

- the offence is one of the crimes specified above or;
- you have answered 'yes' to any of the questions under circumstances of the crime or;
- you consider it appropriate, taking into account any identified vulnerability.

**NOTE:**

THE QUESTIONS CONTAINED WITHIN THIS NEEDS ASSESSMENT ARE FOR GUIDANCE ONLY AND SHOULD NOT BE READ OUT IN QUESTIONNAIRE STYLE TO THE VICTIM.

The victim agrees for a detailed evaluation to take place:     Yes                                     No

Current situation	Yes	No
1. Has the current incident resulted in injury? If so, please clarify.		
2. Is the victim frightened?		
3. Does the victim have relatives/friends/community resources (cultural, religious, other) to support her/him?		
4. Does the victim feel isolated?		
5. Is the victim feeling depressed or having suicidal thoughts?		
6. Is the victim in contact with the suspect? If so, please clarify.		
7. Does he/she try to intimidate the victim?		
8. Does the victim live with the suspect?		
9. Is there any conflict over financial issues? (if applicable)		
10. Is there any conflict over children? (if applicable)		
11. Has the suspect ever committed acts of violence against others within the family (children, relatives, etc.) or against pets?		
12. Is the victim still able to access his/her personal documents/money?		
13. Is the victim free to move around in and/or leave her/his house?		

Offence history	Yes	No
14. Has the suspect ever threatened or committed acts of violence against the victim? If so, please clarify.		
15. Has the suspect ever used a weapon against the victim? If so, please clarify.		
16. Has the victim ever filed a complaint against the suspect?		
17. Has there been an escalating series of incidents?		
18. Are other persons potentially at risk? If so, please clarify.		
19. Has the victim been threatened by any other person? If so, please clarify.		
Suspect	Yes	No
20. Is the suspect identifiable?		
21. Is the suspect a child (under 18 years old)?		
22. Does the suspect have access to weapons? If so, please clarify.		
23. Has the suspect ever been convicted of any offence against the victim? If so, please clarify.		
24. Are there any outstanding court orders against the suspect? If so, please clarify.		
25. Has the suspect ever been convicted of any serious offence? If so, please clarify.		
26. Does the suspect have/has the suspect had problems with drugs and/or alcohol? If so, please clarify.		
27. Does the suspect have/has the suspect had mental health problems? If so, please clarify.		
28. Has the suspect ever threatened or tried to commit suicide?		
<p>Additional information regarding victim/suspect:</p> <p>.....</p> <p>.....</p> <p>Views of the victim on what support they require during criminal proceedings:</p> <p>.....</p> <p>.....</p>		

I hereby certify that the information given above is accurate.

Date : .....

Signature of victim:

Recommendations of the evaluator regarding victim's needs assessment  
**(TO BE COMPLETED IN ALL CASES)**

a) Victim's protection needs (needs related to victim's protection and/or related to improving the quality of the evidence)

.....  
.....  
.....

b) Support referral needs (counselling legal services, victim support services, community services...):

.....  
.....  
.....

Identity of the evaluator:

Date :

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## 10. Analysis of the template questionnaire in partner Member States

Partner Member States had three and a half months to analyse the effect of the questionnaire in their State. It appears from that analysis that the questionnaire is very complete but very long. It takes a long time to complete the evaluation; consequently a short version of the evaluation could be elaborated.

### France

In order to facilitate the transposition, the French ministry of Justice launched trials in seven pilot sites over six months. These sites are:

- Béthune ;
- Bobigny ;
- Draguignan ;
- Lyon ;
- Nancy ;
- Pau ;
- Saint-Malo.

These seven pilot sites are not comparable in terms of size, geographical location and also have a very different «crime rate». These criteria were chosen in order to consider the entire territory with a view to the future generalization of the measure.

The individual assessment must concern all victims of crime, without exception. It is essential to provide several evaluation filters: a first detection (initial assessment) to determine whether a victim is particularly vulnerable and then a detailed evaluation for most «exposed» victims. This detailed evaluation is carried out in all projects by victim support associations.

The assessment implies a two-step process, regardless of the pilot site:

- first step of detection/identification is provided either by the investigator services or the public prosecutor;
- according to these first elements, either by a public prosecutor requisition or by a referral of the investigator services, the victim support association has to contact the victim in order to make a detailed evaluation and, possibly, a report on the victim's need for protection, sent to the Prosecutor.

### Poland

The Ministry of Justice implemented its tasks according to the EVVI project through:

- The Pilot questionnaire being used by "SOS for the Family" organization;
- The questionnaire has been altered by the Council on Crime Victims<sup>6</sup> of the Minister of Justice during its sessions on August 6th and September 3rd. The next session has been planned towards the end of October.

Two versions of the questionnaire have been developed by the Council for Crime Victims:

- one version for NGO's;
- Second version for the State agencies.

### Portugal

In order to collect contributions, opinions and suggestions from key organizations in Portugal concerning the working document created as part of the European cooperative project EVVI - Evaluation of Victims for evaluating victims' needs for protection, the APAV asked six national government organizations for their collaboration:

- Direção Geral da Política e da Justiça (DGPJ)/General Directorate for Policy on Justice. The General Directorate for Policy on Justice, the central department of the government's legal administration which has administrative autonomy.
- Office of the Attorney General of the Republic. The Office of the Attorney General is the highest-level body in the Ministry of Justice (Ministério Público).

<sup>6</sup> Council for Crime Victims is a body established by the Polish Ministry of Justice.

- Public Security Police (PSP). The Public Security Police, known as the PSP, are uniformed, armed, public security officers, and their agency has administrative autonomy.
- National Guard of the Republic (NGR). The National Guard is a military-style public security agency, comprised of military personnel. Organized as a special body of troops, with administrative autonomy, that has jurisdiction throughout the entire country and in territorial waters.
- Judicial Police (JP). The mission of the Judicial Police, under the terms of its Organic Law and the Law on the Organization of Criminal Investigations (LOCI), is to assist judicial authorities in investigations and to develop and promote activities in areas of prevention, detection and investigation under its jurisdiction, or that are entrusted to it by competent judicial authorities.
- Serviço de Estrangeiros e Fronteiras/Portuguese Immigration and Borders Service (SEF). The Immigration and Borders Service is a public security agency under the Ministry of Internal Affairs that has administrative autonomy and operates as part of the country's internal security policy.

Two of the six organizations answered to the APAV:

- Public Security Police (PSP);
- Serviço de Estrangeiros e Fronteiras/Portuguese Immigration and Borders Service (SEF).

The Public Security Police analysis has shown that the questionnaire is quite well structured and organised, with questions highly relevant to the subject area. However, the document is rather long and not suited to be used routinely.

The Portuguese Immigration and Borders Service analysis has shown that the questionnaire is quite complete and well organised. However, it deemed it pertinent to change (or add) some questions that better cover the possibility that the victim was the target of a crime committed by a group (which is common in the case of trafficking in persons) instead of by only one suspect. Two possibilities exist:

- The inclusion of a specific question that clarifies the existence of additional suspects involved in committing the crimes in question;
- The inclusion of an another question that covers the possibility that foreign victims may also be coerced through indirect threats, made to other family members who are still in their country of origin and for whom it is often harder to provide security

### Spain

The victims' assessment questionnaire has been studied by the working group of the Spanish Ministry of Justice and was also sent to the national institutions with responsibility for protecting victims:

- Ministry of Health through "The Special Delegation governing policy on gender violence";
- Ministry of Interior;
- General Council of the Judiciary, through the "Observatory of domestic violence and gender";
- General Prosecution State, in particular those that perform important functions in the protection of victims (child victims, victims of gender violence, etc.).

After receiving inputs from the Institutions, the working group of the Ministry of Justice proceeded to study and assess the results. Those contributions have been incorporated to the 5th June 2014 version of the questionnaire and may lead to better document.

### United Kingdom

There are two areas where the questionnaire could potentially be used. The first being when police officers initially assess the victim at the time the offence is reported. The second being when the Witness Care Units (WCUs) assess victims whose cases are proceeding to trial.

The use of the questionnaire or a document based on it will be dependent on a number of strands of work currently being undertaken covering victim policy in England and Wales under a Criminal Justice Strategy and Action plan. These include work to digitalise the sharing of information between the police/CPS and the courts and changes in the way that victim support services are commissioned and funded.



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Police forces in England and Wales already use the DASH (Domestic Abuse, Stalking and Honour Based Violence) risk assessment model for domestic violence and honour based violence, from which many of the questions in the questionnaire are based. It is unlikely that there will be an appetite amongst forces to move away from the current document for the domestic violence assessments as it is well established and the product of academic research. There is a further complication in that the 43 police forces in England and Wales are independent and agreement will be needed from each force for them to use the document.

Joint Police/CPS WCUs conduct needs assessments of victims whose cases are proceeding to trial. They do currently use a standard template for these assessments but again aspects of the questionnaire may be applicable, particularly those parts that assess the victim's need for measures to assist them in giving evidence.

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## 11. List of the participants in the activities of the EVVI Project

### Kick off meeting of the Working Group – Paris, France – 30<sup>th</sup> January 2014

#### France

- Françoise AYMES-BELLADINA, EVVI Project manager, Magistrate, Head of the victim support office and policy for associations, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
- Sandra DESJARDIN, Deputy manager, Magistrate, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
- Aurélia SCHAFF, Magistrate, Directorate for Criminal Matters and Pardons, French Ministry of Justice
- Audrey NESPOUX, Legal cooperation officer, Department of European and International Affairs, General Secretariat, French Ministry of Justice
- Anthony MANWARING, Magistrate, Deputy Director, Head of the International Department, National School of Judiciary
- Sabrina BELLUCCI, Director of the French Victim Support and Mediation Institute (INAVEM)

#### Poland

- Marzena KRUK, Doctor of psychology, Head of the Human Rights Division, International Cooperation and Human Rights Department, Polish Ministry of Justice
- Radoslaw SIENKIEWICZ, Senior specialist, International Cooperation and Human Rights Department, Polish Ministry of Justice

#### Portugal

- Rosa SAAVEDRA, Senior adviser of the Board, Portuguese Victim Support Association APAV
- Frederico MARQUES, Senior adviser of the Board, Portuguese Victim Support Association APAV

#### Spain

- Enrique VALDES-SOLIS IGLESIAS, Prosecutor, legal advisor at the Spanish Ministry of Justice

#### United Kingdom

- Chrissy TSERTIS, International division of the Crown Prosecution Service
- Samantha THOMPSON, Senior policy advisor, Operations Directorate, Crown Prosecution Service Headquarters

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Study visit about methods of assessments already in place in that Member State – London,  
United Kingdom – 24<sup>th</sup>/25<sup>th</sup> April 2014

France

- Sandra DESJARDIN, Deputy manager, Magistrate, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
- Marylène LADRIL, EVVI Project officer, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
- Aurélia SCHAFF, Magistrate, Directorate for Criminal Matters and Pardons, French Ministry of Justice
- Audrey NESPOUX, Legal cooperation officer, Department of European and International Affairs, General Secretariat, French Ministry of Justice

Poland

- Marzena KRUK, Doctor of psychology, Head of the Human Rights Division, International Cooperation and Human Rights Department, Polish Ministry of Justice
- Jacek TOPOROWSKI, Senior specialist, International Cooperation and Human Rights Department, Polish Ministry of Justice

Portugal

- Rosa SAAVEDRA, Senior adviser of the Board, Portuguese Victim Support Association APAV
- Frederico MARQUES, Senior adviser of the Board, Portuguese Victim Support Association APAV

Spain

- Adela CHINCHILLA, General Secretariat on the Administration of Justice, Spanish Ministry of Justice
- Belen ORDONEZ SANCHEZ, General Secretariat on the Administration of Justice, Spanish Ministry of Justice

United Kingdom

- Chrissy TSERTIS, International division of the Crown Prosecution Service
- Samantha THOMPSON, Senior Policy Advisor, Operations Directorate, Crown Prosecution Service Headquarters
- David BATES, Sergeant, West Midlands Police
- Kristel POUS, United Kingdom Liaison Magistrate, based in the Department of European and International Affairs, General Secretariat, French Ministry of Justice

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Feedback meeting of the Working Group and drafting of a victims' assessment template questionnaire  
– Paris, France – 5<sup>th</sup> June 2014

France

- Françoise AYMES-BELLADINA, EVVI Project manager, Magistrate, Head of the victim support office and policy for associations, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
- Sandra DESJARDIN, Deputy manager, Magistrate, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
- Marylène LADRIL, EVVI Project officer, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
- Aurélia SCHAFF, Magistrate, Directorate for Criminal Matters and Pardons, French Ministry of Justice
- Audrey NESPOUX, Legal cooperation officer, Department of European and International Affairs, General Secretariat, French Ministry of Justice
- Stéphanie STEINER, Captain, Office of the Director General of French Gendarmerie, French Ministry of the Interior

Poland

- Marzena KRUK, Doctor of psychology, Head of the Human Rights Division, International Cooperation and Human Rights Department, Polish Ministry of Justice
- Radoslaw SIENKIEWICZ, Senior Specialist, International Cooperation and Human Rights Department, Polish Ministry of Justice

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United Kingdom

- Samantha THOMPSON, Senior Policy Advisor, Operations Directorate, Crown Prosecution Service Headquarters
- David BATES, Sergeant, West Midlands Police
- Kristel POUS, United Kingdom Liaison Magistrate, based in the Department of European and International Affairs, General Secretariat, French Ministry of Justice

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Meeting of the Working Group for the analysis of the results of the questionnaire –  
Paris, France – 18<sup>th</sup> of November 2014

France

- Françoise AYMES-BELLADINA, EVVI Project manager, Magistrate, Head of the victim support office and policy for associations, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
- Sandra DESJARDIN, Deputy manager, Magistrate, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
- Marylène LADRIL, EVVI Project officer, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
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- Belen ORDONEZ SANCHEZ, General Secretariat on the Administration of Justice, Spanish Ministry of Justice

United Kingdom

- Samantha THOMPSON, Senior Policy Advisor, Operations Directorate, Crown Prosecution Service Headquarters
- David BATES, Sergeant, West Midlands Police
- Kristel POUS, United Kingdom Liaison Magistrate, based in the Department of European and International Affairs, General Secretariat, French Ministry of Justice

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Meeting of the Working Group for the development of a handbook –  
Paris, France – 19<sup>th</sup> of November 2014

France

- Marylène LADRIL, EVVI Project officer, Department responsible for access to law and justice and victim support, General Secretariat, French Ministry of Justice
- Linda MAIZENER, Magistrate, Legal cooperation officer in charge of the EU, Department of European and International Affairs, General Secretariat, French Ministry of Justice
- Isabelle SADOWSKI, Legal adviser, French Victim Support and Mediation Institute (INAVEM)

Poland

- Marzena KRUK, Doctor of psychology, Head of the Human Rights Division, International Cooperation and Human Rights Department, Polish Ministry of Justice
- Radoslaw SIENKIEWICZ, Senior Specialist, International Cooperation and Human Rights Department, Polish Ministry of Justice

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