



Council of the
European Union

Brussels, 13 July 2023
(OR. en)

Interinstitutional File:
2023/0250(COD)

11840/23
ADD 3

JAI 1007
COPEN 259
DROIPEN 110
FREMP 218
SOC 537
CODEC 1373

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 12 July 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: SWD(2023) 247 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

Delegations will find attached document SWD(2023) 247 final.

Encl.: SWD(2023) 247 final



Brussels, 12.7.2023
SWD(2023) 247 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council

amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

{COM(2023) 424 final} - {SEC(2023) 270 final} - {SWD(2023) 246 final}

Executive summary sheet

Impact assessment for the review of the Victims' Rights Directive (Directive 2012/29/EU)

A. Need for action

What is the problem and why is it a problem at EU level?

This impact assessment follows the evaluation of the Victims' Rights Directive (VRD). The VRD is the main horizontal instrument for victims' rights. It lays down rights for all victims of all crimes, including the right to information, the right to support and protection based on victims' individual needs, procedural rights and the right to receive a decision on compensation from the offender at the end of criminal proceedings.

The evaluation published in June 2022 showed that the Directive has delivered the expected benefits, in particular for the overall treatment of victims by the competent authorities, the victims' ability to rely on their right to information and protection, and access to justice and support services. However, the evaluation also highlighted specific problems with each of the five main victims' rights in the Directive. These problems hamper victims' ability to rely on their rights under the Directive and undermine the trust in national justice schemes and those in other Member States. This low level of trust results in the underreporting of crime and damages the smooth functioning of the European area of freedom security and justice. Tackling these problems requires an amendment to the VRD, which can only be achieved at EU level. There are five main problems:

1. victims do not always receive **information** about their rights, or they receive inadequate information that makes it more difficult or impossible for them to exercise those rights;
2. vulnerable victims (such as children, persons with disabilities, victims of hate crime and victims in detention) do not always benefit from a timely assessment of their **protection** needs and are deprived of effective protection measures, such as protection orders;
3. vulnerable victims often cannot rely on specialist **support**, such as extended psychological treatment, and child victims often cannot rely on a targeted approach;
4. victims' **participation in criminal proceedings** is often difficult due to a lack of legal advice and guidance and differences in rules on victims' status in these procedures;
5. victims' **access to compensation** is difficult due to the lack of state support when enforcing the ordered compensation from the offender, leading to risk of secondary victimisation.

What should be achieved?

The general objective of this initiative is to contribute to a **well-functioning area of freedom, security, and justice** based on: (i) a smooth recognition of judgments and judicial decisions in criminal matters; (ii) a high level of security due to improved crime reporting; and (iii) victim-centred justice, where victims are recognised and can rely on their rights. This objective will be achieved by strengthening the minimum standards on victims' rights.

Five specific objectives were identified:

1. significantly improve victims' access to information, including those who do not report crime;
2. align protection measures for victims closer with their needs to ensure the safety of vulnerable victims;
3. improve access to specialist support for vulnerable victims, including children;
4. more effective participation in criminal proceedings for victims;

5. facilitate access to compensation from the offender.

What is the added value of action at EU level (subsidiarity)?

The action needed to address the problems set out above can be better implemented at EU level. This would improve enforcing the rights of victims and help reduce the differences in Member States' rules. It would in turn help increase mutual trust between Member States and facilitate mutual recognition of judgments, judicial decisions and police and judicial cooperation in criminal matters with a cross-border dimension. Amending the VRD will tackle the identified shortcomings and improve victims' experiences at national level and in cross-border situations. This could not be achieved if Member States acted alone.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?

The Commission has developed a number of legislative policy options. Non-legislative options were excluded given that the 2020-2025 victims' rights strategy already includes non-legislative measures to be implemented in the coming years, but their expected impact is included in the baseline. All policy options respond to the identified specific objectives.

Specific objective 1

- Option I.1: **Create an obligation to set up a national coordination mechanism** between law enforcement, judicial authorities (prosecutors and judges) and support organisations. They would work together to ensure that victims receive information that is adapted to their changing individual needs. The coordination mechanisms should include specific protocols on providing information to victims in detention or other closed institutions.
- Option I.2: **Option I.1** + Create an obligation so that national **victim helplines** are as a first contact point for all victims of all crimes, provide emotional support and refer victims to specialised support services if needed, use the EU 116 006 telephone number, and provide a website with state-of-the-art technology to give optimal access in most spoken languages and to persons with disabilities.
- Option I.3: **Option I.1** + Set up a mechanism through which **victims are proactively informed by victim support organisations** (with an opt-out option). Once a victim reports a crime or is identified as a victim, they are contacted by a victim support organisation that will provide information about victims' rights and the availability of support services. This option includes **an obligation on all people or institutions in contact with victims** (victim support organisations, medical professionals, social and welfare professionals) to inform victims about their rights.

According to the analysis and the assessment, the **preferred option is I.2.**

Specific objective 2

- Option II.1: Ensure that the **individual assessment of victims' protection needs**, currently laid down in Article 22 of the VRD, **is improved** by adding the following: (i) carrying out the assessment at the first contact with the competent authorities; (ii) involving support services, law enforcement and the judiciary; (iii) evaluating the risks posed by the perpetrator (such as alcohol abuse or possession of weapons); and (iv) including an assessment of individual needs for support.

- Option II. 2: **Option II.1 + Strengthen the use of protection measures for victims' physical protection**, such as protection orders, by adding protection measures to the list of specialised protection measures currently laid down in Article 23 of the VRD to be used by competent authorities following an individual assessment.
- Option II.3: **Option II.2 + Impose minimum standards on the content of and on conditions for applying physical protection** measures, such as protection orders and witness protection measures, following an individual assessment.

According to the analysis and the assessment, the **preferred option is II.2.**

Specific objective 3

- Option III.1: Ensure the availability of **specialist support services for all child victims** in the same premises based on the **Barnahus model** (providing, under one roof, multi-agency support and protection for child victims of crime) and **free psychological aid for as long as necessary for all vulnerable victims in need**. This would include national coordination of support services, law enforcement and judicial authorities and giving age-appropriate support and the protection necessary to comprehensively address victims' needs.
- Option III.2: **Option III.1 + Ensure the availability of specialist support services for all vulnerable victims**. This would include national coordination of support services, law enforcement and judicial authorities (not necessarily on the same premises). **For all vulnerable victims**, specialist support services would include free **psychological support for as long as necessary** if the individual assessment shows a need it. It would build on the current provision in Article 9(1) of the Directive, which provides for these services where available.
- Option III.3: **Option III.1 + Ensure the availability of specialist support services for all vulnerable victims** (not just children). These services can be provided on the same premises or through a central contact point based on the Barnahus model. Ensure that specialist support services provide **free psychological support for as long as necessary to all victims of crime** (not only vulnerable victims). This support should be identified during the individual assessment of support.

According to the analysis and the assessment, the **preferred option is III.2.**

Specific objective 4

- Option IV.1: Establish a right for victims **to legal/administrative assistance and to be accompanied by a person of their choice** throughout the criminal proceedings, regardless of whether the victim is a formal party to the proceedings. Establish a right for victims to **challenge the criminal proceeding decisions that concern them directly**. Member States would have to ensure that victims can challenge such decisions independently of their status in the criminal proceeding and in line with the principle of judicial review.
- Option IV.2: **Option IV.1 + an amendment to the current right under Article 13 of the VRD to legal aid, which is currently limited to victims who are parties to criminal proceedings**. The right would be extended to ensure legal aid for victims with insufficient means **when challenging decisions on their rights during criminal proceedings**. The conditions or procedural rules under which victims have access to legal aid will continue to be determined under national law.
- Option IV.3: Provide for the victims' **right to participate as a formal party to the criminal proceedings** independent of the current restrictions under national law. Therefore, victims' current rights under the VRD to participate in criminal proceedings, such as access to the case file and access to legal aid, would apply to victims during criminal proceedings.

According to the analysis and the assessment, the **preferred option is IV.1.**

Specific objective 5

- Option V.1: Establish the **right for victims to receive a decision on compensation from the offender in the course of the criminal proceeding** without the current exception under Article 16 of the Directive where national law provides for such a decision to be made in other legal proceedings.
- Option V.2: **Option V.1.** + Create an obligation on **Member States to pay the compensation due from the offender upfront to the victim immediately after the judgment** and then seek the reimbursement of the compensation from the offender.
- Option V.3: Impose **minimum standards on state compensation by amending the 2004 Compensation Directive**. This would include extending the scope of the Compensation Directive to include all crimes (not just limited to violent and intentional crimes). Impose minimum standards on the conditions on receiving state compensation by amending 2004 Compensation Directive (including the administrative time limits to deal with cases within reasonable times and conditions on how to determine the amount of compensation).

According to the analysis and the assessment, the **preferred option is V.2.**

The **preferred options package consists of options I.2, II.2, III.2, IV.1 and V.2.** This combination scores the highest for all criteria and is expected to bring the most benefits to victims across the EU while respecting the limitations of the legal basis and the proportionality of EU action.

What are different stakeholders' views? Who supports which option?

Most stakeholders support the revision of the VRD. All options were discussed and checked with representatives of victim support organisations, Member State authorities and EU agencies, such as the Fundamental Rights Agency and the EU Agency for Criminal Justice Cooperation (Eurojust). In addition, the issue was discussed in the Commission's Criminal Law Expert Group, consisting of academics and practitioners. Further input was received through a number of public consultations. Although all options received broad support from stakeholders, some Member States were reluctant to choose option IV.3 because it would interfere with certain legal traditions.

C. Impact of the preferred option

What are the benefits of the preferred option (if any, otherwise of main ones)?

The preferred package of options is expected to effectively address the main problems and meet the general and specific objectives. They should have significant positive effects on victims' rights, including better access to information, support and protection and better participation in criminal proceedings, including compensation. Overall, this will result in better access to justice for victims and better protection of their fundamental rights. These benefits for victims can lead to wider societal benefits. These benefits include a better functioning of Member States' justice systems, lower underreporting of crime and lower prevalence of crime in general. The preferred package will ensure the combined effects of implementing all the options as they were designed to support each other (for example, improved access to information will result in better access to support, which will mean better participation for victims in criminal proceedings).

What are the costs of the preferred option (if any, otherwise of main ones)?

	Benefits (million EUR) Scenario medium – 5 years; social discount rate 3% ¹	Costs (million EUR) Average low and high limits – 5 years; social discount rate 3%	Net benefit (million EUR) – 5 years; social discount rate 3%
Option I.2	1 388	231	6
Option II.2	1 488	25	59
Option III.2	10 217	9 336	1
Option IV.1	266	255	1
Option V.2	9 732	8 897	1
TOTAL	23 091	18 743	1.2

What is the impact on small and medium-sized companies (SMEs) and competitiveness?

No significant impact on SMEs and competitiveness is expected. Some benefits can be expected for SME professionals providing legal aid or psychological support to victims as their business will increase as a result of the initiative.

Will there be a significant impact on national budgets and administrations?

The costs of implementing the revised Directive will mostly be borne by Member States. There will be costs for the EU to ensure the exchange of best practices and coordination activities, including in the Victims' Rights Platform and the European Network on Victims' Rights. The most expensive option is related to ensuring targeted and integrated support services for the most vulnerable victims, which would include Barnahus. However, the benefits outweigh the costs in all options. However, the biggest benefits are of a non-financial nature.

Will there be other significant impacts?

The most significant impacts include better enforcement of victims' fundamental rights across the EU, including with respect to some absolute fundamental rights (such as the right to personal protection in violent/life-threatening cases) and its positive indirect social and economic consequences. By facilitating equal access to information, protection, support, justice and compensation, the initiative will provide more equal opportunities to all victims to exercise their rights. This will significantly contribute to the UN Sustainable Development Goal (SDG) 10 aiming at reducing inequalities. In addition, with its overall goal to increase trust in institutions and services supporting victims in crime, the initiative will contribute to promoting the rule of law and ensure equal access to justice, thereby contributing to SDG 16. Overall, better support for victims of crime will have a positive effect not only on victims'

¹ This is the social discount rate recommended in Tool#64 of the Better Regulation guidelines.

Proportionality?

All measures in the preferred options package build on the provisions of the VRD and are already in place in most Member States. They have all proved to be particularly successful in dealing with the problems presented in this impact assessment. The package sets up minimum standards. The proportionality has also been considered in the cost calculation of the different options. The proportionality of the measures was carefully assessed and tested with stakeholders. The package of measures proposed meets the legislative criterion of being limited to setting minimum standards.

D. Follow-up

Regular monitoring will be based on data that Member States will have to report to the Commission. In addition, the Commission intends to evaluate implementation of the initiative to assess the extent to which its policy objectives have been achieved (as well as the other four criteria of efficiency/simplification potential, coherence, relevance and EU added value). This evaluation will be based on indicators on the implementation of the different options in the package.