



Council of the
European Union

Brussels, 11 May 2020
(OR. en)

7920/20

DROIPEN 23
COPEN 120
JAI 350
CT 29
FREMP 30
SOC 269

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	11 May 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 188 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

Delegations will find attached document COM(2020) 188 final.

Encl.: COM(2020) 188 final



EUROPEAN
COMMISSION

Brussels, 11.5.2020
COM(2020) 188 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation of Directive 2012/29/EU of the European Parliament and of the
Council of 25 October 2012 establishing minimum standards on the rights, support and
protection of victims of crime, and replacing Council Framework Decision
2001/220/JHA**

1. INTRODUCTION

1.1. Background

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (the Victims' Rights Directive or the Directive) was adopted under Article 82(2) TFEU. It lays down a set of rights for victims of crime and corresponding obligations on Member States. The Victims' Rights Directive is the major EU level instrument applicable to all victims of crime. It is the cornerstone of EU victims' rights policy.

The EU has also adopted several instruments that deal with the specific needs of victims of particular types of crime (such as victims of terrorism¹, victims of trafficking in human beings² or child victims of sexual exploitation³). These instruments complement and build on the Victims' Rights Directive.

The Directive is binding on all Member States with the exception of Denmark.

In order to facilitate timely and correct transposition of the Directive by the Member States, the Commission published in December 2013 a Guidance Document⁴.

In 2018 the European Parliament published a report on the implementation of the Directive⁵, based on a study from 2017⁶. The European Parliament also looked into the Victims' Rights Directive in a general study on criminal procedural law in the EU,

¹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L0541>

² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036> As to its implementation, please refer to the 'Transposition report' (COM(2016) 722 final); 'Users report' (COM(2016) 719 final) and European Commission's Progress reports COM(2016) 267 final and COM(2018) 777 final and with regard to the victim centred, gender specific and child sensitive actions: https://ec.europa.eu/anti-trafficking/publications/eu-anti-trafficking-action-2012-2016-glance_en and https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_anti-trafficking_action_2017-2019_at_a_glance.pdf

³ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0093>

⁴ DG Justice Guidance Document related to the transposition and the implementation of Directive 2012/29/EU, European Commission, DG Justice, December 2013, https://ec.europa.eu/info/sites/info/files/13_12_19_3763804_guidance_victims_rights_directive_eu_en.pdf

⁵ Report on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI)), 14 May 2018, https://www.europarl.europa.eu/doceo/document/A-8-2018-0168_EN.html

⁶ The Victims' Rights Directive 2012/29/EU. European Implementation Assessment, PE 611.022, December 2017, [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/611022/EPRS_STU\(2017\)611022_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/611022/EPRS_STU(2017)611022_EN.pdf)

published in 2018⁷. In 2019, various stakeholders published additional reports on the implementation and application of the Directive⁸.

1.2. Purpose and main elements of the Directive

The objective of the Directive is to ensure that all victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. According to the Directive, victims shall be recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner by all actors coming into contact with them. Special attention should be paid to victims with specific needs in view of protecting them from secondary victimisation, retaliation and intimidation. Such victims shall also have access to specialised support services. Moreover, the Directive requires that where the victim is a child, the child's best interest shall be the primary consideration.

The Directive is applicable to all victims without discrimination, independently of their residence status. It is applicable to all criminal proceedings taking place in an EU Member State, independently of when and where the crime took place.

The Directive provides victims with a right to information, a right to understand and to be understood, a right to access support and protection in accordance with their individual needs, as well as with a set of procedural rights.

The Court of Justice of the European Union has interpreted the Directive once - in the case *Gambino and Hyka*⁹. In this case, the Court pronounced on the risks of undermining the victims' rights to protection and to receiving compensation within a reasonable time (Articles 18 and 16 of the Directive respectively) as a result of additional hearings that may be conducted under Italian legislation upon the request of the defendant if the composition of the court has changed. The Court clarified that national legislation that allows the defendant to ask witnesses to be heard again in such circumstances was compatible with the relevant provisions of the Directive.

1.3. Objective and scope of the report

As laid down in Article 29 of the Directive, this report assesses the extent to which Member States have taken the necessary measures in order to comply with the Directive. The Victims' Rights Directive requires not only transposition into national legislation. It also requires that Member States take non-legislative measures such as

⁷ Criminal procedural laws across the European Union – A comparative analysis of selected main differences and the impact they have over the development of EU legislation, PE 604.977, August 2018, [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604977/IPOL_STU\(2018\)604977_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604977/IPOL_STU(2018)604977_EN.pdf)

⁸ These reports include: a report by Special Adviser to President Juncker, Joëlle Milquet, on 'Strengthening victims' rights: from compensation to reparation' published in March 2019, Four reports by the Fundamental Rights Agency on Justice for victims of violent crime, published in April 2019, and VOCIARE synthesis report by Victim Support Europe, published in June 2019.

⁹ Case C-38/18, Judgment of the Court of 29 July 2019.

setting up of general and specialist support services and ensuring that practitioners and other people coming into contact with victims are effectively trained on victims' rights and needs. The assessment is based on the analysis of the national measures transposing the Directive that were notified to the Commission and of additional data that was communicated to the Commission on the basis of Article 28 of the Directive.

This report focuses on the core provisions of the Directive that are grouped in the following clusters: (1) scope and definitions; (2) access to information; (3) procedural rights; (4) access to support services; (5) restorative justice; and (6) right to protection.

The report assesses the situation in all Member States bound by the Directive¹⁰.

2. GENERAL ASSESSMENT

Under Article 27, Member States had to transpose the requirements of the Directive into their national legal orders by 16 November 2015. In January 2016, the Commission launched infringement proceedings against 16 Member States that had not communicated their transposition measures by that date¹¹.

As of the date of publication of this Report, most of the Member States have not completely transposed the Victims' Rights Directive. Infringement proceedings for these countries are on-going¹².

3. SPECIFIC POINTS OF ASSESSMENT

3.1. Scope and definitions (Article 2)

The Victims' Rights Directive provides for minimum standards on victims' rights. Member States can and are encouraged to go beyond these minimum standards.

Article 2 of the Directive sets out the definitions of 'victim', 'family members', 'child' and 'restorative justice'.

A correct transposition of the definition of victim (that includes family members of a person deceased as a result of crime) is particularly important. It defines the scope of application of the individuals' rights provided by the Directive.

Compliance with the 'victim' definition was found lacking in several Member States. The definition of victim was either missing, or the fact that family members of a

¹⁰ The report includes the UK, as it covers a period during which it was an EU Member State and part of the transition period during which the Directive continued to apply.

¹¹ Austria, Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Romania, Slovenia and Slovakia.

¹² The Commission has 21 on-going infringement proceedings for incomplete transposition of the Victims' Rights Directive against Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden.

deceased victim are classified as victims was not specified, limiting the rights of such family members.

‘Family members’ of a victim who has not deceased as a result of crime also have rights under the Directive, in particular a right to support and protection. The incomplete transposition of this definition has also been identified in a few Member States.

The correct transposition of the definitions ‘child’ and ‘restorative justice’ is also important as they determine individuals’ concrete rights. Compliance with the transposition of these definitions was found lacking in a few Member States.

3.2. Access to information (Articles 3-7)

The Victims’ Rights Directive sets out broad provisions on the right to access information. It includes a right to understand and to be understood (Article 3), a right to information about victims’ rights (Article 4), a right to be informed when making a complaint and about the case (Articles 5 and 6) and a right to interpretation and translation (Article 7).

Article 3 requires Member States to take appropriate measures to ensure effective communication with victims. Such communication should be in a simple language and with a consideration of personal characteristics of the victim, including any disability.

The Commission found the implementation of the right to understand and to be understood to be problematic in a number of Member States. It includes a few Member States that failed to transpose the obligation to proactively assist victims when communicating with them (Article 3). Several Member States failed to ensure that the communication is provided in a simple language and with a consideration of the personal characteristics of the victim (Article 3(2)).

Article 4 requires that victims are offered without unnecessary delay a set of information from their first contact with competent authorities. The transposition of the provision has been problematic for a few Member States in particular when it comes to the requirement that the information must be provided from the first contact with the competent authorities. Moreover, the Commission observed some issues with the practical application of this provision. The effective implementation of the obligation under Article 4 requires that the competent authorities are well trained on how and when to inform victims about their rights.

Under Article 5 victims have a right to receive a written acknowledgement of their complaint and to complain in a language they understand. Shortcomings in the transposition of this Article were identified in several Member States. One Member State has not transposed the requirement giving a possibility to victims to receive the necessary linguistic assistance when making the complaint (Article 5(2)). A couple of Member States have not transposed the requirement for translation of the written

acknowledgement of the complaint (Article 5(3)). A few other Member States limited the provision to victims of specific crimes or make it subject to victims' request.

Under Article 6 victims have a right to receive information about their case during the criminal proceedings. This provision aims to ensure that victims are able to participate in the proceedings and to be informed about possible risks for their security when, for instance, the offender is released or absconds. Compliance issues were identified in a large number of Member States. In a few of those Member States a clear requirement to notify victims of their right to request information about the decision not to proceed with the case was missing. In a couple of Member States no requirement was found to provide this information when the victim so requests. In a small number of Member States, victims are not notified about the nature of the charges against the offender (Article 6(1)). A few Member States are not compliant with the requirement to provide information to the victims about the state of the criminal proceedings. A couple of them have not transposed it and the other few Member States do not ensure the provision of such information throughout the whole proceedings.

A couple of Member States have not transposed Article 6(3) of the Directive. The competent authorities in these Member States do not provide victims with the reasons or a brief summary of the reasons for the decision on the case.

The transposition of the obligation that victims should be notified about the release or escape of the offender (Article 6(5)) raises concern in several Member States. Most of these Member States failed to transpose the requirement that victims shall be informed 'without unnecessary delay' about this issue. In addition, some Member States have not transposed the requirement to inform victims about protection measures in case of release or escape of the offender.

The right to interpretation and translation for victims who do not speak the language of the criminal proceedings, is set out in Article 7. This right must be provided to victims free of charge and upon their request.

Shortcomings regarding the transposition of Article 7 were found in the majority of Member States. In one Member State the transposition is incomplete, as it provides for the interpretation only during court proceedings (Article 7(1)). Compliance issues, related to non-transposition of Article 7(2) on the use of videoconferencing were identified in several Member States. Shortcomings in the transposition of the requirement to provide victims with translation of information essential to the exercise of their rights, were found in some Member States (Article 7(3)). These shortcomings are mostly related to the missing translation of the reasons for the relevant decision.

A small number of Member States have not transposed the victims' right to submit a reasoned request to consider a document as essential (Article 7(5)). Transposition issues of Article 7(7) regarding the assessment by the competent authorities whether victims need interpretation and translation were found in several Member States. Most of them have not transposed this requirement. In addition, some Member States do not provide for a possibility to challenge the decision not to provide the interpretation or translation.

3.3. Procedural rights (Articles 10, 11, 13, 16 and 17)

Several provisions of the Victims' Rights Directive related to procedural rights refer to the role that victims play in the criminal justice system of a particular Member State. This role varies across the Member States. Thus, the exact scope of procedural rights of victims differs from one Member State to another.

Article 10 of the Directive aims to ensure that all victims have an opportunity to provide information, views or evidence throughout criminal proceedings. The applicable procedural rules are left to national law. Compliance issues were identified in a few Member States. They mainly relate to the lack of necessary safeguards for hearings of child victims (Article 10(1)).

Article 11 lays down victims' rights in the event of a decision not to prosecute. A small number of Member States have not transposed this provision completely. For instance, some Member States do not provide for sufficient information to victims that would allow them to decide whether to request a review of a decision not to prosecute (Article 11(3)).

Article 13 on access to legal aid has been completely transposed by most Member States. It should be however noted that this provision refers to national law when it comes to actual determination of the conditions or procedural rules under which victims have access to legal aid. Thus, this provision does not harmonise the conditions under which victims have access to legal aid.

Article 16 of the Directive lays down a right to decision on compensation from the offender in the course of criminal proceedings. All Member States with the exception of one comply with this requirement. Member States are also obliged to promote measures that encourage offenders to provide adequate compensation (Article 16(2)). Most Member States have transposed this requirement.

Article 17(1) requires that Member States minimise the difficulties for a victim who is a resident of a Member State different to the one where the criminal offence was committed. A few Member States have not transposed this requirement.

Shortcomings in ensuring that the complaint is transmitted without delay to the State in which the criminal offence was committed (Article 17(3)) were also identified. Several Member States have no provisions to this effect.

3.4. Access of victims to support services (Article 8 and Article 9)

The purpose of Articles 8 and 9 is to ensure that victims have access to general and specialist support services in accordance with their needs. The services shall be confidential, free of charge and act in the interest of the victims before, during and for

an appropriate time after criminal proceedings. Family members have access to support services in accordance with their needs and the degree of harm suffered.

When it comes to transposition of Article 8(1) on the right to general support services, a number of Member States have not transposed it completely. Many Member States limit access to such services to victims of domestic violence or victims of trafficking in human beings. In practice, however, victims of domestic violence do not receive effective support and protection in several Member States. Furthermore, not all Member State provide for a right to support services for victims' family members.

Several Member States have failed to transpose the obligation of competent authorities to refer victims to support services (Article 8(2)). In those Member States victims are either not referred to victim support services or only a certain category of victims is referred (e.g., victims of domestic violence). Similar problems of transposition were found in relation to Article 8(3), which requires Member States to establish free of charge and confidential specialist support services. A number of Member States either have not transposed this provision or have transposed it incompletely. For instance, some Member States provide for such services only to victims of domestic violence or child victims.

Issues with the transposition of the obligation that access to victim support services should not be dependent on the formal complaint of a victim (Article 8(5)) were identified in a few Member States. For example, in one Member State only victims of domestic violence have access to support services without reporting a crime to police.

Article 9(1) lists the minimum services that must be provided by victim support services. A few Member States have not transposed this provision into their legislation. Nonetheless, the Commission identified non-legislative measures implementing this provision.

On access to shelters or any other appropriate interim accommodation for victims in need of a safe place and on targeted support for victims with specific needs (Article 9(3)), the Commission found implementation issues in several Member States. This notably includes problems with practical implementation, such as the availability of shelters for victims of certain types of crime, and an insufficient number of shelters.

3.5. Restorative justice (Article 12)

This Article aims to ensure that if a Member State provides for restorative justice services, the necessary safeguards are in place for victims to avoid further victimisation.

The Directive does not oblige Member States to introduce such services. Twenty four Member States provide for restorative justice services. The below assessment is relevant only for those Member States.

A large number of Member States concerned have failed to transpose completely one or more of the minimum conditions for restorative justice set out in Article 12(1). Examples of incomplete or incorrect transposition include a lack of the obligation that victims give ‘informed’ consent to participate in the process or a lack of guarantee to inform the victims on the potential outcomes of the process.

On facilitating the referral of cases to restorative justice services (Article 12(2)), a few Member States were found to have no specific measures in place.

3.6. Victims’ right to protection (Articles 18-24)

Articles 18-24 aim to ensure the protection of victims, including the recognition of victims with specific protection needs.

Article 18 requires Member States to ensure that a wide range of protection measures is available to protect victims and their family members from secondary and repeat victimisation, intimidation and retaliation. It also requires Member States to protect victims and their family members from physical, emotional or psychological harm. Article 18 applies to all victims and to all family members. Compliance issues were identified in less than half of the Member States, mainly because of the absence of specific measures aimed at protection of family members. In a few Member States, the relevant measures are not available to all victims or the available measures do not include protection against the risks of emotional or psychological harm.

The Directive requires that contacts between the victim and the offender are avoided and that all new court premises designate separate waiting areas for victims (Article 19). Shortcomings in the transposition of this provision were found in more than half of the Member States, although a few Member States fulfil this requirement with practical, non-legislative measures.

Article 20 aims to prevent secondary victimisation of victims during criminal investigations. Over half of the Member States have either limited the scope of this Article or have not transposed it at all. Thus, for example, several Member States have not transposed the requirement that medical examinations of victims are kept to a minimum. In a few Member States, the obligation that interviews are kept to a minimum is available to specific victims only (child victims or victims with specific protection needs).

Article 21 aims to ensure victims’ rights to have their privacy protected. A couple of Member States have not transposed this provision at all, and less than half have only transposed it partially.

Article 22 is particularly important as it stipulates that every victim has a right to an individual assessment of their protection needs. Its purpose is to determine whether a victim has any particular vulnerability to secondary and repeat victimisation, to

intimidation and/or to retaliation, and to protect them according to their individual needs.

In several Member States the requirement to introduce this assessment is not implemented or is only partially implemented. This impacts the overall compliance with the provisions on specific protection measures under Articles 23 and 24 that rely on the individual assessment.

In addition, less than half of the Member States have not transposed or have transposed Article 22(3) only partially. This provision lists the situations deserving particular attention when assessing the victims' vulnerability. For instance, in some Member States the process of individual assessment does not take into consideration that a crime has been committed with a bias or a discriminatory motive.

A few other Member States have not completely transposed the requirement of Article 22(4), according to which children are always presumed to have specific protection needs. For instance, in one of those Member States the law limits the presumption to child victims of certain categories of offences only.

Article 23 sets out specific protection measures for victims whose special protection needs have been identified through an individual assessment. Such protection measures must be available to victims during criminal investigations and court proceedings.

Several Member States do not comply with this requirement, as they have not transposed one or more of the envisaged measures or they have transposed them incompletely. Such incomplete transposition derives, for example, from the limitation of the availability of the special protection to children or to victims of sexual violence. As another example, in several Member States communication technologies are not used effectively during court proceedings as means to avoid contact between victims and offenders.

Article 24 lays down special protection measures that must be available to child victims. Compliance issues and problems with practical implementation of these measures were identified in a few Member States. For instance, provisions for recording interviews are limited to children who are victims of certain types of crime (Article 24 (1)).

Article 24(2) requires that if someone's age is uncertain and there are reasons to believe that the victim is a child, it shall be presumed that this person is a child. A few Member States have not transposed this provision, although some ensure this through non-legislative measures. Transposition seems to be problematic in a few other Member States. For instance, some only apply this presumption to victims of the most serious crimes, such as trafficking in human beings or sexual abuse.

4. DATA COLLECTION

The Directive requires that Member States, by 16 November 2017 and every 3 years thereafter, communicate to the Commission available data showing how victims have accessed the rights set out in this Directive (Article 28). The data should include at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims (recital 64).

Only 4 Member States provided the relevant statistical data by 16 November 2017. On 15 November 2017, the Commission sent a questionnaire to the Member States requesting the above-mentioned information for the year 2016 by 16 January 2018. Twenty Member States replied to the questionnaire, but most of them answered to some questions only.

According to the statistics for 2016, provided by 18 Member States, a total of 26 304 808 crimes were reported to the police. The most reported crimes include theft offences and criminal damage to property.

The statistics presented by 18 Member States show that 11 120 123 persons reported a crime in 2016. The available data shows that approximately 40% of the victims of reported crimes are women. France indicates a particularly high percentage of women as victims of reported crime (62%). In all Member States who replied to the questionnaire, less than 10% of the victims of reported crimes are children.

5. CONCLUSION

The 2012 Victims' Rights Directive is the core instrument of the EU victims' rights policy. It provides for ambitious rules that are capable of improving the situation of victims in the European Union. This assessment shows however that the full potential of the Directive has not been reached yet. The implementation of the Directive is not satisfactory. This is particularly due to incomplete and/or incorrect transposition.

This report also raises numerous concerns on the practical implementation of the Directive. Shortcomings in implementation of some key provisions of the Directive, such as access to information, support services and protection in accordance with victims' individual needs, were found in most Member States. It seems that the provisions related to procedural rights and to restorative justice are less problematic.

The Commission is working closely with Member States to overcome the identified difficulties. Moreover, the Commission promotes correct implementation of the Directive through financial support¹³. For example, the European Network on Victims'

¹³ Regulation (EU) No 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020, OJ L 354, 28.12.2013, p. 73–83, <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/programmes/just>

Rights¹⁴, set up under an EU grant, provides a forum of national experts who exchange best practices and discuss correct implementation of the Directive.

Infringements for incomplete transposition are currently on-going against most Member States. If necessary, the Commission will open further infringements proceedings for incorrect transposition and/or incorrect practical implementation.

¹⁴ <https://envr.eu/>