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From:	General Secretariat of the Council
To:	Delegations
Subject:	Conclusions from the 62 nd plenary meeting of the European Judicial Network (EJN) (Antwerp, 10-12 June 2024) - Conclusions of Workshop III: EJN and Victims Rights

Delegations will find attached the above-mentioned conclusions.

62nd PLENARY MEETING OF THE EUROPEAN JUDICIAL NETWORK

10 - 12 June 2024
Antwerp - Belgium

CONCLUSIONS of Workshop III: EJM and Victims Rights

I. BACKGROUND: EJM INVOLVEMENT IN THE VICTIM'S RIGHTS

In the **62nd Plenary meeting of the EJM Contact Points** that took place in Antwerp, Belgium 10-12 June 2024, workshop III was dedicated on the discussions on the Victims' Rights and EJM involvement in it.

Every year, millions of people in the European Union (EU) become victims of some kind of crime. The objective of criminal justice must be to ensure that all victims of crime can fully rely on their rights, no matter where in the EU, irrespective of the circumstances of the crime. The complexity of cross-border cases makes it especially challenging for the protection of these rights. This is where the role of the EJM becomes even more crucial.

During recent years, the EJM has been involved in victims' rights' related topics under the Finnish and German Presidencies of the Council of the EU. In 2019, on the initiative of the Finnish Presidency, the EJM was mentioned in the Council Conclusions on Victims' Rights (adopted in December 2019 under the Finnish Presidency), in addition to the Council Conclusions on Victims of Terrorism adopted earlier, in 2018 under the Bulgarian Presidency.

In the **Council Conclusions on Victims' Rights of 2019**, the Council emphasizes that ***"cooperation between the European Network on Victims' Rights (hereinafter 'ENVR') and other relevant EU networks such as the European Judicial Network"*** could be considered.

In the **Council conclusions on Victims of Terrorism of 2018** the Council encouraged ***"cooperation and synergies with existing EU structures such as the European Network on Victims' Rights, the European Judicial Network (EJM), EUROJUST and EU police- and crisis management networks"***.

The **Victims' Rights Directive (VRD) (2012/29/EU)** strengthens the victims' procedural rights in criminal proceedings and also requires appropriate training on victims' needs for everyone in contact with them. On 12 July 2023, the Commission proposed amendments to the Victims' Rights Directive. The amendments proposed by the Commission (hereinafter: ***Commission's proposal for the revision of the VRD***) aimed at helping to ensure victims can fully benefit from their rights.

The discussion in the Workshop of the 62nd Plenary meeting of the EJM Contact Points focused on the rights of victims against the current legislation and the proposed changes.

Prior to the proposal, in June 2021, during an *ad hoc* meeting of the Victims' Rights Platform on methods of improving cooperation between the competent authorities in cross-border cases, it was decided that the common report of the agencies and networks on improving cooperation between the competent authorities in cross-border cases would be issued in the first half of 2022. In order to contribute to the report, the methodology used by the EJM Secretariat was to launch an extensive questionnaire among the EJM Contact Points to collect experience among judicial practitioners as well as to tackle the challenges with regard to victims' rights. **The aim of this questionnaire was to map challenges and good practices on ensuring victims' access to their rights in cross-border cases based on the experience of the EJM Contact Points.**

EJM Secretariat gathered the replies of the EJM Contact Points in a report "**EJM and Victims' Rights**", which was presented to the EJM in the 44th Regular meeting of the EJM on 29 February 2024 (See: **ANNEX**).

II. DISCUSSIONS DURING THE WORKSHOP

1. CHALLENGES

1.1. Definition of victim

The discussions in the workshop started with the definition of what is a 'victim'. The discussions showed that one key challenge in relation to victims' participation in criminal proceeding is that the **legal status of a victim in criminal proceedings varies**. The [Commission's report on the evaluation of the Victims' Rights Directive](#) (hereinafter: "Commissions report") highlights the same issue.

Participants of the workshop shared views on what was the formal role of a "victim" in the national criminal justice system of their Member State (e.g. civil party, witness, private prosecutor, no formal role, other).

Many EU Member States give victims a formal legal status with a set of rights in proceedings. Some Member States classify victims as "injured parties" rather than victims. Certain Member States allow victims to participate as a party to the case, granting them rights similar to the prosecution and defence. An example was given of a Member State where victims can assist the public prosecutor as "assistants", which gives them the right to appeal decisions. So while several Member States commented that victims are a party of the proceedings with their own set of rights, in other countries this is not the case.

The key problem with this designation, as mentioned by some the participants, is that it is a phase in the proceedings – the investigation phase – where a final decision by the court had not been taken yet about the offence which is being investigated; therefore some see this to

be prejudicial regarding the **presumption of innocence of the defendant**. However, not all participants agreed with this view.

Overall, it was agreed that the definition of a victim varies significantly across legal systems/ EU Member States and other countries, impacting the procedural rights of victims. While the *Commission's proposal for the revision of the VRD* continues to leave the definition of a victim to the national law, the revision does propose to establish a *right to assistance in court*¹ and a *right for victims to challenge the decisions taken during court proceedings* which concern certain victims' rights under this directive². The Member States would have to ensure that victims can challenge those decisions regardless of their status in the criminal proceedings.

1.2. Procedural rights³:

The participants continued the discussions on **procedural rights** during the workshop.

First of all, participants admitted that procedural rights of victims tend to be inconsistent across different legal systems. Many times this comes down to the **formal status of the victim** as described above. While some Member States provide victims with legal representation and the right to appeal, in other Member States the procedural rights are far more limited.

Secondly, participants admitted that the challenge also outlined in the *Commission's report* is there: victims' participation in criminal proceedings is challenging due to a lack of legal advice, guidance and differences in rules on victims' status in these procedures in particular **in cross-border cases**.

When it comes to victims in cross-border cases, the following challenges were mentioned:

- Victims who move abroad face challenges in receiving updates about the case.
- Member States have no uniform approach to informing foreign victims about the proceedings.
- Victims in many Member States lack the ability to provide testimony remotely, forcing them to travel back.

¹ Article 10a

² Article 10b

³ Victims' Rights Directive (VRD) (2012/29/EU): Right to be heard (Article 10 VRD); rights in the event of a decision not to prosecute (Article 11 VRD); in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender (Article 16 VRD); in cross border cases, victim has a right to lodge a complaint in their State of residence, if the victim was not able to do so in the State where the crime was committed (Article 17 VRD).

Thirdly, procedural rights of **vulnerable victims** also was raised. The discussions showed that most Member States have special measures for vulnerable victims in place which are well implemented.

Overall, it was commonly agreed said that the **existing legal framework is sufficient** but the **implementation of the current rules remains challenging**. Hence it was said that the problem was not the rights established in national or international legislation. Poor implementation was thought to account for **the lack of awareness among prosecutors and judges** about existing legal framework already at national level.

1.3. Electronic means of communication:

Electronic communication plays an increasing role in victim testimony and in cross-border judicial cooperation in general. To address the identified shortcomings in relation to access to information, *Commission's proposal for the revision of the VRD* obliges the Member States to provide for a possibility for victims to exercise their rights to information and to access justice using electronic communication.⁴ This would also help to facilitate access to justice for victims in cross-border cases. Also, quite often it is necessary to use videoconference for hearing from victims. The proposed measures in the *Commission's proposal for the revision of the VRD* requests the Member States to facilitate participation in criminal proceeding for victims who are resident abroad via video conferencing and telephone conference calls.

The participants admitted that in practice the proposed obligation to facilitate participation in criminal proceeding for victims who are **resident abroad via video conferencing and telephone conference calls might be challenging**. This arises because of the existing **technical and legal barriers**.

During the discussions the participants mentioned the following challenges:

- With regard to **legal challenges**, some Member States allow victims to testify via video conferencing. Others require in-person testimony, limiting access for victims abroad. An example of one Member State was given where video-recorded testimonies can be read aloud in court instead of requiring victims to appear in court in person.
- With regard to **technical challenges** there was said to be infrastructure issues such as courts lacking reliable video-link facilities to connect with other courts. This is further exacerbated by a lack of interoperability in the systems used.
- Finally, **lack of victim support abroad** was also mentioned – victims testifying remotely from another country do not receive the same legal and emotional support they would at home.

In addition to this, the discussions focused on European Court of Human Rights (ECHR) case-law regarding the taking of statements from victims and the rights of defendants, especially in

⁴ Article 26b.

relation to the right to a **fair trial** as guaranteed by **Article 6 of the European Convention on Human Rights**. ECHR case law emphasizes a delicate balance between the rights of the victim and the defendant in criminal proceedings, including when statements are taken from the victim.⁵

The issue typically arises in cases where a victim's statement is submitted in written form rather than given in person during a trial. One of the core components of a fair trial is the right of the defendant to cross-examine witnesses providing testimony against them. This right includes the ability to challenge the evidence presented by the victim. If the victim's statement is given only in written form, this may interfere with the defendant's right to effectively challenge the testimony, especially in cases where the victim is not available for cross-examination. There are certain differences, however, when it comes to vulnerable victims with regard to written testimony and using electronic channels, in court practice.

It was also commonly agreed by the participants though that both aspects, the rights of the defendant and the victim, must somehow be balanced also keeping in mind that the investigation should not be slowed down.

All in all, while electronic communication can improve victim participation and hence contribute to more effective protection of victim rights, technical difficulties, lack of legal harmonization at national level, and inadequate support systems are currently seen as hindering its effectiveness.

2. SOLUTIONS PROPOSED

2.1. Harmonisation of the legal framework is not sufficient. Judicial cooperation is the key

Participants of the workshop generally agreed that further harmonisation of the legislation is important but the **challenges of the implementation have to be tackled as a priority**. There is a strong need to accommodate differences while tackling weaknesses in different legal systems.

2.2. Enhance the use of the existing tools of cooperation

Existing structures/bodies such as the **EJN and Eurojust** came up in the discussions and the importance of their respective roles was stressed on several occasions. Several participants mentioned that they have already made use of the existing structures, including the EJN and EUROJUST, to facilitate communication in relation to informing the victim, and this was highlighted as a good practice.

⁵ For example, *Y v Slovenia*, [41107/10](#), 28 May 2015.

It was said that **Eurojust was in a position to assist in more complex and big cases** like terrorist attacks.

The participants also stated that **the EJM could be used** either for transmitting the initial information or for facilitating subsequent contacts. **Potential role for the EJM** in the proceedings could be different (e.g. *EJM could facilitate a timely and proper exchange of information where the victim has returned to their state of residence; EJM could ensure that the victim is informed of the process of making a complaint or about a decision terminating the criminal proceedings; EJM could assist when a victim is exercising their right to a review of a decision not to prosecute; EJM may also help when facilitating any communication with regard to compensation rights of victims etc*). Another suggestion was that the role of the EJM could potentially be mentioned in the revised directive in the course of revision of the VRD, namely in **Article 17 concerning cross border cases**.

2.3. Increase the knowledge by different means (e.g.: trainings, EJM website, best practices)

The participants considered it highly important to have **training by a national or EU training institution** (EJM or other) on victims' rights. The following examples were brought:

- Workshops for prosecutors and judges to increase awareness of victims' rights.
- Specialized training on handling vulnerable victims.
- Expanding practical case-study-based seminars on cross-border cooperation with a stronger focus on victims' rights.

It was also suggested that a section dedicated to **victims' rights on the EJM website** could be of an advantage, especially for cross-border cases. It should be analysed further what kind of information could be gathered and eventually shared on the EJM website.

ANNEX

Report "EJN and Victims' Rights"

In June 2021, an ad hoc meeting of the Victims' Rights Platform on methods of improving cooperation between the competent authorities in cross-border cases took place. It was decided in the meeting that a common report of the agencies and networks on improving cooperation between the competent authorities in cross-border cases would be issued in the first half of 2022.

The methodology used by the EJN Secretariat was to launch an extensive questionnaire among the EJN Contact Points to collect the experience among the judicial practitioners as well as to tackle the challenges with regard to victims' rights.

The report "EJN and Victims' Rights" is the compilation of the replies of the EJN Contact Points as an outcome of the questionnaire. This outcome could contribute to the Commissions aim to revise the Victims' Rights Directive.

The report was presented to the EJN in the **44th Regular meeting of the EJN on 29 February 2024.**



EJN AND VICTIMS' RIGHTS

Contribution of the EJN Contact Points in the field of Victims' Rights and to the revision of the Victims' Rights Directive

1. ABOUT THE EUROPEAN JUDICIAL NETWORK (EJN)

Facilitating judicial cooperation in criminal matters is the core task of the EJN. In accordance with the legal basis of the EJN, [Council Decision 2008/976/JHA on the European Judicial Network](#)⁶ (EJN Decision), the Contact Points' role is to facilitate the execution of requests for judicial cooperation by assistance to establish direct contacts between competent national judicial authorities, support in the drafting stages of the requests for legal assistance, and provide assistance in urgent cases and cases of delayed execution of requests. They also assist with providing information about national law and legal system.

During the 2019-20 reporting period, the EJN continued to actively facilitate the execution of requests for legal assistance and to support the national judicial authorities in the application of the various judicial cooperation instruments such as the European Arrest Warrant (EAW), European Investigation Order (EIO), mutual legal assistance (MLA) requests and freezing orders, as well as less commonly used mutual recognition instruments such as the European Protection Order and Supervision measures.

Relying on the EJN to facilitate their requests in the period 2019-20, the judicial practitioners used the EJN as a channel for cooperation by the national judicial authorities in more than 14 000 cases.

⁶ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, pp. 130–134). Available here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2008.348.01.0130.01.ENG&toc=OJ%3AL%3A2008%3A348%3ATOC



2. EJN INVOLVEMENT IN PROTECTION OF THE VICTIMS' RIGHTS

1. VICTIMS ON THE EJN AGENDA

During the recent years, the EJN has been involved in victims' rights' related topics under the Finnish and German Presidencies of the Council of the EU. In 2019, on the initiative of the Finnish Presidency, the EJN was mentioned in the Council Conclusions on Victims' Rights (adopted in December 2019 under the Finnish Presidency), in addition to the Council Conclusions on Victims of Terrorism adopted earlier, already in 2018 under the Bulgarian Presidency. The focus of the German Presidency continued to be on the best practices of EU Member States concerning support for victims of crime in cross-border situations, particularly for victims of terrorism.

In the **Council Conclusions on Victims' Rights of 2019**, the Council emphasizes that the *"cooperation between the European Network on Victims' Rights (hereinafter 'ENVR') and other relevant EU networks such as the European Judicial Network"* could be considered. Already in 2018, the EJN had been mentioned in **Council conclusions on Victims of Terrorism**. In these conclusions, the Council encouraged *"cooperation and synergies with existing EU structures such as the European Network on Victims' Rights, the European Judicial Network (EJN), EUROJUST and EU police- and crisis management networks"*.

The 47th plenary meeting of the EJN Contact Points under the Slovakian Presidency, which took place soon after the Brussels terrorist attack, concluded that some of the key issues are training, awareness raising and even more so close cooperation between different entities in the field. In this light, the EJN Contact Points agreed that complementarity between the EJN and the European Network on Victims' Rights (ENVR) should be developed further – as stated in the Council Conclusions

In September 2020, the High-Level Conference on the EU Strategy on Victims' Rights took place. The Secretary to the EJN attended the conference. In this meeting, the Commission set up the Victims' Rights Platform to ensure a more horizontal approach to victims' rights. Victims' Rights Platform is expected to strengthen the cooperation and coordination at the EU level. The platform is one of the actions under the Victims' Rights Strategy 2020-2025, which is the first ever EU strategy on victims' rights. During the High-Level Conference on the EU Strategy on Victims' Rights (2020-2025), the platform was formally launched, and, on the invitation of the newly established Commission coordinator for Victims' Rights, the EJN Secretariat was among the entities nominated as a member of the platform. The Platform was to bring together for the first time all EU level actors relevant for victims' rights.



2. VICTIMS OF TERRORISM

The EU has adopted instruments on specific needs of victims of particular types of crime (victims of terrorism⁷, victims of trafficking in human beings⁸, child victims of sexual exploitation⁹). According to the Commission, *“these instruments complement and build on the Victims’ Rights Directive”*¹⁰.

The 47th plenary meeting of the EJM Contact Points held in Bratislava in 2016 under the Slovak Presidency of the Council of the EU focused on measures for the protection of victims’ rights, dealing in particular with good practices and problems in supporting victims of terrorist attacks. The EJM Contact Points concluded thus already in 2016 that some of the key issues are training, awareness raising and even more so close cooperation between different entities in the field. Complementarity between the EJM and the European Network on Victims’ Rights (ENVR) was emphasized and that an exchange of information between the two networks would be beneficial.

The discussions also addressed the role of the EJM in the application of the Victims’ Rights Directive. During the discussions, the EJM Contact Points emphasized that information should be given to the victims and their families before it is made public – in case of terrorist attacks. It was agreed to be a good practice to engage other stakeholders or interested parties, such as the press, in the process to ensure respect for victims.

The EJM Contact Points further suggested analysing whether more information should be provided on victims’ rights on the EJM website and if contact details of authorities that deal with victims could be added.

3. VICTIMS RIGHTS DIRECTIVE (2012/29/EU)

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 (the Victims’ Rights Directive), and replacing Council Framework Decision 2001/220/JHA was adopted under Article 82(2) TFEU. It provides the rights for victims of crime and respectively, the obligations of the Member States. Such rights include also support and protection to victims in order to ensure that victims of crime are recognized, the minimum standards of their

⁷ 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>

⁸ 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>

⁹ 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>

¹⁰ 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. COM/2020/188 final



rights are respected, and that they can have access to the justice. The Victims' Rights Directive strengthens the victims' procedural rights in criminal proceedings and also requires appropriate training on victims' needs for everyone in contact with victims. The Directive is applicable to all victims of crime.

On 11 May 2020, the European Commission adopted a [report on the implementation of the Victims' Rights Directive](#) with the aim of assessing the measures Member States have taken to comply with the provisions of the Directive.

On 28 June 2022, the European Commission adopted its [evaluation of the Victims' Rights Directive](#). The evaluation is one of the Commission's key actions set out in the [EU Strategy on Victims' Rights \(2020 – 2025\)](#).

On 12 July 2023, the Commission proposed [amendments to the Victims' Rights Directive](#). The Commission's proposal has to be adopted by the European Parliament and the Council.

3. QUESTIONNAIRE ON VICTIMS' RIGHTS LAUNCHED AMONG THE EJM CONTACT POINTS IN 2021

1. BACKGROUND OF THE QUESTIONNAIRE

In June 2021, an ad hoc meeting of the Victims' Rights Platform on methods of improving cooperation between the competent authorities in cross-border cases took place. It was decided in the meeting that a common report of the agencies and networks on improving cooperation between the competent authorities in cross-border cases would be issued in the first half of 2022. The report to be produced was said to analyse victims' access to their rights under the Victims' Rights Directive, including from the perspective of victims in cross-border cases. The common report was agreed to be based on individual contributions from each agency/body, including the EJM and Eurojust.

The methodology used by the EJM Secretariat was to launch an extensive questionnaire among the EJM Contact Points to collect the experience among the judicial practitioners as well as to tackle the challenges with regard to victims' rights. It is essential that victims receive good information and protection during cases; and it is even more challenging to achieve this in cross border cases. **The aim of this questionnaire launched among the EJM Contact Points was thus to map challenges and good practices on ensuring victims' access to their rights in cross-border cases based on the experience of the EJM Contact Points.** This was to identify the **existing expertise on victims' participation in criminal proceedings in cross-border cases as well as to detect the shortcomings and concrete fields for the room for further improvement.** Eventually, this would contribute to the Commissions aim to revise the Victims' Rights Directive.



The questions were primarily based on the Victims' Rights Directive, the instrument being the cornerstone of EU victims' rights policy; however, specific aspects of the rights of victims of terrorism are taken into throughout.

2. CONCLUSIONS: EJM OPERATIONAL INVOLVEMENT IN PROTECTION OF THE VICTIMS' RIGHTS AND PROPOSAL FOR THE WAY FORWARD

The EJM Contact Points from 15 different Member States acknowledged that it is essential that victims receive good information and protection during cases; and that it is even more challenging to achieve this in cross border cases. The EJM Contact Points emphasized the role of the EJM in the field of **strengthening victim's rights in cross-border cases**. The replies focused on different aspects of the directive and **on where the judiciary could be more involved**. The replies to the questionnaire illustrated good practices on ensuring victims' access to their rights in cross-border cases based on the experience of the EJM Contact Points but also shortcomings where judiciary could be involved in more effective way.

In sum, the EJM Contact Points have an important role to play when it comes to **ensuring that victims' participation in criminal proceedings** in cross-border cases are fully supported and **their rights are respected**. The EJM Contact Points suggested **best practices in the Member States, when it comes to respecting victims' role and rights** in international judicial cooperation. The possibility to apply the best practice depends on national legislation in each Member State.

Attention was paid to **digitalization and new technologies in facilitating victims' access to their rights** in cross-border cases and on the use of technologies and relevant investigative measures. It is expected that digital participation in criminal proceedings can be beneficial for increasing victims' rights and that **making use of the electronic tools in communication between judicial authorities in cross-border cases will have a positive impact on victims' access to justice in general**.

The following topics were discussed and following suggestions were made by the EJM Contact Points.

3.2.1. ACCESS TO INFORMATION (ARTICLES 3-7)

Right of the victim to receive information from the first contact with a competent authorities acting in the criminal proceedings (*Article 4 Victims Rights Directive*). This provision lists different type of information the victims should receive during their first contact with such competent authority. The offender may be released or escape from arrest and the victim should be



informed of their right to be notified of the offender's escape or release as from the first contact with the competent authority (and at any relevant stage of the proceedings).

Right of victims when making a complaint (Article 5). *All victims, regardless of their formal role in the criminal proceedings, and including the victims of cross border cases (who have not yet left the country where the crime was committed), can make a complaint.*

Right of a victim to receive information about their case (Article 6), **depending on their role in the relevant criminal justice system.**

Interpretation and translation during criminal proceedings (Article 7).

The EJM Contact Points discussed in their replies, if and who in their Member States is responsible for fulfilling the obligation to inform the victims (police officers, prosecutors and/or judges) and whether there is a **system created to inform victims of their rights**.

Contact Points recognized that the victims have a right to receive and obtain different information as provided for in the Directive; however, the replies from the EJM Contact Points reveal that there tends to be several challenges in practice. For example, there tends to be **no unified notification system in place to inform the victim** of the crime neither about the right to be informed nor about the release or escape from arrest of the offender. Every Member State notifies the victims as provided by in national legislation; in many cases the law is not very detailed about this and in many Member States there is no notification system in place in which victims can register to receive information.

Another aspect that was revealed in the replies was that while victim does have a right to receive different information, in most Member States they must have proactively indicated this wish. **The victims have to request to be notified** (i.e. apply for it, or to register for receiving information etc., depending on the system of each particular Member State) in order to receive such information.

Some Member States do foresee that **victim's support organizations "may" be involved in the process of notifying the victim** and "may" be the ones delivering information to the victims. Thus, it was admitted that there is **room for clarification the involvement of the victims support organizations** and to analyse to what extent this involvement should be formalized.

When **making a complaint**, there are different internal practices and/or formal procedures in place in the Member States for police services and/ or prosecutors **to provide immediate access to linguistic assistance** in order to ensure that a victim can make a complaint in a



language they understand. With regard to **interpretation and translation**, in most Member States no use is made of videoconferencing and of other technological tools to ensure victims can access interpretation and translation easily. There tends to be **no translation service available via phone nor videoconference**. Member States rely on the existing pool of interpreters and translators who will be then present in person.

Making use of electronic tools for providing information to victims (i.e. websites with relevant information) is not fully structured within and across Member States – the victims are being informed through different channels. In a few Member States dedicated web portals have been created but in others there is none.

SUGGESTIONS AND BEST PRACTICES:

- In order to inform the victim about their rights, EJM or other existing structures can facilitate the communication between the two Member States central authorities or the authorities responsible for the particular task. The communication via the national authorities to inform the victim has proved to be challenging on many occasions.
- The information to the victims could be sent using any means/ channels, and the assistance of EJM Contact Points can be used either for transmitting the initial information or for facilitating subsequent contacts. Some EJM Contact Points have already experience of using the EJM to facilitate the information flow via central authorities.
- There was an overall agreement by the EJM Contact Points that there is a room to develop online channels/ web portals to share such information as well as to further develop the notification system: web portals in some countries, or dedicated helplines were suggested.
- Brief, clear and translated information sheets should be immediately provided to victims by police services.
- An example of the best practice from one Member State – in serious cases, a victim is assigned a contact person who will be then responsible for passing on the information on every step – could be considered as a possibility in the EU; competence could be divided between the national authorities and victims support organization.
- An example of the best practice from one Member State – national legislation stipulates that the assistance of an interpreter may be provided by a means of telecommunication if necessary – could be considered as a possibility in the EU.



- More use of videoconference should be encouraged across the EU. In some Member States in cross border cases the use of videoconferencing is strongly encouraged, where appropriate, involving the competent EJP CPs

3.2.2. PROCEDURAL RIGHTS (ARTICLES 10, 11, 13, 16 AND 17)

Right to be heard (Article 10): *All victims have an opportunity to provide information, views or evidence throughout criminal proceedings. Victims play an important role for providing evidence in criminal proceedings.*

Rights in the event of a decision not to prosecute (Article 11): *Informing the victim about a decision not to prosecute any different in cross border cases when the victim has left the Member State to their state of residence provides for a practical challenge. Recital 51 of the Victims Rights Directive states that if the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection other than in direct relation to any criminal proceedings. The Member State in which the victim resides should provide assistance.*

In the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender (Article 16): *If a convicted offender is not in a position to provide compensation and is lacking the means, there should be mechanisms in place to settle the compensation.*

In cross border cases, victim has a right to lodge a complaint in their State of residence, if the victim was not able to do so in the State where the crime was committed (Article 17).

The questionnaire further invited the EJP Contact Points to discuss their experience with the procedural rights of the victims as provided for in the Directive. While answers were elaborated on different procedural rights, **the Contact Points were asked to assess the cross border situations in particular.**

All victims have an opportunity to provide information, views or evidence throughout criminal proceedings (Article 10). They play an important role in **providing evidence in criminal proceedings**. The applicable procedural rules (how and when victims may be heard) is left to national law. Safeguards are in place for **vulnerable groups of victims** (children, victims of terrorist attacks.) and these are ensured by the practitioners. **There is no common approach on specifics of this provision for vulnerable groups of victims**, across Member States, however, and thus differ from State to State.



With regard to the right to a **decision on compensation from the offender in the course of criminal proceedings** (Article 16), once again, there is no common approach. If a convicted offender is not in a position to provide compensation and is lacking the means, the system differs from Member State to Member State even in cases without cross border element. In most Member States there are relevant funds established to receive compensation when the offender lacks means, however, not in all; and the procedure to receive such compensation varies considerably. In several Member States, there is no possibility to obtain compensation in this situation. In some it is possible to receive the compensation from the State, in some civil proceedings will have to be initiated to obtain compensation.

It was also stated by the Contact Points that communication between the authorities responsible for compensation should be strengthened, in particular in application of the provisions of Directive 2004/80/EC of April 29, 2004, in order to ensure that all victims are compensated, whether or not the acts were committed in their State of residence, but also to avoid any risk of double compensation.

In cross-border cases, communication with regard to **compensation rights of victims**, would take place between central authorities and, where appropriate, could be facilitated by the EJM Contact Points.

How to ensure procedural rights of the victims in cross border cases where the victim has returned to their state of residence was elaborated further in the replies. The EJM Contact Points admitted the shortcomings when it comes to victims' procedural rights in cross-border cases. In principle, victim residing in another EU Member States have the same procedural rights, yet in practice this is more difficult to achieve. The specifics with regard to the victims of cross border cases was mentioned – the **need to establish good communication with another Member State** was commonly said to be of outmost importance because **most of the times such cases are urgent**.

Quite often **it is necessary to use videoconference for the hearing of the victims**. The EJM Contact Points have been of help in facilitating the execution of requests for hearing by videoconference. Hearing of a victim who has returned to their state of residence can be requested by an EIO. Authorities in the Member States communicate with the victims directly (by electronic means) or if necessary issue an EIO, which will be then executed by the Member States where the victim resides. A victim who has returned to their state of residence can provide the issuing authority with a testimony by using video conference.

Good communication between the authorities of different Member States was said to become even more important when the **victim left the Member where the crime occurred already before the first contact with the competent authorities in that Member State**. During the



investigation of the crime, again, in order to facilitate such communication between the authorities, benefits from using existing structures, including the EJM for that purpose, were emphasized. Currently, in most countries, a judicial authority is maintaining communication with a victim (while the first contact is most of the times made with police authority). If there is a need to involve other Member State, **in some Member State EJM is used.**

Informing the victim about a decision not to prosecute (Article 11) when the victim has left the Member State to their state of residence is regulated differently across Member States as stated by the EJM Contact Points. Recital 51 of the Directive states that if the victim has left the territory of the Member State where the criminal offence was committed that Member State is no longer obliged to provide assistance, support and protection other than in direct relation to any criminal proceedings. **The Member State in which the victim resides should provide assistance.**

However, there is no common approach on how to transpose this provision and to regulate such situation. Sometimes an MLA request is sent to another Member State to identify the location of the victim. **In practice, if the victim has left to the Member of their residence – and, again, especially when they have left already before the first contact was made with the authorities – the situation proves to be particularly challenging. The Contact Points stated that it could happen that the victim never receives relevant information.** Communication in this respect with the other Member State is highly important and ways to improve this should be identified.

In cross border cases when the victim has left the Member State to their state of residence, as a rule, **the complaint of the victim made in their state of residence**, is transmitted from the State of residence to the State where the crime occurred. In this case the challenge to notify/ inform the victim about their rights raises the question who would inform the victims about their rights and how. When victim **lodges a complaint in their State of residence, in Many Member States there is no mechanism in place to ensure that the complaint of a victim is transmitted without delay to the State in which the criminal offense was committed.** The transmission of the victim's complaint filed in one Member State to another Member State in which the crime was committed is the responsibility of the authority in charge of the investigation based on applicable instruments of criminal cooperation including based on the spontaneous transmission of information. The complaint should be sent to the competent authority in the other Member State but the procedures often times lack clarity. It was said that mutual assistance facilitators are used to ensure that the situation is handled efficiently: Eurojust, the network of liaison magistrates, EJM contact points, contacts within the foreign central authority, etc.



The Contact Points also discussed the role of issuing and executing Member State when providing information to victims in the application of the Council Framework Decision **2008/947/JHA (Probation and Alternative Sanctions)** and the Council Framework Decision **2009/829/JHA (European Supervision Order)**.

As a good practice it was explained that even though neither the Framework Decision 2008/947 nor the national law transposing the Framework decision, do not include specific provisions on informing victims at certain stages of the proceedings, the victims are nevertheless informed. In this case, as an issuing Member State, the judicial authority could transmit to the victim the information that it is transmitting to another Member State – a certificate of recognition of a probation decision – at the same time as the certificate is sent by the public prosecutor's office or by the judge in charge of the application of sentences. As an executing State, the victim must be notified in line with national legislation, for example, of the end of a suspended sentence with probation or a probationary suspension, of the release of the convicted person or of the end of the probationary period but the latter only if the victim has requested so.

The Framework Decision 2008/829 contains several provisions relating to victims (Article 2, Article 22). Some Contact Points state, however, that these have not been transposed into national law of their Member States.

SUGGESTIONS AND BEST PRACTICES:

- In cross border cases, the EJN Contact Points could help the judicial authorities involved to identify the best measures to be taken, to provide information on legislation and on different procedural solutions available and about relevant national legislation or practice of another Member State.
- In cases where the victim has returned to their state of residence, the involvement of the EJN Contact Points becomes particularly important because such requests tend to be urgent and it involves cross border cooperation between the authorities of different Member States. The EJN Contact Points can facilitate a timely and proper exchange of information.
- The process of making a complaint can be facilitated by the EJN, where needed, while central authorities may be the main entities responsible for it. To ensure that the complaint of a victim is transmitted without delay to the State in which the criminal offence was committed, the EJN Contact Points could be involved.
- The EJN Contact Points could have a role also when it comes ensuring that victims are informed about any decision ending the criminal proceedings related to the criminal offence suffered by the victim (including the decision not to prosecute)



in cross border cases. The same could apply for when victim is exercising their right to a review of a decision not to prosecute when the victim has left the Member State.

- The EJM Contact Points could be of help in facilitating the execution of requests for hearing by video conference.
- With regard to the compensation right, although no formal role for the EJM Contact Points is foreseen, in practice there have been cases, EJM Contact Points have helped to facilitate communication in relation to the compensation between the authorities involved.
- Continuous/ long-term victim support in cross border cases may be formalized as this is currently not used in practice.
- It could be useful to have an overview in some format of mechanisms and possibilities in other Member States available to deal with the challenges that may be associated with providing support to victims in cross-border cases if the competent bodies are not known, and consequently, victims not always being fully informed of the support offered.
- It should be analysed to possibly include victims' rights related provisions in Framework Decision 2008/947/JHA (Probation and Alternative Sanctions) and also to ensure the transposition of relevant provisions in the Council Framework Decision 2009/829/JHA into national law of the Member States should be analysed.

3.2.3. VICTIMS' RIGHT TO PROTECTION (ARTICLES 18-24)

Protection of victims (Articles 18-24). *The directive aims at ensuring the protection of victims, including the recognition of victims with specific protection needs, whereas Article 22 emphasized that there needs to be a case-by-case approach towards victims.*

With regard to protection of victims, different mechanisms are in place in Member States. Guidelines, clear procedures on who conducts the individual assessment, involving experts, appropriate timeline were mentioned by the Contact Points as examples of such mechanisms



to identify the specific and individual needs of victims. However, some Contact Points admit lack of mechanisms in their Member States.

As a good practice, it was said that **all victims, regardless of age or offence, are individually assessed by an investigating officer.** The purpose of the individual assessment is to systematically protect victims against secondary victimization, repeat victimization, intimidation and retaliation. This individual assessment identifies the victim's protection needs, allowing appropriate protection to be provided and to determine whether and to what extent the victim should be able to benefit from special measures during criminal proceedings and the enforcement of criminal decisions.

The individual assessment takes into account the particular vulnerabilities of the victim, the type of offense or nature of the offense, as well as the circumstances under which the offense was committed. The investigating authority is responsible for the assessment. If necessary, protective measures are taken or demanded by the public prosecutor (location ban, contact ban and approach ban).

Another protection mechanism mentioned was that at the request of the victim, a **European Protection Order** can be issued in order to be able to invoke the imposed measures in another Member State.

It was also mentioned that **several challenges are seen within protection of the victims.** It is important to help the victims from another Member State to understand the criminal justice system, encourage victims who live abroad to participate in criminal proceedings in another Member State, ensure that they have information about available support organizations, financial support of the victims.

3.2.4. TRAINING NEEDS (ARTICLE 25)

Training needs of the authorities involved (*Article 25*).

The majority of the EJM Contact Points stated that they have never been trained by a national training institution (or similar) on victims' needs; nor they have received relevant trainings at EU level. The EJM Contact Points consider it necessary for the judiciary to receive more trainings on the victims' rights.



Apart from overall training on victims' rights for the judiciary, which was called upon by the EJM Contact Points, the EJM Contact Points concluded that it would be very useful to have an overview in some format of mechanisms and possibilities in other MSs to deal with the challenges that may be associated with providing support to victims in cross-border cases if the competent bodies are not known, and consequently, victims not always being fully informed of the support offered. In what format and where the information should be presented, is yet to be analysed.
