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CCBE response to the public consultation "Supporting crime victims – evaluation of the Victims' Rights Directive"

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The list below only shows those questions which are considered to be of relevance to the CCBE. Additional comments are attached below.

Answers to questions:

Section I: Effectiveness (this section treats the progress of the Victims' Rights Directive towards a better support and protection of victims of crime)

4) The definition of victim of crime in the Victims' Rights Directive comprises all persons who suffered any type of harm from crime and family members of victims who died as a result of crime. In your view, has this definition contributed to ensuring that all victims of crime can rely on their rights set out in this Directive?

- ○ Strongly agree
- ○ Agree
- ◉ Neither agree nor disagree
- ○ Disagree
- ○ Strongly disagree
- ○ I do not know

Further comments:

400 character(s) maximum

Regarding the definition, the CCBE would like to highlight that caution is needed in relation to the term "victim". In order to find the right balance between procedural rights for victims and those recognised for accused persons, we would recommend the introduction of the term "alleged victim".

7) Do you think that the rights of victims of crime should be strengthened with regard to:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	I do not know	Comments - if any (maximum 200 characters)
Other?		x					Please see our comments regarding Articles 6, 7 and 13.

8) Do you agree that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings?

- ○ Strongly agree
- ◉ Agree
- ○ Neither agree nor disagree
- ○ Disagree
- ○ Strongly disagree
- ○ I do not know

Further comments:

400 character(s) maximum

Since the Directive has come into force, the scope of the information which the victims get on their rights has been sufficient. Please see our additional comment in the paper attached.

Section II: Relevance (this section treats the objectives of the Victims' Rights Directive and the relationship between the needs and problems in society)

10) Are there any rights or obligations which are not relevant to meeting the overall objectives of the Victims' Rights Directive to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings?

400 character(s) maximum

Full understanding of what is provided in writing is not always guaranteed.

11) Are there any victims with special needs who are not, or who are insufficiently covered? If so, which ones and why?

400 character(s) maximum

Minor descendants should be considered as direct victims.

12) Do existing rules enable or encourage the use of new technologies to support and protect and ensure victims' participation in criminal proceedings?

- ○ Strongly agree
- ○ Agree
- ◉ Neither agree nor disagree
- ○ Disagree
- ○ Strongly disagree
- ○ I do not know

Further comments:

400 character(s) maximum

The use of videoconference for victim´s interrogation is rare. However, it is often important to organise physical meetings.

Section III: Coherence (this section treats the relationship between the VRD and other instruments, as well as the links between the provisions of the Directive)

14) To what extent do you agree that the Victims' Rights Directive is coherent with and complementary with the following EU instruments:

Further comments:

400 character(s) maximum

Provisions should be coherent with defendant's rights and procedural safeguards, i.e. presumption of innocence and right to legal aid and legal advice. The correlation between, on the one hand, the rights of defendants, and, on the other hand, the rights of victims, must be kept in mind in order to guarantee the right to a fair trial.

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15) To what extent do you agree that the Victims' Rights Directive is coherent with and complementary to legislation and policy on victims' rights in your Member State?

- ○ Fully coherent
- ◉ Somewhat coherent
- ○ Not coherent
- ○ I do not know

Further comments:

400 character(s) maximum

In general, domestic law is more developed than the directive, especially on the issue of procedural rights.

16) To what extent do you agree that the individual provisions of the Victims' Rights Directive are internally coherent between each other?

- ○ Fully coherent
- ◉ Somewhat coherent
- ○ Not coherent
- ○ I do not know

Section V: EU Added Value (this section looks for changes that are due to the EU intervention and could not be achieved without the VRD)

22) What would be the impact for your organisation and/or your Member State or yourself as a victim or potential victim of crime in the absence of the Victims' Rights Directive?

- ○ Very positive impact
- ○ Positive impact
- ○ No impact
- ◉ Negative impact
- ○ Very negative impact
- ○ I do not know

23) What would be the impact of amending the Victims' Rights Directive or introducing additional rights?

- ○ Very positive impact
- ◉ Positive impact
- ○ No impact
- ○ Negative impact
- ○ Very negative impact
- ○ I do not know

Further comments:

400 character(s) maximum

See our comment regarding the inclusion under Article 6 of the right of the alleged victim of a crime or victim of a crime and/or their lawyer to access and copy the criminal case file. See also our comment on the inclusion of minor descendants in the definition of direct victim.

24) To what extent has the Victims' Rights Directive brought an added value in comparison to the situation prior to its adoption?

- ○ Fully
- ◉ To a large extent
- ○ To a limited extent
- ○ Not at all
- ○ I do not know

Further comments:

400 character(s) maximum

The Directive was a positive step towards ensuring that victims in all 27 Member States are treated with respect, that the special needs of vulnerable victims are properly addressed, that victims receive the support they need, can participate in proceedings and receive and understand the relevant information, and that they are protected throughout criminal and court proceedings.

25) Do you agree that victims in cross-border cases can rely on their rights under the Victims' Rights Directive?

- ○ Strongly agree
- ○ Agree
- ◉ Neither agree nor disagree
- ○ Disagree
- ○ Strongly disagree
- ○ I do not know

Further comments:

400 character(s) maximum

In theory yes but in reality, it is in some cases problematic, mostly when the victim does not have the right to a legal aid lawyer who could represent the victim in the other member state.

Closing comments

26) Do you have any further comments on the topic raised in this consultation?

400 character(s) maximum

There is in the CCBE's view a striking absence of consideration for the role of lawyers and legal assistance in the Directive. Please see our additional comments for more details.

Additional comments

Regarding the definition of victims of crime (Question 4)

The CCBE would like to highlight that caution is needed in relation to the term "victim". In order to find the right balance between procedural rights for victims and those recognised for accused persons, we would recommend the introduction of the term "alleged victim". It would refer to complainants and a person should be called so from the moment an alleged crime has been committed until the end of the criminal proceedings where a judgment occurs. The term "victim" should be used after a final judgment is rendered.

This approach would ensure that the presumption of innocence is not impacted. Indeed, applying the term "victim" too quickly creates the impression that those accused of crimes are guilty. Yet, this might not be so – in criminal proceedings, we do not know whether the person has really been a victim and whether this person has been the victim of the accused or anybody else. At the end of the proceedings, the alleged victim might no longer be considered as one.

Moreover, we consider it necessary to expressly include in the definition of alleged victim and victim the minor descendants of the direct victim. The status of indirect victims remains insufficient. Protection and support need to be granted to them as permanent witnesses of the acts and of the harm suffered. Furthermore, the mention of the relatives of a person whose death has been caused by a criminal act proves that any other result or harm apart from the death will not entitle family members (and therefore minors) to the protection granted to the victims.

Regarding the question whether over the last 5 years victims of crime were able to rely on the enumerated rights (Question 5)

For Italy and France, the following answers were indicated:

- to receive information from the first contact with a competent authority - agree

- to receive information about their case - neither agree nor disagree

- the right to special protection measures for children during criminal proceedings - agree.

In Italy, there are problems to prevent crimes and to avoid crimes when the trial detention is served or the sentence is served.

In France, regarding the general obligation to provide assistance to victims, numerous institutions, bringing together actors from the judicial and associative worlds, have been set up to welcome victims and facilitate their journey. In addition, the public authorities have encouraged the establishment of links between victims and aid associations. Finally, the generalisation of victim assistance offices has been a significant step forward for victims. These offices were created on an experimental basis in about ten courts in 2009. Coordinated by the Judge in charge of victims, and run by victims' aid associations, these were a rapid success, and their generalisation was initiated by Decree nr. 2012-681 of 7 May 2012. These offices have an information and support mission. They can provide victims with precise information on the status of the criminal case related

to their complaint. They redirect victims to the competent judicial services, in terms of compensation, recovery of damages or enforcement of sentences.

Regarding the question whether over the last 5 years victims of crime were able to rely on the enumerated rights (Question 6)

For Italy and France, the following answers were indicated:

- the right to be heard in criminal proceedings - agree
- the right to request a revision of a decision not to prosecute - agree.

In Italy, free legal aid is always ensured to all sexual-abuse victims, regardless of the victim's financial situation.

In general, French law is more developed than the directive, especially on the issue of procedural rights.

Regarding the question whether the rights of victims of crime should be strengthened (Question 7)

Article 7 of the Directive provides for the right to interpretation and translation which is especially relevant for migrants who do not understand the language. According to the wording of the Directive, this right is however subject to the victims' request (par. 1, 3 and 4). As such a right is fundamental, and "upon request" might cause misunderstanding, we think it should be deleted.

Article 6 (Right to receive information about their case) could be amended to stipulate that the alleged victims are notified of their right to receive information on their case and that they receive this information unless when they have expressed their wish not to receive it. In other words, providing the alleged victim with information about the case should be the default option. It is also important to ensure the possibility for victims to change their minds – for example, when they said no at the beginning but want to receive information later.

Moreover, we believe it is important to include under Article 6 the right of the alleged victim of crime or victim of crime and/or their lawyer to access and copy the criminal case file (as this is the case in Germany and the Netherlands). This amendment will increase the transparency of criminal proceedings, it will serve as a check for the fairness of the proceedings, and the victim or alleged victim of crime will have all the available information to proceed with a civil claim for damages if there is no compromise with the defendant.

We also consider that the right to legal aid (Article 13) would be strengthened if the Directive foresaw that the victim has the right to choose his or her legal counsel from the beginning. This should be supported by legal aid, according to national law systems.

Regarding the question whether victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings (Question 8)

Since the Directive has come into force, the scope of the information on their rights which the victims get has been sufficient. Victims' support depends on a number of factors. Usually, support is related to the effectiveness of the NGOs focused on victims but also the criminal authorities pay much higher attention to victims as it used to be. The participation in criminal proceedings is relative. But we shall not forget about the proportionality of the rights of the suspect and accused persons in relation to the victims. Basically, victims' rights shall be represented by police officers and prosecutors.

In France, the scope of information victims receive on their rights is sufficient. However, psychological support and the rapid implementation of specific assistance for victims of serious crimes are not yet mandatory in France, although there have been several initiatives in the field. Moreover, the use of an interpreter is mandatory for the victim during the hearing, but this is not the case when the complaint is filed.

Regarding the question whether the VRD is coherent with and complementary to legislation and policy on victims' rights in the Member States (Question 15)

In general, domestic law is more developed than the directive, especially on the issue of procedural rights. For France, moreover, in the directive, the victim is not recognised as a party to the criminal proceedings. They cannot initiate the trial by initiating the proceedings. They do not have the right to actively participate in the proceedings by accessing the file, requesting actions or exercising appeals. French law, on the other hand, places the victim at the heart of the criminal trial.

Regarding the question about the impact of amending the VRD or introducing additional rights (Question 23)

Including under Article 6 the right of the alleged victim of crime or victim of crime and/or their lawyer to access and copy the criminal case file would increase the transparency of criminal proceedings, serve as a check for the fairness of the proceedings, and the victim or alleged victim of crime would have all the available information to proceed with a civil claim for damages if there is no compromise with the defendant. In some Member States, victims have the right to access to the case file. But it might be explicitly added to the VRD. In addition, including minor descendants in the definition of direct victim would ensure that children as permanent witnesses of the acts and of the harm suffered are offered protection and support.

Regarding further comments (Question 26)

There is in the CCBE's opinion a striking absence of consideration for the role of lawyers and legal assistance in the Directive. This is in contrast with the recognition of the role of civil society and victims support services. The only references are the ones in Article 24 regarding child victims and Article 25 regarding the training of lawyers. Although we consider the latter aspect very important, we think that lawyers play an important role, for example in enabling victims to have access to information, informing them about their rights or enabling access to justice. Therefore, we think that lawyers' role should be explicitly recognised in the directive. Lawyers should be able to provide information to the alleged victims from the very beginning.