

Project

# Victims in Europe

Implementation of the  
EU Framework Decision  
on the standing of victims  
in the criminal proceedings  
in the Member States  
of the European Union



With financial support from the  
European Commission - Directorate-General Justice, Freedom and Security

promoted by:



on behalf of:



**Victim Support**  
Europe



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# **1. Introduction**

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# 1. Introduction

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## 1.1 Background and context of the Framework Decision

On the 15th of March 2001 the *European Union Framework Decision on the standing of victims in criminal proceedings* was adopted.<sup>1</sup> This event is a milestone in more than one way. It is the first time that there is a so-called ‘hard-law instrument’ concerning victims of crime available at the international level. The Framework Decision codifies rules at the supranational level concerning the legal position of victims that are binding concerning the domestic legal order of the member states. Prior to 2001 only soft-law instruments were on offer, like the resolution of the General Assembly of the United Nations and the Recommendation of the Council of Europe in this field.<sup>2</sup>

The Framework Decision not only approaches matters forcefully, but also speedily. For the largest part the provisions had to be implemented within one year. There are only a few exceptions to this rule, with articles 5 and 6 requiring implementation by 2004 and article 10 by 2006.

In recent years were developed several EU Framework Decisions in the field of criminal justice. This is a marked difference with the situation well into the nineties. Then the EU held the opinion that it did not have the competence to interfere with the criminal justice affairs of the member states. This perspective also applied with respect to the position of victims of crime. When non-governmental organisations for victim assistance applied for possible financial support from Brussels, the answer was invariably negative. The reason given was that they were active in the field of criminal justice and that this was not ‘Europe’s business’. With this background in mind it is remarkable that the Framework Decision on victims eventually belonged to the first generation of Framework Decisions in the area of criminal justice.

How to explain this sudden advance of victims? The heart of the matter is the position of the so-called cross-border victims. At the end of the last century Swedish Euro-commissioner Anita Gradin was convinced that the fate of those victimized in another state than their country of residence differs from those who fall victim in their own country.<sup>3</sup> A cross-border victim does not always speak the language, does not understand the host country’s legal

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1. 2001/220/JHA.

2. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res. 40/34 of 29<sup>th</sup> of November 1985; Recommendation (1985)<sup>11</sup> on the Position of the Victim in the Framework of Criminal Law and Procedure, 28<sup>th</sup> of June 1985; and of later date than the Framework Decision Recommendation (2006)<sup>8</sup> on Assistance to Crime Victims, 14<sup>th</sup> of June 2006.

3. See for Gradin’s role, as well as those of the Portuguese and French governments in the development of the Framework Decision, Rock, P. Constructing victims’ rights; the Home Office, New Labour, and victims Oxford, Oxford University Press, 2004, p. 513.

system and has often returned to his country of origin long before the trial. These specific problems of ‘foreign’ victims were then linked with the classic European freedoms and in particular with the freedom of persons to travel without restrictions (without discrimination based upon nationality) within the European common space. This consideration has been the main driver for European competence in the protection of victims of crime.

But it is not practically feasible to regulate the position of cross-border victims, without paying attention to national victims as well. European standardization of the position of cross-border victims may lead to the situation that cross-border victims enjoy rights not open to nationals, which would again be at odds with the freedoms relating to the European common space. This is the reason that the content of the Framework Decision, although it is in certain ways still explicitly inspired by the phenomenon of cross-border victimization, ultimately applies to all victims of crime.

How does this background of the Framework Decision impact its provisions? We believe the content of the Framework Decision can be characterized in two ways. First: as to *the main theme*, the document is extremely similar to the other previously existing international instruments. Second: concerning the *details*, all the supranational texts differ. Where the differences in details may be mere coincidences in other surroundings, in the case of the Framework Decision they appear to be caused by deliberate choices that follow the national law of the member states. We will elaborate this observation below.

The main theme of the Framework Decision follows the international consensus also evidently expressed by other legal instruments. At its core it includes the following basic rights for victims of crime:

- A right to respect and recognition at all stages of the criminal proceedings (article 2);
- A right to receive information and information about the progress of the case (article 4);
- A right to provide information to officials responsible for decisions

- 
- relating to the offender (article 3);
  - A right to have legal advice available, regardless of the victims' means (article 6);
  - A right to protection, for victims' privacy and their physical safety (article 8);
  - A right to compensation, from the offender and the State (article 9);
  - A right to receive victim support (article 13);
  - The duty for governments to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure (article 10);
  - The duty for the State to foster, develop and improve cooperation with foreign States in cases of cross border victimisation in order to facilitate more effective protection of victims' interests in criminal proceedings (article 12).

The shortest and most accurate summary of the general purpose of the Framework Decision is probably the 8<sup>th</sup> article of its preamble. 'The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.'

As to the details of the different provisions the first point of interest is the phrasing of articles 5 through 7 of the Framework Decision. In these articles, which relate to safeguards for communication (translators), to legal assistance and to reimbursement of expenses incurred due to participation in the criminal procedure, the scope is restricted to 'the victim having the status of witnesses or parties'. This is a meaningful restriction. The United Kingdom insisted on this particular phrasing. The background is that common law systems do not recognize the so-called 'partie civile'. There is no possibility for the injured party to adhere a claim for compensation to the criminal justice procedure, which is a common legal figure on the continent. The



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way the Framework Decision is phrased means that every victim who is not heard as a witness in the court case is deprived of the three procedural rights mentioned. It seems evident that the government of the United Kingdom has insisted on this restriction, expecting that this would diminish the need for substantial changes in their national legislation.

This cautious approach is also evident in other aspects of the Framework Decision. Concerning ‘mediation’ for example, the Framework confines itself to the rather vague instruction that member states ‘shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.’ That offers a lot of leeway. As to the delivery of victim support through non-governmental organisations the Framework Decision decrees that this should be promoted or encouraged (art. 13). Encouragement is also called for in the case of professional education for those who come into contact with victims during the course of the criminal procedure (art. 14). Meeting this criterion will not prove much of a challenge.

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## 1.2 The results: the Commissions' evaluation of 2004

What were the consequences of the Framework Decision after its adoption? We emphasize that the time allowed for implementation was extremely tight. For most provisions transposal into national law was required by March 2002, exactly one year after adoption of the Framework Decision. Bearing in mind the sometimes far-reaching requirements of the Framework Decision, these tight deadlines may not have been very realistic. In any case none of the member states adopted an all-embracing statute in the period 2001-2002 to meet the requirements of the Framework Decision in a systematic fashion. Moreover, although art. 18 of the Framework Decision specifically requires member states to supply a report of 'the measures taken by Member States to comply with the provisions of this Framework Decision,' within one year after its adoption, none of the member states had in fact done so. Only after repeated reminders and a year later did the Commission receive a series of national reports which varied widely in scope and content. The tone of the reports was invariably self-satisfied. All member states expressed the opinion that they met virtually all the requirements of the Framework Decision. The minor shortcomings that were recognized were accompanied by vague promises of further amendments to national legislation.

In March 2004 the European commission report on the compliance with the Framework Decision was published. The report was extremely negative in its assessment. It commences with the observation that member states have a considerable amount of discretion in the transposal of Framework Decision requirements. It is not necessary, for example, that national legislation adopts the same terminology as the Framework Decision. However, after this rather mild opening, the Commission points out serious shortcomings on a large scale. The overall conclusion is that: "No member state can claim to have transposed all the obligations arising from the Framework Decision, and no Member State has correctly transposed the First paragraph of Article 2". The latter is a particularly fundamental charge, because the paragraph mentioned is more or less the root of all other concrete victims' rights: 'Each Member State shall (...) make every effort to ensure that victims are treated

with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.’ The Commission’s overall judgement is then subsequently documented by a long list of more specific shortcomings.

However the Commission’s assessment seems, at least in part, to be hampered by the way that correct implementation of Framework articles is conceptualized and the method by which the Commission has to assess the achievements of member states in this respect. There are three main difficulties that are relevant to note:

- First of all, there is no **clear, formalised fact-finding procedure** in place, at the European level. The member states submit a report, but the Commission does not have the option to verify its veracity. In addition the Commission does not have the possibility to request follow-up information concerning the reports. As a consequence the Commission has a strong tendency to rely completely on the literal text of the formal legislative provisions the member states supply. This means that the Commission’s evaluation more or less entirely focuses on transposal of Framework articles into national legislations. This implies that the Commission can not review the actual practice existing in the various countries and can not consider provisions of material law, which are not laid down in formal law. An example of the latter is the Dutch prosecutorial guidelines. The regulations contained in these instructions are publicized, have external effects and are acknowledged by our Supreme Court as being part of ‘the law of the land’ in the sense of art. 79 of the Judicial Organisation Act.
- The content of many of the norms in the Framework Decision are **phrased** in such an ‘**open**’ fashion that it is hard to ascertain whether a member state fulfils the obligation or not. An example is art 8 paragraph 1 of the Framework Decision ensures ‘a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that

there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.’ But what level of protection of the victims’ physical safety meets the standard of being suitable? Again this requirement seems to be focused on the development of formal legislation. And its background seems to relate to threatening situations of organized crime. A legal provision protecting threatened witnesses will probably lead to the conclusion that the implementation meets Framework Decision requirements. However this means that the actual safety of victims is not ascertained at all. Consider for example the large group of victims of domestic violence who regularly contact the police because of imminent and serious threats by their partners (compare Groenhuijsen, 2006).<sup>4</sup>

• The final problem concerning implementation is due to the **peculiar character** of this Framework Decision. If one reviews the current list of Framework Decisions in the field of criminal justice it is quite obvious that most of their topics are relatively small, confined subjects.<sup>5</sup> Notwithstanding their importance, but their content is clearly demarcated, which allows member states to meet their requirements with the introduction of a small number of legislative provisions, which mostly have a clearly prescribed content. See for example the Framework Decisions regarding protection against euro counterfeiting (2000/383/JBZ), on money laundering (2001/500/JBZ), on combating trafficking in human beings (2002/629/JBZ) and even in the case of the European Arrest Warrant (2002/584/JBZ). The Framework Decision on victims is of a completely different nature. It contains provisions that affect large portions of the Code of Criminal Procedure. Implementation therefore does not only require the introduction of a number of legislative provisions, but also careful reflection on the entire criminal procedure.

4. Compare Groenhuijsen, M.S. De kaderbesluiten van de Europese Unie op het gebied van het strafrecht; stand van zaken en een blik op de toekomst In: M.J. Borgers e.a. (red.), 2006, p. 225-241

5. E.g. Borgers, M.J., F.G.H. Kristen e.a. Implementatie van kaderbesluiten. Nijmegen, Wolf Legal Publishers 2006

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### 1.3 Project ‘Victims in Europe’

To supplement the Commission’s own efforts in gauging the progress of Member States in fulfilling the requirements of the Framework Decision, the umbrella organisation of victim services in Europe, Victim Support Europe developed the current research project. The project is carried out in partnership by the Portuguese Victim Support Organisation APAV, which was also designated project-leader on behalf of Victim Support Europe, and the Dutch research institute Intervict, affiliated with Tilburg University.

The project aims to review the implementation of the Framework decision in a comprehensive fashion. It consists of three components.

- *Legal implementation.* Where the Commission’s own evaluation, almost by necessity, is restricted to *transposal* of framework articles into formal law the project aims to review *compliance* of Member States’ legal systems with the framework articles. This means including guidelines and protocols that are law in a material, but not in a formal sense. Moreover the methodology developed in the project allows for comparison of the fashion in which member states comply with Framework articles, which allows further understanding of the way that the ‘open’ phrasing of the articles is interpreted by them. Finally the methodology, if repeated, allows the development of victims’ rights across the Union to be monitored.
- *Organisational implementation.* Implementation of a number, if not most, of the Framework articles will only be fully realized if the legal framework is matched with sufficient organisational capacity. A law transposing article 13, relating to victim support organisations, may be a paper exercise, if this is law is not backed by sufficient financial support for an actual victim support organisation to exist and adequately fulfil its tasks. For article 4, on information to victims, to be effective it is not sufficient that this information is available somewhere, but that it actually reaches victims. A survey aimed at gauging this organisational implementation in the 27 member states of the Union was undertaken.

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- *Measures of impact.* If the intention of the Framework Decision is to ensure that ‘each member state shall make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings’ the final test is whether victims throughout actually perceive that their treatment is respectful. Are they satisfied with their treatment by criminal justice organisations? Did they receive sufficient information and support? Evidence of this type is not available in all countries, a proxy for this is the opinion of experts throughout the European Union concerning the impact of legal provisions and that we could assess through the questionnaires developed.

This project promoted by APAV, on behalf of Victim Support Europe, had the special participation, as partners and members of the project core group: Victim Support Europe, InterVICT (The Netherlands); Weisser Ring (Germany); Bílý Kruh Bezpečí (Czech Republic) and Victim Support Malta (Malta). Project Victims in Europe had also 12 member organisations from Victim Support Europe as partners, namely: Fehér Gyuru Közhasznú Egyesület (Hungary); Victim Support Scotland (Scotland); Brottsofferjourernas Riksförbund (Sweden); Victim Support Northern Ireland (Northern Ireland); Steunpunt Algemeen Welzijnswerk (Belgium); Pomoc Obetiam Násilia (Slovakia); Weisser Ring Austria (Austria); Supporting Victims of Crime and Combating Corruption Foundation (Bulgaria); INAVEM (France); Slachtofferhulp Nederland (The Netherlands); Victim Support England & Wales (England); Victimology Society of Serbia (Serbia).



## **2. Methodology**

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# 2. Methodology

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## 2.1 Introduction

This chapter covers the methodology of the surveys into the legal and organisational implementation of the Framework Decision. Section 2.2 and 2.3 discusses the questionnaire covering the legal and organisational implementation. In section 2.2.1 and 2.3.1 the development of the questionnaires is discussed and an outline of the questionnaires is given. Section 2.4 details the experiences in the collection of the data from the experts across the European Union. It will become apparent that the data from different experts from the same member states regularly conflicted with each other. This may well reflect real differences in the interpretation of the legal system in jurisdictions or the possibility that different (legal) practices are in place in a member state, for example in the countries that have a federal structure. However it is also possible that the differences are due to varying interpretations of the questions in the questionnaire, difficulties in understanding English legal terminology and/ or unfamiliarity with some of the issues covered in the Framework Decision. The section will therefore be concluded with an outline of the activities undertaken to reduce inconsistencies caused by varying interpretations.



## 2.2 Legal questionnaire

### 2.2.1 Development and outline questionnaire

The questionnaire covers the whole of the Framework Decision. We will forego a complete description of the questionnaire at this point, the relevant distinctions and categorizations will be discussed throughout chapter 3, in the description of the results.

The question wording is based on Brienen and Hoegen's standard work 'Victims of crime in 22 European Countries' from 2000. Their research was based on Recommendation R85(11) of the Council of Europe, that to a large extent covers the same subjects as the Framework Decision. It should be noted though that it offers more possibilities for the defining of coherent and unambiguous standards and relevant classifications. These classifications constitute the analytical framework in Brienen and Hoegen's work and we adopt the same fruitful approach.

An example of this added value is the way the questionnaire probed the measures in place for the treatment of vulnerable victims. The Framework Decision states that 'Each Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.' In Brienen and Hoegen's work a variety of possible avenues for reaching this goal are explored. For example there is the questioning of child-witnesses, which is covered by question 13:

*13. According to the law in your country how is the questioning of child-witnesses supposed to be conducted, both during the investigation and trial phase? (More than one answer possible)*

- *No special attention is paid to this matter*
- *This is up to the discretion of the individual examiner*
- *This type of questioning should be performed by specially trained police officers*
- *Measures have been taken at the level of prosecution and court to alleviate the*

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*burden for young victims*

- *This type of questioning should always take place in the presence of a trusted adult*
- *This type of questioning can take place in a child-friendly environment*
- *This type of questioning can take place through a live television-link*
- *The video-recording of earlier questioning is allowed to be used as evidence in court*

This question provides more than insight into the question whether Member States are treating child-witnesses in a specific fashion, but, in addition shows the manner in which they go about reaching that goal.

## 2.3 Organisational implementation questionnaire

### 2.3.1 Development and outline questionnaire

The organisational implementation questionnaire aimed to gather information on the practice and effectiveness of measures designed to implement the Framework Decision's provisions. With this objective key actors with an informed opinion about this subject were contacted.

The organisational questionnaire follows the order of the Framework Decision. For that end, thirteen categories of close-end questions were developed and measured through a five-point scale in which (1) is completely disagree and (5) completely agree. For example, in the article 2 “Respect and Recognition”, we asked:

*To what extent do you agree with the following statements:*

- *Most victims in my country consider the role they have in the criminal justice system to be appropriate*
- *Most victims in my country feel adequately recognized by the professional personnel in the criminal justice system*

An overview of the questions put to the experts across the European Union is contained in table 2.1.

*Table 2.1 | The relationship between the Framework Decision the Questionnaires*

Framework Decision Article	Question topics in the legal implementation questionnaire	Question topics in the organisational questionnaire
1. Definition Victim	1. Scope of definition of victim	
2. Respect and recognition	2. Definition vulnerable victim	1. Victims' role in the criminal justice system
	3. Specific treatment during the investigation phase	2. Victims recognition
	4. Specific treatment during the trial phase	
3. Right to be heard	5. Information relating to compensation	3. Victims' awareness concerning the possibility to be heard or provide evidence
	6. Availability of free assistance for information provision	4. Police contact after the complaint
	7. Right to private prosecution	5. Prosecutors contact after the complaint
	8. Conditions for subsidiary right for private prosecution	
	9. Right to appeal for a review concerning non-prosecution decision	
	10. Authority conducting this review	
	11. Right to appeal court's verdict	
3. Questioning	12. Repetitive questioning	6. Questioning by criminal justice authorities
	13. Questioning child-witnesses	7. Questioning by criminal justice authorities and the victims' participation in the criminal justice system
	14. Questioning mentally disabled victims	
	15. Questioning cross-border victims	
	16. Questioning victims of domestic/ sexual violence at the level of the police	
	17. Questioning victims of domestic/ sexual violence at the level of the judicial authorities	
4. Right to receive information	18. Level of state responsibility for information provision	8. Type of services or organisations to ask for support
	19. Specification of information dissemination	9. Type of support
	20. Policy duty to provide information	10. Report an offence
	21. Information relating to outcome police investigation	11. Criminal proceedings
	22. Information relating to prosecution decision	12. Conditions to obtain protection
	23. Types of victims to which information in question 22 is provided	13. Access to legal advice or legal aid
	24. Information on place and date of court hearing	14. Compensation
	25. Information on outcome of case	15. Special arrangements for victims resident in another Member State
	26. Information on release of offender	16. Outcome of the Report
		17. Awareness of rights after a first contact with the police officers
		18. Awareness of rights after a first contact with the vs workers
		19. Level of information provision from the State
		20. Level of information provision from NGO and/or civil society
		21. Time to provide information by justice authorities
5. Communication safeguards	27. Measures for reducing communication difficulties	22. Measures for reducing communication difficulties and their efficiency
	28. Victims eligible for these measures	23. Particular characteristics of the victims in questioning
6. Specific assistance	29. Availability free legal aid	24. Comparable measures for victims and offenders
		25. Awareness to receive free of charge legal aid when partie
		26. Adequacy and efficiency of the advice and legal aid provided free of charge
		27. Access to the legal aid
7. Victims expenses in criminal proceedings	30. Eligibility victims for repayment of expenses	28. Awareness of the victims to receive reimbursement
	31. Responsibility for payment of these expenses	29. Procedure to apply for reimbursement
		30. Time taken to reimburse victims
		31. Resources available for the reimbursement of expenses
		32. Adequacy of the expenses reimbursement
		33. Payment up-front
8. Protection	32. Hearings in camera	34. Police protection
	33. Limits on disclosure of victims personal information	35. Privacy assurance
	34. Restrictions on press coverage	36. Protection from the media
	35. Physical protection measures	37. Protection regarding the contact with the offender
	36. Availability separate waiting area's	
	37. Status injunction/ protection order	
	38. Sanctions against threatening behaviour	

9. Compensation in the course of criminal proceedings	40. Influence of payment of compensation on sanctions offender	38. Compensation adequacy
	41. Availability adhesion procedure	39. Time taken for compensation and victims needs
	42. Status compensation through the adhesion procedure	40. Awareness of the victims to ask for compensation
	43. Enforcement of payment of compensation through the adhesion procedure	41. Simplicity of the request
	44. Availability compensation order	
	45. Status compensation through the compensation order	
10. Penal mediation	46. Enforcement of payment of the compensation order	
	47. Suitable offences	42. Awareness of the victims regarding penal mediation
	48. Consequences for criminal proceedings	43. Accessibility to the penal mediation procedure
	49. Authority responsible for referral to mediation	44. Independent advice
11. Cross-border victims	50. Role of victim support in mediation	
	51. Accepting complaints for crimes committed abroad	45. Suitable procedures
		48. Appropriate support
		49. Cooperation between Member States
		50. Role of the State
		51. Procedures to report a complaint
13. Victim support organisations	52. Existence and position of victim support organisations	52. Funding
	53. Level of cooperation between victim support and the police	53. Access to Victim Support Organisations
		54. Adequacy of Victim Support Services and Victims Needs
		55. Sufficiency of the support provided
14. Training criminal justice personnel	54. Availability of training for police officers	56. Knowledge to deal with the victims
	55. Evaluation effects of this training	57. Resources available
	56. Availability of training for judicial authorities	58. Training programmes for police officers
	57. Evaluation effects of this training	59. Training programmes for legal practitioners

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## 2.4 Method of contacting respondents

### *Rationale, method and activities to reach respondents*

As mentioned before, the Commission's own evaluation report on the implementation of the Framework Decision suffered a number of shortcomings. One of the most important problems was that the European Commission was entirely dependent on the contributions of the Member States to learn about the manner in which they had transposed the Decision into their national legislation. The Commission neither had the possibility to check the accuracy of the reports, nor the opportunity to ask additional questions. Another obstacle was that those who were responsible for drafting the national reports were also the ones who were responsible for implementing the Decision, a situation that might have a bearing on the impartiality of the information provided.

To remedy these shortcomings the research team included in the legal implementation at least three experts per Member State to fill out the legal implementation questionnaire. For the organisational questionnaire it was established a minimum of 5 answers. This allows for comparison between state and non-state experts, thereby enhancing the reliability of the information.

The first step in contacting the experts was to draw up an extensive database of people who could be considered sufficiently knowledgeable on national laws and the standing of victims within their criminal justice system. Next to representatives of the Ministry of Justice, the Ministry of Internal Affairs, the criminal courts, the police and the law department of universities, the database also included employees of various NGOs that provide services to victims. Subsequently, a template e-mail explaining the purpose of the research and containing the link to the digital questionnaire was sent to this selection of experts. Efforts were made to single out a specific contact person instead of sending the questionnaires to general e-mail addresses, thereby enhancing the odds of getting a reply. Four weeks after the initial request a reminder was sent through e-mail. This method alone was effective in gene-

rating enough responses for some of the Member States. Lithuania, the United Kingdom, Finland and Italy are examples of Member States where three responses were obtained without further encouragement.

For the other Member-States, the digital invitations to partake in the questionnaire were succeeded by follow-up calls intended to entice sufficient experts – preferably one more than strictly necessary - to commit themselves to answer the questionnaire. If an expert from one organisation consented to fill out the questionnaire, the research team refrained from making similar requests to experts working for the same organisation. This was done in order to prevent answering patterns, to make sure that there would be a certain dispersal of answers over the various disciplines (e.g. ministry of justice, university and NGO) and to avoid overburdening one organisation. Furthermore, special efforts were made to ensure that at least the Ministry of Justice was represented in the sample.

Despite these attempts, the data collection process was cumbersome and at this moment some Member States still lack the required amount of three answers. In addition to the aforementioned measures, the members of the research team have used their personal resources, i.e. the personal and direct contacts that they have established throughout their career.

#### *Results in terms of response of contacting respondents*

Over the course of the project, the research team was able to gather 97 responses to the legal questionnaire. Table 2.2 provides a breakdown of the member states replies.

*Table 2.2 | Number of respondents by Member State*

Country	Number of Respondents
Austria	4
Belgium	4
Bulgaria	3
Czech Republic	3
Cyprus	2
Denmark	3
Estonia	3
Finland	5
France	2
Germany	3
Greece	2
Hungary	4
Italy	5
Ireland	2
Latvia	2
Lithuania	4
Luxembourg	3
Malta	2
Netherlands	3
Portugal	9
Poland	4
Romania	3
Slovakia	3
Slovenia	5
Spain	4
Sweden	2
United Kingdom	8
Total number of respondents	97

For the organisational implementation questionnaire the research team gathered a total of 218 answers. The countries with the higher number of answers were Portugal (N=28), United Kingdom (N=16), Belgium (N=16), Italy (N=15), Spain (N=13), Germany and Ireland (N=11).



*Table 2.4 | Number of respondents per EU Country*

Country	Number of Respondents
Austria	5
Belgium	16
Bulgaria	8
Czech Republic	4
Cyprus	4
Denmark	4
Estonia	6
Finland	6
France	6
Germany	11
Greece	5
Hungary	6
Italy	11
Ireland	15
Latvia	3
Lithuania	7
Luxembourg	7
Malta	5
Netherlands	4
Portugal	28
Poland	6
Romania	6
Slovakia	5
Slovenia	5
Spain	13
Sweden	6
United Kingdom	16
Total number of respondents	218

Most of the experts that answered the organisational implementation questionnaire were from the Civil Society (N= 104), followed by Public Bodies (N=48), Research Sector (N=31), Judicial Sector (N=20) and Criminal Investigation (N=10).

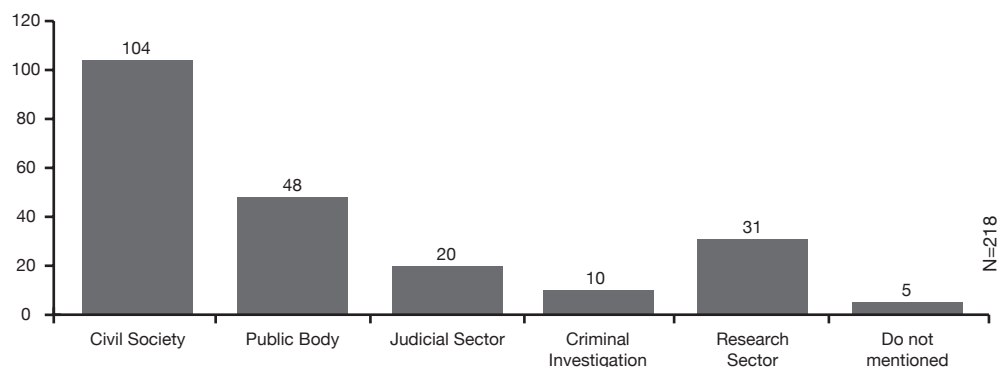
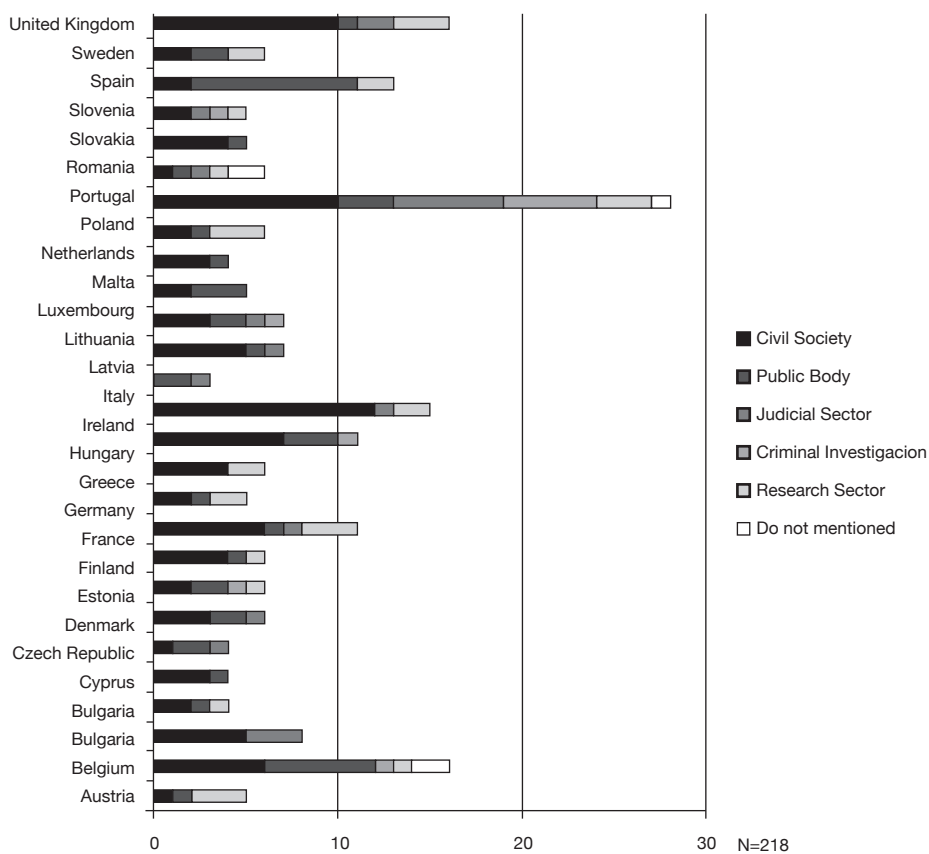
*Image 1 | Number of answers per Type of organisation*

Image 2 allows us to see in detail which type of organisation, per country, answered the organisational implementation questionnaire.

*Image 2/ Type of organisation per EU Country*



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*Assessing and correcting divergence in answers*

As mentioned above, in the legal questionnaire it was foreseen that for each country three experts should answer the survey questionnaire. This enhances the quality and reliability of the questionnaire answers, providing the respondents answering the question have the same understanding of the questions in the questionnaire. However, during the project it has become apparent that the understanding varies between respondents. In a number of instances it was clear that respondents misunderstood the questions. There were cases where the respondents provided answers to the open-ended questions that contradicted the answers to the closed-ended questions. The answers to the open-ended questions, particularly if legal information was included, was taken to represent the actual situation in the member state. For instance in response to the closed-ended questions many respondents stated that the police are obliged to accept complaints for crimes committed abroad. However in most cases where the experts provided additional open-ended information they noted the necessity of jurisdiction of their own country. This however does not concur with the text of the relevant framework article. Article 11(2) explicitly states that this should also be possible for crimes in which in the member state does not have competence itself. Finally external sources were reviewed. Academic articles, legislation and reviews of legal practice were incorporated into the database.

This is not a problem that is restricted to this study. In fact, after reviewing the various assessments of the victims' legal position (including the European Commission's most recent evaluation of the Framework Decision, the study by the Centre for the Study of Democracy with professor Andrew Sanders and studies by the Council of Europe and other agencies like the OSCE that covered some of the same topics) we can not but conclude that this problem is difficult to overcome. Of course, conducting comparative studies in the legal field is always a complicated endeavour, as slight differences in the meaning and interpretation of words may have far-reaching consequences. However we find that the difficulties are particularly pronounced in the field of victim issues within criminal justice. This is striking, because due to their relatively

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minor position within criminal justice procedures, the position of victims in most jurisdictions is fairly straightforward. For instance, most codes of criminal procedure contain only a small number of provisions which relate to the position of victims.

We find the difficulty in obtaining adequate data concerning the victims position in criminal justice across Europe to be an important finding in and of itself. It signals the unfamiliarity with victims' issues and rights that still exists in many jurisdictions and the relatively low priority that their plight occupies.

## 3. Results

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# 3. Results

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## 3.1 Introduction

This chapter discusses the results of the project. For each of the Framework Decision articles the main findings are presented. The chapter follows the structure of the Framework Decision. Articles are discussed in the same order as contained in the Framework document. For each article the results of the legal and organisational questionnaire are discussed.

## 3.2 Article 1: Definition of victim

### 3.2.1 The scope of the term victim

Article 1 of the Framework Decision contains the definitions of key concepts used. A highly important one is the definition of victim. According to the Framework Decision *‘victim’ shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.*

Other international legal instruments expand this, with the Council of Europe Recommendation Rec 2006(8) stating that ‘the term ‘victim’ also includes, where appropriate, the immediate family or dependents of the direct victim’ and the 1985 UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power includes ‘persons who have suffered in intervening to assist victims in distress or to prevent victimization’. The latter category is often referred to as first responders.

Although the matter of the definition of the term victim may seem relatively straightforward at first glance, the answers of the respondents showed that this is a more complicated matter. First of all, not all jurisdictions, have a legal definition of victim, but instead grant rights to, for instance ‘the injured party’ of a crime. Moreover the inclusion of others than the direct victim in legislation concerning victims does not necessarily effect the definition of

victims. Instead it may be stated in legislation that the provisions apply not only to the direct victim, but to others as well. It is our opinion that where victim provisions apply to others than the direct victim they effectively reside under the scope of the victim definition, but some of the respondents were of a different opinion. Finally the expansion of the term victim may only apply to certain provisions, for instance criminal injuries compensation or in certain instances, for instance when the direct victim is deceased as a consequence of the crime.

The respondents of the legal questionnaire were asked whether the parents, the children, other family members, the same sex partner of the victim and first responders were included under their definition of the term victim. Table 3.1 contains the results.

*Table 3.1/ The scope of the term ‘victim’*

<u>Member State</u>	<u>Parents</u>	<u>Children</u>	<u>Other family members</u>	<u>Same sex partners</u>	<u>First responders</u>
Austria	1	1	1	1	0
Belgium	1	1	1	1	0
Bulgaria	1	1	1	1	1
The Czech Republic	1	1	1	1	1
Cyprus	1	1	1	0	0
Denmark	0	0	0	0	0
Estonia	1	1	1	1	1
Finland	1	1	1	0	1
Germany	1	1	1	1	1
Greece	1	1	1	0	1
Hungary	1	1	1	1	1
Ireland	1	1	1	1	1
Italy	1	1	1	1	1
Latvia	1	1	1	0	0
Lithuania	1	1	1	0	1
Luxembourg	1	1	1	1	1
Malta	0	0	0	0	0
The Netherlands	1	1	1	1	0
Poland	1	1	1	0	0
Portugal	1	1	0	0	0
Slovakia	0	0	0	0	0
Slovenia	0	0	0	0	0
Spain	1	1	1	1	0
Sweden	1	1	1	1	0
United Kingdom	1	1	1	1	0

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### 3.2.2 Conclusions

The differences of opinion concerning the interpretation of the scope of the term ‘victim’ complicate a comparison between member states. It seems likely that the experts from Denmark, Malta, Slovenia and Slovakia interpreted the definition in a strict fashion.

In the other member states the closest family members are included in the term victim, according to the experts. In some of the countries (Cyprus, Finland, Greece, Latvia, Lithuania, Poland and Portugal) this does not apply to the same-sex partner of the direct victim. This may well reflect the standing of same-sex unions in these member states. First responders are included in Bulgaria, the Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania and Luxembourg.

## 3.3. Article 2: Respect and recognition

### 3.3.1 Introduction

Article 2 refers to respect and recognition. Fulfilling section 1 of this article implies a correct and complete transposal of all Framework Articles (Groenhuijsen and Pemberton, 2009). This section refers to the overall evaluation of compliance with Framework directives and is therefore not included separately in the legal questionnaire. Section 1 reads as follows:

*Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.*

Section 2 of Article 2 refers to the situation of vulnerable victims. The Framework Decision states:

*Each Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.*



It is clear that this provision may impact the whole process of victim assistance for those victims, who are considered ‘particularly vulnerable’. It is therefore remarkable that the Framework Decision does not breathe a word about the criteria by which member states should decide who is particularly vulnerable. It is completely up to the member states’ discretion to define this concept. We will use the Council of Europe recommendation Rec (2006) 8 as a guide in determining the relevant dimensions of vulnerability.

### 3.3.2 Respect and recognition: organisational implementation

For a general overview concerning the status of the victims’ rights in the criminal proceedings we asked the respondents if, in their country, most victims consider that the role they have in the CJS is appropriate and if they feel adequately recognized by the criminal justice professionals.

Answers were measured on a five-point scale (1 = completely disagree, 5 = completely agree).

*Table 3.2| Overall assessment - Respect and Recognition (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Victims’ role in the CJS	26	12,3	87	41,0	48	22,6	46	21,7	5	2,4	212	100
Victims Recognition	21	10,0	101	48,1	47	22,4	37	17,6	4	1,9	210	100

Most of the experts are negative. 53% finds the victims role in the criminal justice system in their respective countries to be inappropriate, with only 24% finding it adequate. In addition victims are not adequately recognized by criminal justice professionals according to 58% of the experts, with only 20% of the experts taking the view that they are adequately recognized.

### 3.3.3 Some notes on vulnerability

The Recommendation Rec 2006(8) of the Council of Europe, however, does

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provide insight into the concept of vulnerability. Article 3.4 reads ‘States should ensure that victims who are particularly vulnerable, *either through their personal characteristics or through circumstances of the crime*, can benefit from special measures best suited to their situation’ (emphasis added).

There is good reason to follow the Council of Europe in their assessment. Victimological research has shown that the impact of crime on victims depends on three sets of factors. Pre-existing psychological or demographic features of the victim, the severity and circumstances of the crime and the reaction of the social surroundings in the aftermath of victimisation (see Winkel, 1999; Ozer et al, 2003). Moreover the necessity of special treatment in the criminal justice system is related to the risk of secondary victimization in the interaction with criminal justice agencies. Research has shown this risk to be elevated for victims of certain types of crimes (like sexual or domestic violence) or with certain characteristics (like young victims) (see van Mierlo & Pemberton, 2009; Pemberton, 2009). Groenhuijsen and Pemberton (2009) show that the personal characteristics most often invoked in assessing vulnerability are the mental disability or the age of the victim. In most cases the latter refers to children and adolescents. The circumstances of the crime can be taken to mean its severity or the type of crime committed, with victims of domestic or sexual violence often receiving specialised treatment.

#### **3.3.4. The definition of vulnerable victims**

Like the definition of victims in general there is disagreement between experts in the existence of a definition of vulnerability of victims. In some of the legislations the term vulnerability is not used, but the necessity of special treatment of certain categories of victims is acknowledged in legislation. It is our opinion that an explicit definition of vulnerability is not necessary for correct transposal of the article. Instead, reference to special treatment of categories of victims due to their specific needs is sufficient. We have therefore also reviewed the legislation of the member states to see whether they do afford certain groups of victims special treatment, thereby implicitly viewing these victims as vulnerable.

The experts were asked whether the age of the victim, the handicap of the victim and/ or the type of crime committed constitutes grounds for them to be considered vulnerable, i.e. in need of specialised treatment.

The respondents from at least five countries stated that there is no definition of vulnerable victim in their legal system. However, as will be discussed in section 3.4 they all afford child victims special treatment, which implies that they are viewed as vulnerable. These ‘implicit’ definitions of vulnerability are included in table 3.3.

*Table 3.3/ Definition vulnerable victim*

Member State	No vulnerable victim	Age victim	Handicap victim	Type of crime
Austria	0	1	1	1
Belgium	0	1	1	1
Bulgaria	0	1	1	1
Cyprus	0	1	0	1
Czech Republic	0	1	1	1
Denmark	0	1	1	1
Estonia	0	1	1	0
Finland	0	1	1	1
France	0	1	0	1
Germany	0	1	1	1
Greece	0	1	1	1
Hungary	0	1	1	0
Ireland	0	1	0	0
Italy	0	1	1	1
Latvia	0	1	1	1
Lithuania	0	1	1	0
Luxembourg	0	1	0	1
Malta	0	1	1	0
Netherlands	0	1	1	1
Poland	0	1	1	0
Portugal	0	1	0	1
Romania	0	1	1	1
Slovakia	0	1	1	0
Slovenia	0	1	0	1
Spain	0	1	0	1
Sweden	0	1	0	1
United Kingdom	0	1	1	1
Total	0	27	19	20

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### 3.3.5 Conclusions

Transposal of article 2 section 1 of the Framework Decision, which relates to respect and recognition, entails the full transposal of all Framework articles. Therefore the legal questionnaire does not query this topic separately. However the answers of the experts across Europe to the organisational questionnaire suggest that the amount of respect afforded to victims and recognition of the harm they suffered still leaves much to be desired.

As to vulnerability the results show that most member states find mental disability or the type of crime suffered to constitute grounds for special treatment of victims. This concurs with the way the Council of Europe defines vulnerability. In a number of the member states the special treatment may not be accompanied by a definition of vulnerability as such. However it is not hard to argue that what matters most for victims is not the definition of vulnerability but the special treatment that should follow that definition.

## 3.4 Article 3: Right to be heard

### 3.4.1 Introduction

Article 3 deals with the right to be heard for victims of crime. The right to be heard in the criminal justice process can, generally speaking, take two forms. The first is when a victim is summoned to witness in his or her own case (e.g. Herman, 2003). The second is when the victim is allowed to participate in his or her own case, for example by adhering a civil claim, instigating private prosecution or submitting a victim impact statement. Participating in penal mediation also may be seen to be an avenue for the victim's right to be heard. This topic will be considered in the evaluation of article 10 of the Framework Decision.

The main concern with participation as a witness in both the pre-trial and trial phases is the prevention of secondary victimisation. In fact the term

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secondary victimisation was coined to describe the experience of victims being questioned and cross-examined with very little respect for the ordeal they had been through (Campbell et al, 1999, Frazier & Haney, 1996; Temkin, 2002). Attempting to minimize the risk of this happening has implications for the extent, length and repetitiveness of questioning. From the point of view of victims questioning should be kept to a minimum. The Framework Decision acknowledges this in article 3(2) ‘Each Member State shall take appropriate measures to ensure that its authorities question victims only insofar as necessary for the purpose of criminal proceedings.’ In addition, Guideline C.8 of Recommendation (85)<sup>11</sup> on The position of the Victim in the Framework of Criminal Law and Procedure of the Council of Europe, states that ‘At all stages of the procedure, the victim should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity. Whenever possible and appropriate, children and the mentally ill or handicapped would be questioned in the presence of their parents or guardians or other persons qualified to assist them.’ Section 3.4.3 discusses the legal implementation of this framework article.

Participation in the procedure can have benefits for victims. Research shows that many victims feel they are lacking sufficient participation in their case as it progresses through the criminal justice system and this leads to the obvious conclusion that many would prefer a higher level of participation than is currently available (Shapland et al, 1985; Wemmers, 1996).

Nevertheless victim participation is a complicated matter. First of all more participation is not always in victims’ interests and neither can it be said to be true for all victims. The benefits of increased participation from a procedural justice perspective should be offset against the psychological stress that may accompany this increased participation (Orth, 2002). This is most obvious in the situation of victims ‘participating’ as interrogated witnesses, as was noted above. However, also in more victim-friendly forms of participation this factor should be taken into account. Research by Edwards (2004) and Wemmers and Cyr (2004) suggests that given the choice victims prefer the situation where they are allowed input in the process, in the sense of

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having their say, but generally prefer decision-making power in their cases to reside elsewhere. In addition and as Reeves & Mulley (2000) rightly noted, victims should also have the right not to participate. The fact that the state has a responsibility in the apprehension, prosecution and punishment of offenders is of great importance to many victims.

Second it is difficult to compare the usefulness and benefits derived from different forms of participation for victims. For one thing, the precise nature of the participation on offer will for a large part determine its usefulness for victims. In examining victim impact statements for example, one should consider that this class of measures may vary from a written statement that primarily serves a function in awarding compensation to an oral statement that may influence the sentence given to the offender (see Erez, 2004). Moreover the existence of auxiliary measures, like support, advice and information is likely to influence the benefits derived from participation. For example, in recent years the use of the Dutch adhesion procedure has shown a marked increase (see Slachtofferhulp Nederland, 2008). This is not due to any changes in the design of the procedure, but to advances in the levels of support provided in victims who want to initiate this procedure.

In addition research concerning the effectiveness of different methods of victim participation is in its infancy. Pemberton & Reynaers (2010; see also Zech & Rime, 2005) show that the satisfaction surveys that are sporadically undertaken are a poor measure of the usefulness and benefits of participation for victims. This is even more complicated due to recent research (see Winkel, 2007; Lens, Pemberton, Kunst & Groenhuijsen, 2010) that shows that different participatory instruments attract different types of victims.

In sum then, providing victims with participatory instruments can definitely be in their interest. However much depends on the way the instrument is implemented and even then it is difficult or in fact even impossible to compare different instruments that are intended to allow victims to participate. One should keep this in mind while reviewing the results relating to article 3(1) of the Framework Decision, which will be discussed in the following section.

### 3.4.2 Legal implementation Article 3(1)

This section focuses on article 3(1) of the Framework Decision, the victims' right to be heard:

'Each Member State shall safeguard the possibility for victims to be heard during proceedings and to supply evidence.'

Like other articles of the Framework Decision, article 3(1) is phrased in an 'open' fashion<sup>6</sup> that leaves ample room for interpretation. As a result it is hard to ascertain whether a member state fulfils the obligation laid down in the article or not. In order to allow for an assessment of the progress made in the implementation of article 3(1) it was necessary to define more coherent and unambiguous standards. These can serve as fruitful base for comparison. Using Brienen and Hoegen's classifications seven questions (five through eleven) were put to the experts concerning the victim's right to supply the courts with evidence relevant to his or her need for compensation, the right to private prosecution and the right to appeal either the decision to refrain from prosecution or the verdict of the court.

#### *Information concerning the need for compensation*

First of all question 5 refers to information concerning the victim's need for compensation. Brienen and Hoegen classified the jurisdictions they studied into the following categories:

1. The court has no obligation to take into account information concerning the victims' need to compensation
2. Supplying this type of information is a participatory right of the victim or his lawyer
3. Supplying this type of information is a formal duty of the public prosecutor
4. The victim is allowed to provide a Victim (Impact) Statement.

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6 Groenhuijsen & Pemberton (2009).

It is obvious that the victim's right to be heard is poorest in jurisdictions in which the first category applies. Most countries in Brienen & Hoegen's study held the victim responsible for demonstrating and substantiating his need for compensation.<sup>7</sup> In a minority of the jurisdictions this was a formal duty of the public prosecutor and the Victim Impact Statement was only implemented in Ireland and England.

Table 3.4| The right to supply the courts with information relevant to the victims' need for compensation

Member State	No obligation	Participatory right of victim or lawyer	Formal duty of public prosecutor	Victim (Impact) Statement
Austria	0	1	1	1
Belgium	0	1	0	1
Bulgaria	0	1	0	0
Cyprus	1	0	0	0
Czech Republic	0	1	0	0
Denmark	0	1	0	0
Estonia	0	1	0	1
Finland	0	1	1	1
France	0	1	0	0
Germany	0	1	0	0
Greece	0	1	0	0
Hungary	0	1	0	0
Ireland	0	1	0	1
Italy	0	1	0	0
Latvia	0	1	0	0
Lithuania	0	1	0	0
Luxembourg	0	1	0	1
Malta	0	1	0	0
Netherlands	0	1	0	1
Poland	0	1	0	1
Portugal	0	1	1	0
Romania	0	1	0	1
Slovakia	0	1	0	0
Slovenia	0	1	0	0
Spain	1	0	0	0
Sweden	0	1	1	0
United Kingdom: England and Wales	0	1	1	1
United Kingdom: Scotland	0	1	1	1
United Kingdom: Northern Ireland	0	0	0	1
Total	2	26	6	12

Some of the experts in Cyprus and Spain state that their courts are under no obligation to consider the question of compensation, but in both cases there was disagreement among them. Six member states have obliged the public prosecution service to provide this type of information. In accordance with

<sup>7</sup> Brienen & Hoegen, p. 1045.



Brienen & Hoegen the majority of countries (n=26) still rely on the victims themselves to bring their injuries and losses suffered forward in court, either as the only or as an auxiliary means of presenting this type of information. There has been a remarkable increase in jurisdictions that have implemented the Victim Impact Statement in comparison with Brienen & Hoegen. Next to Ireland and England, the countries that have this option available for victims are Austria, Belgium, Estonia, Finland, Luxembourg, the Netherlands, Poland and Romania, see table 3.4. However as the nature of Victim Impact Statements may vary, it is not clear what bearing this finding has on compensation issues.

#### *Private prosecution*

An instrument that ensures that victims are able to be heard in a court of law and to provide evidence is to grant the victim the right to private prosecution. Private prosecution is defined as ‘a prosecution brought by a private individual or organization as opposed to a prosecution brought by or on behalf of the state.’<sup>8</sup> The purpose of the institution of private prosecution is to act ‘as a personal safeguard for the victim against an arbitrary decision of the authorities to dismiss his case or to refuse to undertake any action.’ The option to private prosecution is therefore explicitly laid down in Recommendation (85) as an alternative to a review by a competent authority of a decision not to prosecute.<sup>9</sup>

8 Brienen & Hoegen, p. 1063.

9 Guideline B.7.

10 In certain jurisdictions, for example the United Kingdom the prosecutor still has the right to take over a subsidiary private prosecution and to discontinue it if they find insufficient evidence to support the charge.

11 Brienen & Hoegen, p. 1063.

Two sorts of rights to private prosecution can be discerned, namely the exclusive right to private prosecution – where the offence in question can only be prosecuted by the private individual and not by a public authority - and the subsidiary right to private prosecution – where the public prosecutor is in principle authorized to start public action, but where a private prosecution may be initiated in case the public prosecutor refrains from doing so.<sup>10</sup> In general, exclusive private prosecution is only applicable to offences with a relatively minor public interest to prosecute, such as libel or defamation.<sup>11</sup>

Table 3.5/ The right to private prosecution

Member State	No right to private prosecution	Exclusive right to private prosecution	Subsidiary right to private prosecution	Exclusive and subsidiary right to private prosecution
Austria	0	0	0	1
Belgium	1	0	0	0
Bulgaria	0	0	0	1
Cyprus	0	0	0	1
Czech Republic	0	0	1	0
Denmark	1	0	0	0
Estonia	1	0	0	0
Finland	0	0	1	0
France	0	0	1	0
Germany	0	0	1	0
Greece	1	0	0	0
Hungary	0	0	0	1
Ireland	0	0	0	1
Italy	0	0	1	0
Latvia	0	1	0	0
Lithuania <sup>12</sup>	0	1	0	0
Luxembourg	0	0	1	0
Malta	1	0	0	0
Netherlands	1	0	0	0
Poland	0	0	0	1
Portugal	0	0	1	0
Romania	0	0	0	1
Slovakia	1	0	0	0
Slovenia	0	0	0	1
Spain	0	0	1	0
Sweden	0	0	0	1
United Kingdom	0	0	0	1
Total	7	2	8	10

The overall picture is that most member states do have a subsidiary right to private prosecution in place (18) often combined with an exclusive right to private prosecution (10 out of 18). Only 7 member states report that the victim does not have a right to private prosecution and 3 member states rely on exclusive private prosecution only.

On inspecting the results of the questionnaire and comparing them to Brienen & Hoegen's outcomes, there are some noteworthy discrepancies. Where the Danish and Maltese experts in our current study deny the existence of any form of private prosecution in their respective countries, Brienen & Hoegen found that in Denmark and Malta there is in fact a form of private prosecution in place, namely *exclusive* private prosecution.<sup>13</sup> Another remarkable difference concerns Belgium, where all the experts in the current survey de-

12 The Lithuanian experts disagreed on this issue, there may be a subsidiary right to private prosecution.

13 In Denmark there is exclusive private prosecution possible for certain offences (p.217) and in Malta private prosecution can be initiated on two conditions: 1) the offence has to fall within the jurisdiction of the magistrate's court and 2) the offence cannot be prosecuted except on the complaint of the injured party (p.621).

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nied the existence of private prosecution in their country while Brienen and Hoegen found to have a subsidiary right to private prosecution. According to ‘Victims of Crime’, a Belgian victim can file a complaint and constitute himself as civil claimant before the examining magistrate (‘plainte avec constitution de partie civile’) who is then obliged to open a judicial investigation. The judicial investigation may be followed by standard criminal proceedings. The examining judge and the public prosecutor are in charge of these proceedings and may decide whether or not to proceed with the prosecution. The question here is whether the Belgian system would fall under the definition of private prosecution. Does the right to bring a case before an examining magistrate classify as private prosecution considering the fact that the decision to prosecute or not ultimately still lies in the hands of the public prosecutor? Clearly, the experts do not believe this to be the case.

*Right to review the decision not to prosecute*

Guideline B.7 of the Council of Europe Recommendations (85)<sup>11</sup> proposes an alternative for private prosecution. Victims should have the right to file for a review by a competent authority of a decision not to prosecute. The Guideline shows no preference for either a right to review or a right to private prosecution, so countries are free to adopt whatever measure they prefer, but it is important that at least one of these options is in place.

Although Guideline B.7 is phrased in a manner that makes the right to a review and the right to private prosecution seem equal alternatives, it is argued that the right to review is a better safeguard of the right to challenge a prosecutorial decision.<sup>15</sup> As we discussed in the previous paragraph, the right to private prosecution is often limited to (minor) offences and usually requires certain conditions to be met, such as permission of the court or a prior attempt at reconciliation. Neither of these restrictions apply to the right to review non-prosecution decisions.

The review of the decision not to prosecute can be carried out through a non-institutionalized procedure. This means that, although the right to a review

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<sup>15</sup> Brienen & Hoegen, p. 16.

is not officially recognized, a practice has developed to grant the victim a chance to challenge the decision and to have the initial decision reconsidered. In this version, the victim is dependent of the benevolence of the authorities and – in contrast with an institutionalized review – has no options to oblige the authorities to undertake the review. When an institutionalized review is in place, the procedure is laid down in legislation or in guidelines, implying that that the review is considered a right of the victim instead of a service by the decision making authorities.<sup>16</sup>

*Table 3.6/ The right to review a decision not to prosecute*

Member State	No right to review	Non-institutionalized review	Institutionalized review
Austria	0	0	1
Belgium	1	0	0
Bulgaria	0	0	1
Cyprus	1	0	0
Czech Republic	0	0	1
Denmark	0	0	1
Estonia	0	0	1
Finland	0	0	1
France	0	0	1
Germany	0	0	1
Greece	0	0	1
Hungary	0	0	1
Ireland	1	0	0
Italy	0	0	1
Latvia	0	0	1
Lithuania	0	0	1
Luxembourg	1	0	0
Malta	1	0	0
Netherlands	0	0	1
Poland	0	0	1
Portugal	0	0	1
Romania	0	0	1
Slovakia	0	0	1
Slovenia	1	0	0
Spain	0	0	1
Sweden	0	0	1
United Kingdom	0	0	1
Total	6	0	21

In 6 member states, the respondents indicated that no right to review exists. A majority of the member states (21) have an institutionalized review in place.

<sup>16</sup> Brienens & Hoegen,  
p. 1064.

### 3.4.3 Article 3: Questioning

#### *Repetitive questioning*

Statements of the victim and the evidence he produces are, as a rule, critical during the processing of the case. Unfortunately this frequently leads to an instrumental view of the victim.<sup>17</sup> Precisely because the victim is essential to the investigation of the case and the furnishing of proof, treatment of the victim during the process of questioning easily leads to the practice of questioning victims without regard for their personal situation and dignity. The instrumental perception of the victim may also result in the practice of repeated questioning. According to Brienens & Hoegen repetitive questioning should be reduced to an absolute minimum. To achieve this, 'the first hearing of the victims should, in principle, be as thorough as possible and conducted in a manner that does not anticipate further questioning at a later date.'<sup>18</sup>

Both the Framework Decision and Guideline C.8 of Recommendation 85(II) address the manner of questioning, but remain silent on the frequency of questioning. Nevertheless, repetitive questioning of victims is a widely and well-recognised source of secondary victimization. Secondly, the frequency of questioning is critical to the victim's perception of the criminal proceedings and to his willingness to cooperate with the judicial authorities in the future.<sup>19</sup> Therefore, in accordance with Brienens & Hoegen, a question regarding repetitive questioning was added to the questionnaire. The experts were asked whether restrictions on repetitive questioning apply, and if so whether they apply to all victims or only to certain types of victims.

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17 Brienens & Hoegen p. 16.

18 Ibid.

19 Brienens & Hoegen  
p. 1108.

*Table 3.7/ Limits on repetitive questioning*

Member State	No limits	Repetitive Questioning is limited for all victims	Repetitive Questioning is limited for certain vulnerable victims
Austria	0	0	1
Belgium	1	0	0
Bulgaria	1	0	0
Cyprus	1	0	0
Czech Republic	0	1	0
Denmark	1	0	0
Estonia	1	0	0
Finland	0	0	1
France	0	0	1
Germany	1	0	0
Greece	1	0	0
Hungary	1	0	0
Ireland	1	0	0
Italy	0	0	1
Latvia	0	0	1
Lithuania	0	0	1
Luxembourg	0	0	1
Malta	1	0	0
Netherlands	0	0	1
Poland	0	0	1
Portugal	0	0	1
Romania	1	0	0
Slovakia <sup>20</sup>	1	0	0
Slovenia	1	0	0
Spain	1	0	0
Sweden	0	0	1
United Kingdom	1	0	0
Total	15	1	11

The main outcome of the research shows that in a large number of countries (n=15) there are no limits on repetitive questioning in the pre-trial and trial stages. However, in repetitive questioning is limited for certain vulnerable victims in Finland, France, Sweden, Italy, Portugal, Poland, The Netherlands, Luxembourg, Lithuania, Latvia and Austria. In all these member states vulnerable victims include children. Furthermore at least France, The Netherlands and Luxembourg also acknowledge victims of sexual violence as vulnerable victims. The Czech Republic is the only member state that reports that repetitive questioning is limited for all victims.

### *Questioning of child-victims*

The awareness of the need to adapt normal questioning methods when conducting the questioning of children is present in all the member states. Chil-

<sup>20</sup> The Slovakian respondents provided diverging answers, it may be that repetitive questioning is limited for certain groups of victims.

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dren are, as a rule, treated and questioned with more consideration than other victims. Nevertheless, the manner in which children are questioned varies substantially.

Brienen and Hoegen categorize the possibilities for questioning of children as follows:

- No special attention is paid to this matter
- This is up to the discretion of the individual examiner
- This type of questioning should be performed by specially trained police officers
- This type of questioning should always take place in the presence of a trusted adult and/ or this type of questioning can take place in a child-friendly environment
- This type of questioning can take place through a live television-link and/ or the video-recording of earlier questioning is allowed to be used as evidence in court

In certain jurisdictions, the consideration for the special needs of child-witnesses depends on the discretion of the individual examiner (Malta, Poland and Spain). The majority of the jurisdictions (n=20) have introduced special training programmes for the police to be able to question children in accordance with their needs.

As stated in guideline C.8, authorities are expected to give special consideration to the personal situation of children and as is expressed in the guideline, the presence and assistance of a person of confidence is a way to achieve this. Similarly the creation of a child-friendly environment can contribute significantly to the improvement of the manner of questioning.<sup>21</sup> A child-friendly environment allows the authorities to question child-witnesses under the best possible circumstances. One or both of these options are available in all member states. To relieve the burdening of court appearances a closed circuit television link or video-registration of the pre-trial questioning can be used as evidence in the court in almost all the jurisdictions, the exceptions being Romania, Bulgaria and Italy. Table 3.8 provides an overview of the results.

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<sup>21</sup> Brienen & Hoegen, p. 1113.

*Table 3.8/ Questioning of child-witnesses*

Member State	No special attention	Discretion of individual examiner	Performed by specially trained police officers	Trusted adult present and/ or a child-friendly environment	Television-link, and/ or video recording
Austria	0	0	1	1	1
Belgium	0	0	1	1	1
Bulgaria	0	0	1	1	0
Cyprus	0	0	0	1	1
Czech Republic	0	0	1	1	1
Denmark	0	0	1	1	1
Estonia	0	0	1	1	1
Finland	0	0	1	1	1
France	0	0	1	1	1
Germany	0	0	1	1	1
Greece	0	0	0	1	1
Hungary	0	0	1	1	1
Ireland	0	0	1	1	1
Italy	0	0	1	1	0
Latvia	0	0	1	1	1
Lithuania	0	0	1	1	1
Luxembourg	0	0	1	1	1
Malta	0	1	0	1	1
Netherlands	0	0	1	1	1
Poland	0	1	1	1	1
Portugal	0	0	0	1	1
Romania	0	0	0	1	0
Slovakia	0	0	1	1	1
Slovenia	0	0	1	1	1
Spain	0	1	0	1	1
Sweden	0	0	1	1	1
United Kingdom	0	0	1	1	1
Total	0	4	20	27	24

*Questioning of victims with mental disabilities*

Besides children, guideline C.8 makes a special reference to mentally ill or handicapped persons. Again Brienen and Hoegen categorize the possibilities for questioning victims with mental disabilities:

- No special attention is paid to this matter
- Persons with mental disabilities should be questioned in the presence of a trusted adult
- Persons with mental disabilities are allowed to be questioned through a live television link and/ or video-recording of earlier questioning is allowed to be used as evidence in court



*Table 3.9/ Questioning of victims with mental disabilities*

Member State	No special attention	Should take place in the presence of a trusted adult	Can take place through a television-link and/ or video recording of earlier questioning
Austria	0	1	1
Belgium	0	0	1
Bulgaria	0	1	0
Cyprus	1	0	0
Czech Republic	0	0	1
Denmark	0	1	0
Estonia	0	1	0
Finland	0	1	1
France	1	0	0
Germany	0	1	1
Greece	1	0	0
Hungary	0	1	0
Ireland	1	0	0
Italy	1	0	0
Latvia	0	1	1
Lithuania	0	1	0
Luxembourg	1	0	0
Malta	0	1	0
The Netherlands	0	0	1
Poland	1	0	0
Portugal	0	1	0
Romania	0	1	0
Slovakia	0	0	1
Slovenia	0	1	1
Spain	1	0	0
Sweden	0	1	1
United Kingdom	0	1	1
Total	8	15	11

Contrary to children, not all member states have special facilities for persons with mental disabilities. This means that as long as they understand the questions they will have to testify like any other witness. In Cyprus, Greece, Italy and Poland the experts stated that no special attention is paid to this matter, while this may be the case in France, Ireland, Spain and Luxembourg as well. Here the experts differed on this issue, it could be the case in these jurisdictions that the adults should be present as well.

The most preferred option is questioning in the presence of a trusted adult. This is available in 15 jurisdictions and it may be the case in an additional four as well. Eleven jurisdictions allow testimony through a television-link or a video-recording of earlier questioning. Table 3.9 contains the results.

### *Questioning of victims of sexual or domestic violence*

Regarding other vulnerable victims besides children and mentally disabled persons, the survey specifically focused on the attention of criminal justice authorities to the needs of victims of sexual crimes and for victims of domestic violence. Awareness of the treatment and questioning of victims of sexual crimes has increased after long campaigns by feminist groups and many other organisations, such as victim support organisations. Domestic violence has only become more visible to the public in the past decade. For a long time domestic violence was considered a private matter and fell outside the criminal justice domain. In addition, most women do not report incidents of domestic violence to the authorities.<sup>22</sup> Brienen and Hoegen divided the possibilities for questioning of victims of domestic or sexual violence as follows:

- No special attention is paid to this matter
- The questioning should be conducted by a police officer of the same sex
- The questioning is allowed to be conducted in the presence of a companion
- Specialized rape teams and/ or domestic violence teams should be available that conduct both questioning and investigation of rape and/ or domestic violence
- Special guidelines are used for questioning victims of sexual violence and/ or domestic violence

In eleven jurisdictions (Bulgaria, Estonia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Slovakia) there is no obligation to pay attention to either sexual or domestic violence situations.<sup>23</sup> This does not mean that the criminal justice authorities are not sensitive at all to the needs of these types of victims. Ireland's Victims Charter for example explicitly mentions victims of sexual violence.

The manner in which special treatment of victims of domestic and sexual violence is undertaken varies in the other 16 jurisdictions. In 10 jurisdictions the questioning should be undertaken by a police officer of the same sex and

<sup>22</sup> Brienen & Hoegen, p. 1115.

<sup>23</sup> The experts from Poland disagreed on this issue. It is possible that Poland does oblige special treatment of victims of domestic and sexual violence

in 10 jurisdictions, the questioning is allowed to take place in the presence of a companion. 12 jurisdictions have special guidelines in place for the questioning of victims of sexual and/ or domestic violence, while 8 jurisdictions have specialized teams available. See table 3.10.

*Table 3.10/ Questioning of victims of sexual and domestic violence*

Member State	No special attention	Should be conducted by a police officer of the same sex	Allowed to be conducted in the presence of a companion	Specialized rape or domestic violence teams	Special guidelines for sexual and domestic violence
Austria	0	1	1	0	1
Belgium	0	0	1	0	1
Bulgaria	1	0	0	0	0
Cyprus	0	0	0	0	1
Czech Republic	0	1	1	0	0
Denmark	0	0	0	1	0
Estonia	1	0	0	0	0
Finland	0	0	1	0	1
France	0	1	0	0	1
Germany	0	1	1	0	1
Greece	1	0	0	0	0
Hungary	1	0	0	0	0
Ireland	1	0	0	0	0
Italy	1	0	0	0	0
Latvia	1	0	0	0	0
Lithuania	1	0	0	0	0
Luxembourg	0	1	1	1	1
Malta	1	0	0	1	1
The Netherlands	0	1	0	1	1
Poland	1	0	0	0	0
Portugal	0	0	1	0	0
Romania	0	1	1	0	0
Slovakia	1	0	0	0	0
Slovenia	0	0	1	1	0
Spain	0	1	0	1	0
Sweden	0	1	1	0	1
United Kingdom: England and Wales	0	1	0	1	1
United Kingdom: Scotland and Northern Ireland	0	0	0	1	1
<b>Total</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>8</b>	<b>12</b>

### *Questioning of cross-border victims*

Victims resident in another Member State of the European Union often face problems when participating in the proceedings in the country of crime. This is mainly due to the fact that their stay in the country where the crime was

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committed is temporary and that they therefore are not able to wait for the procedure to commence. Moreover language differences may provide an additional barrier. Therefore possibilities for the victim like fast-track procedures, distant testimonies and video-taping of previous questioning are beneficial for the position of cross-border victims and the same applies to sufficient availability of translators.

All the member states report that translators are available for the questioning of foreign victims. In seven member states (Cyprus, Czech Republic, Denmark, Hungary, Ireland, Italy and Slovakia) this is the only measure available. In 14 of the member states video-telephone conferencing or video-recordings of earlier questioning may be used in giving evidence. 14 member states allow victims to make a statement immediately after commission of the offence. We should keep in mind though, that the latter possibility is not specifically designed for cross-border victims, but was available for all victims in these jurisdictions. Table 3.11 contains the results.

*Table 3.11/ Questioning of cross-border victims*

Member State	No special attention is paid to this matter	Translators are available for the questioning	Video/ telephone conferencing or earlier video-recording	Immediate statement
Austria	0	1	1	0
Belgium	0	1	0	1
Bulgaria	0	1	1	1
Cyprus	0	1	0	0
Czech Republic	0	1	0	0
Denmark	0	1	0	0
Estonia	0	1	1	1
Finland	0	1	1	0
France	0	1	1	1
Germany	0	1	1	0
Greece	0	1	1	0
Hungary	0	1	0	0
Ireland	0	1	0	0
Italy	0	1	0	0
Latvia	0	1	1	0
Lithuania	0	1	0	1
Luxembourg	0	1	1	1
Malta	0	1	0	1
Netherlands	0	1	0	1
Poland	0	1	1	0
Portugal	0	1	0	1
Romania	0	1	0	1
Slovakia	0	1	0	0
Slovenia	0	1	1	1
Spain	0	1	1	0
Sweden	0	1	1	1
United Kingdom: England and Wales	0	1	1	0
United Kingdom: Scotland	0	1	1	1
United Kingdom: Northern Ireland	0	1	0	1
Total	0	29	14	14

### 3.4.4 Organisational implementation

The Framework Decision states that “Each Member State shall safeguard the possibility for victims to be heard during proceedings and to supply evidence”. In the organisational implementation questionnaire, experts were asked to express their opinion in statements covering the following topics:

- Victims’ awareness concerning the possibility to be heard or provide evidence after the complaint;
- Contact established by the police after the complaint;
- Contact established by the prosecutors after the complaint;

- The extensiveness and intrusiveness of questioning by criminal justice authorities;
- The extensiveness and intrusiveness of questioning as an obstacle for victims participation in the Criminal Justice System (CJS).

Answers were measured on a five-point scale (1 = completely disagree, 5 = completely agree).

According to the experts, most of the victims are aware of the possibility to be heard and provide evidence after the complaint (61,5%). They are aided by the police, according to the experts, who contact the victim (69,4%). The prosecution service fares less well. None of the experts agree with the statement and 51% disagree. In addition more respondents find the questioning by criminal justice authorities to be extensive and intrusive than disagree (44% and 28% respectively) which therefore, hampers victims' participation in the CJS (52,6%). See table 3.12

*Table 3.12| Overall assessment - Hearings and Provision of Evidence (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Victims' awareness	8	3,8	45	21,1	29	13,6	105	49,3	26	12,2	213	100
Police contact	6	2,9	26	12,6	31	15	116	56,3	27	13,1	206	100
Prosecutors contact	<b>58</b>	<b>30,1</b>	<b>41</b>	<b>20,9</b>	96	49,0	--	--	--	--	196	100
Intrusive and extensive questioning by criminal justice authorities	7	3,5	48	24,2	56	28,3	<b>73</b>	<b>36,9</b>	<b>14</b>	<b>7,1</b>	198	100
Intrusive and extensive questioning hampers victims' participation in the CJS	9	4,5	48	24,2	37	18,7	<b>73</b>	<b>36,9</b>	<b>31</b>	<b>15,7</b>	198	100

In particular these measures on hearings and provision of evidence should benefit vulnerable victims. However the respondents were mostly of the opinion that the measures taken for vulnerable victims are inadequate. 48,5% found this to be the case, while only 26% found these measures to be adequate.

Table 3.13 | Overall assessment - Vulnerable Victims (Number and % of answers)

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Adequacy	39	19,5	58	29,0	51	25,5	46	23,0	6	3,0	200	100

### 3.4.5 Conclusions

#### *Right to be heard*

Jurisdictions have considerable leeway in the way they implement the right to be heard as expressed by article 3(1) of the Framework Decision. All member states have implemented measures that provide victims with avenues for participation. However the diversity, even within the same type of measures make a direct comparison between jurisdictions in the manner they provide participation difficult if not hazardous.

Providing the courts with information concerning the victims need for compensation is mostly a right for the victim, rather than a duty for the prosecutor, but the court is obliged to take compensation issues into account in nearly all of the European Union. More and more countries are implementing forms of Victim Impact Statements.

Most countries have implemented either a form of private prosecution or the right to review the decision to not prosecute. Only in Malta and Belgium does neither right exist.

#### *Questioning*

Most member states place no restrictions on repetitive questioning. Of those that do only the Czech Republic restricts repetitive questioning for all victims, while the rest places restrictions on the repetitive questioning of child victims.

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Special attention is paid to the questioning of child victims in all member states, although the instruments used vary. The same is true in most member states concerning the questioning of victims with mental disabilities. Special attention to the questioning of victims of sexual and domestic violence is less widespread. In ten countries experts said that no special attention is paid to their situation.

Cross-border victims have access to translators across the European Union. However this is not necessarily a measure that is taken in the interest of cross-border victims. Similarly, about half the member states allow victims to make a statement immediately after the commission of a crime, but this is a feature of their criminal justice systems rather than a measure specifically intended to serve cross-border victims' needs.

Most of the respondents are not satisfied with the manner in which questioning of victims is undertaken in their jurisdictions. A majority finds the questioning to be unnecessarily intrusive and extensive. This in turn hampers victims' participation in the criminal justice system. This also applies to vulnerable victims. Measures taken to provide additional protection are inadequate according to most respondents.

## 3.5 Article 4: Information

### 3.5.1 Introduction

Information is of vital importance to victims navigating the criminal justice system. Only if victims know their rights and opportunities within the legal system, can they make use of them. Information is therefore a central need for victims of crime (Strang, 2002, Wemmers, 1996, Pemberton, 2009). Few victims are knowledgeable of the workings of the criminal justice system, or know their way around it (Brewster, 2001; this holds for the public in general, e.g. Roberts, 1992). Research has shown lack of information as a prime source of dissatisfaction with the criminal justice proceedings (Wemmers, 1996, Sims & Myhill, 2001; Allen et al, 2006). This is true for the police inves-



tigation (Brandl & Horvath, 1991), the prosecution phase (Angle et al, 2003) and the final outcome of the court case (e.g. Konradi, 1996). Moreover most victims do not know what possibilities are open to them, where they can receive assistance and what is expected from them (see in general the findings from the International Crime Victim Survey, Van Kesteren et al, 2008).

Information is thus a vital component of victim rights. Nevertheless there are also victims for whom receiving information about the progress of the case may be a burden or an unwanted reminder of their ordeal. Offering victims the possibility to decline receiving information is therefore also important (Reeves and Mulley, 2000).

The Framework decision acknowledges the importance of information in article 4. The four sections refer to information at the initial stage (section 1), information concerning the ongoing process (section 2), information concerning the release of a convicted offender (section 3) and the possibility of opting-out of receiving information (section 4).

Section 1 read as follows:

*Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests.*

This requirement is followed by an extensive list of the topics that should be covered by the information that the victim initially receives. Services and support available to victims, their eligibility for legal aid and assistance, the procedure to obtain compensation and, if they have not already done so, where and how they can report an offense.

Section 2 and 3 of Article 4 state the following:

*Each Member State shall ensure that victims who have expressed a wish to this effect are kept informed of:*

*(a) the outcome of their complaint;*

*(b) relevant factors enabling them, in the event of prosecution, to know the conduct of the criminal proceedings regarding the person prosecuted for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected;*

*(c) the court's sentence.*

*Member States shall take the necessary measures to ensure that, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary.*

Section 4 reads:

*In so far as a Member State forwards on its own initiative the information referred to in paragraphs 2 and 3, it must ensure that victims have the right not to receive it, unless communication thereof is compulsory under the terms of the relevant criminal proceedings.*

The legal implementation survey reviewed the progress in member states concerning the dissemination of information at the initial contact with the police, the outcome of the investigation, the decision to prosecute, the trial and the release of the offender. Moreover it reviewed the possibilities for victims to opt-out of receiving information. Finally it considered whether the information is offered to all victims or that it is restricted to certain categories, for example those with a formal role in the procedure, like witnesses or parties.

### **3.5.2 Legal implementation**

*Information at the initial stage*

Section 1 of article 4 relates to information at the initial stage, victims *first contact with law enforcement agencies*. Two features of Member States legislation are relevant in reviewing their compliance with this article. First of all

the Framework Decision calls on Member States to *ensure* access to information. An adequate way of ensuring access, at least in legislation if not in practice, would be to oblige criminal justice agencies to disseminate information of this type to victims. Moreover, preferably, one of the agencies should be made responsible for this undertaking.

Secondly Brienen and Hoegen showed some jurisdictions to have limited information provision to the subject of compensation (Brienen and Hoegen, 2000). This does not comply to the topics required by the framework decision. We therefore asked the experts whether an obligation to provide information exists, whether this is limited to the topic of compensation and if not, whether this general obligation has been assigned to an agency, mostly the police. Table 3.14 provides the results.

*Table 3.14| Obligation to provide information to victims*

Member State	No obligation	Obligation, but only relating to information on compensation	General obligation	General obligation with responsible agent
Austria	0	0	0	1
Belgium	0	0	0	1
Bulgaria	0	0	0	1
Cyprus	0	0	1	0
Czech Republic	0	0	0	1
Denmark	0	0	0	1
Estonia	0	1	0	0
Finland	0	0	0	1
France	0	0	0	1
Germany	0	0	1	0
Greece	1	0	0	0
Hungary	0	0	0	1
Ireland	0	0	0	1
Italy	1	0	0	0
Latvia	0	0	1	0
Lithuania	0	0	0	1
Luxembourg	1	0	0	0
Malta	1	0	0	0
Netherlands	0	0	0	1
Poland	0	0	0	1
Portugal	0	1	0	0
Romania	0	0	0	1
Slovakia	0	0	1	0
Slovenia	0	1	0	0
Spain	0	0	1	0
Sweden	0	0	0	1
United Kingdom	0	0	0	1
Total	4	3	5	15

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Most jurisdictions meet both criteria. At least fifteen member states have a general obligation to provide information to victims, which is also assigned to a responsible agencies. Greece, Italy, Luxembourg and Malta fall short of Framework requirements as these jurisdictions do not oblige criminal justice agencies to provide information to victims.<sup>24</sup> Slovenia, Estonia and Portugal restrict the obligation to provide information to the subject of compensation.

This is a marked improvement in the situation preceding the Framework Decision. In Brienen and Hoegen's survey only seven countries had implemented a general obligation to inform victims with a designated responsible agent (see Brienen and Hoegen, 2000).

#### *Information concerning the progress of the case*

The experts were first asked in what ways the victims can learn the outcome of the police investigation. Of course in all jurisdictions receiving a summons to appear in court is a possibility for the victim to learn the outcome and the experts in nearly all jurisdictions stated the victim may contact the police.

In Denmark, Cyprus and Romania these are the authorities' sole duties concerning information provision to the victim about the outcome of the police investigation, while in Greece and Malta victims have the right to inspect the file. In the opinion of the authors of this report these jurisdictions fall short of Framework requirements.

In the other jurisdictions the duty for the authorities to provide information to victims is more extensive. According to the experts most jurisdictions oblige the authorities to inform all victims of the outcome of the police investigation. In some of these jurisdictions (at least in Belgium, Finland, Germany, the Netherlands and Sweden) there is a possibility for victims who do not want to be informed of the outcome to state this and receive no further information. In a small minority of the jurisdictions the duty to inform victims is restricted to certain types of victims, or there is solely a duty to inform victims of negative outcomes. This is the case in Austria, Hungary,

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<sup>24</sup> In Luxembourg there was disagreement between the experts on this issue.

France, Luxembourg and Lithuania.<sup>25</sup> See table 3.15.

Table 3.15| Mechanisms to learn the outcome of the police investigation

Member State	Summons	Victim may contact the police and/ or inspect the file	Notification duty, restricted to certain types of victims, or negative outcomes only	Notification duty for all victims
Austria	1	1	1	0
Belgium	1	1	0	1
Bulgaria	1	1	0	1
Cyprus	1	1	0	1
Czech Republic	1	1	0	0
Denmark	1	1	0	0
Estonia	1	1	0	1
Finland	1	1	0	1
France	1	1	1	0
Germany	1	1	0	1
Greece	1	1	0	0
Hungary	1	1	1	0
Ireland	1	1	0	1
Italy	1	1	0	1
Latvia	1	1	0	1
Lithuania	1	1	1	0
Luxembourg	1	1	1	0
Malta	1	1	0	0
Netherlands	1	1	0	1
Poland	1	1	0	1
Portugal	1	1	0	1
Romania	1	1	0	0
Slovakia	1	1	0	1
Slovenia	1	1	0	1
Spain	1	1	0	1
Sweden	1	1	0	1
United Kingdom	1	1	0	1
Total	27	27	5	17

25 In Lithuania the experts disagreed in this issue, and the notification duty may extend to a larger group of victims.

26 In the case of both Italy and Romania the answers of the experts differed. In both these jurisdictions inspection of the relevant laws (article 429 Code of Criminal Procedure in Italy and Art. 4 Law 211/2004 in Romania) do not clearly specify whether the duty to inform victims also relates to the decision to prosecute.

After the police investigation, the prosecutor may decide to proceed with the case against the suspect or may refrain from it. In most jurisdictions victims are informed of either positive or negative decisions. The exceptions are Slovenia, Germany, Greece, Latvia, France, Austria and Luxembourg where the obligation to inform victims solely relates in the case of a negative decision and Spain, Cyprus and Malta where no information is provided.<sup>26</sup> See table 3.16.

*Table 3.16/ Information provision concerning the decision to prosecute*

Member State	No information provided	At least in case of a negative decision	In case of a negative or positive decision
Austria	0	1	0
Belgium	0	0	1
Bulgaria	0	0	1
Cyprus	1	0	0
Czech Republic	0	0	1
Denmark	0	0	1
Estonia	0	0	1
Finland	0	0	1
France	0	1	0
Germany	0	1	0
Greece	0	1	0
Hungary	0	0	1
Ireland	0	0	1
Italy	0	0	1
Latvia	0	1	0
Lithuania	0	0	1
Luxembourg	0	1	0
Malta	1	0	0
Netherlands	0	0	1
Poland	0	0	1
Portugal	0	0	1
Romania	0	0	1
Slovakia	0	0	1
Slovenia	0	1	0
Spain	1	0	0
Sweden	0	0	1
United Kingdom	0	0	1
Total	3	7	17

This information is provided to victims with a formal role in the proceedings in the Czech Republic, France, Hungary, Luxembourg, Italy, Portugal, Slovakia, Sweden and Belgium.<sup>27</sup> Most jurisdictions provide the information to all victims, irrespective of their role in the proceedings. Three member states explicitly allow victims to opt out from receiving information. This is the case in United Kingdom (England and Wales and Scotland), Germany and the Netherlands, see table 3.17.

<sup>27</sup> The experts in France and Slovakia disagreed with each other, it may be that information is disseminated to a larger group of victims.

*Table 3.17/ Victims provided with information concerning the prosecution decision*

Member State	At least to victims with a formal role in the proceedings	To all victims	To victims who indicated they want to be informed
Austria	0	1	0
Belgium	1	0	0
Bulgaria	0	1	0
Czech Republic	1	0	0
Denmark	0	1	0
Estonia	0	1	0
Finland	0	1	0
France	1	0	0
Germany	0	0	1
Greece	0	1	0
Hungary	1	0	0
Ireland	0	1	0
Italy	1	0	0
Latvia	0	1	0
Lithuania	0	1	0
Luxembourg	1	0	0
Netherlands	0	0	1
Poland	0	1	0
Portugal	1	0	0
Romania	1	0	0
Slovakia	1	0	0
Slovenia	0	1	0
Sweden	1	0	0
United Kingdom: England and Wales, Scotland	0	0	1
United Kingdom: Northern Ireland	0	1	0
<b>Total</b>	<b>10</b>	<b>12</b>	<b>3</b>

Information concerning the place and date of the procedure is provided to victims as witnesses in all jurisdictions and to all but one (Denmark) who have a formal role (civil claimant, private or auxiliary prosecutor) to play in the procedure. It is provided to all victims in at least 12 countries, with four countries (Netherlands, Portugal, Sweden, United Kingdom) providing it only to victims who want to be informed. Table 3.18 provides the results.

*Table 3.18/ Information provision concerning the court date*

Member State	Victims as witnesses	Victims with another formal role (civil claimant, auxiliary or secondary prosecutor)	All victims	Victims who indicated they want to be informed
Austria	1	1	1	0
Belgium	1	1	1	0
Bulgaria	1	1	1	0
Cyprus	1	1	0	0
Czech Republic	1	1	1	0
Denmark	1	0	0	0
Estonia	1	1	0	0
Finland	1	1	0	0
France	1	1	0	0
Germany	1	1	0	0
Greece	1	1	0	0
Hungary	1	1	0	0
Ireland	1	1	1	0
Italy	1	1	0	0
Latvia	1	1	1	0
Lithuania	1	1	1	0
Luxembourg	1	1	0	0
Malta	1	1	0	0
Netherlands	1	1	0	1
Poland	1	1	1	0
Portugal	1	1	0	1
Romania	1	1	0	0
Slovakia	1	1	0	0
Slovenia	1	1	0	0
Spain	1	1	0	0
Sweden	1	1	0	1
United Kingdom	1	1	0	1
Total	27	26	8	4

In most jurisdictions an obligation to provide information on the outcome of the trial relates to victims with a formal role in the proceedings (this is the case in 23 countries). In three countries (Greece, Malta and Cyprus) the experts report that no obligation to provide victims with this information exists. In Ireland no specific mention is made of a formal role, but its Victims Charter provides for information dissemination beyond those who had a formal role. This is also the case in Belgium, Bulgaria, Denmark, Estonia, Germany, Hungary, Latvia, Netherlands, Sweden and the United Kingdom. See table 3.19.



*Table 3.19| Information concerning the outcome of the trial*

Member State	No obligation	Victims with a formal role (witness and/or civil claimant)	To other victims as well
Austria	0	1	0
Belgium	0	1	1
Bulgaria	0	1	1
Cyprus	1	0	0
Czech Republic	0	1	0
Denmark	0	1	1
Estonia	0	1	1
Finland	0	1	0
France	0	1	0
Germany	0	1	1
Greece	1	0	0
Hungary	0	1	0
Ireland	0	0	1
Italy	0	1	0
Latvia	0	1	1
Lithuania <sup>28</sup>	0	1	0
Luxembourg	0	1	0
Malta	1	0	0
Netherlands	0	1	1
Poland	0	1	0
Portugal	0	1	0
Romania	0	1	0
Slovakia	0	1	0
Slovenia	0	1	0
Spain	0	1	0
Sweden	0	1	1
United Kingdom	0	1	1
Total	3	23	10

*Information concerning the release of the offender*

Finally the Framework Decision also refers to the possibility of informing victims of the release of the offender. Compared with the other stages of the process most jurisdictions are considerably less forthcoming with information about the release of the offender.

Many jurisdictions do not have an obligation to inform any victims of the release of the offender. This is the case in Bulgaria, Denmark, Estonia, Greece, Hungary, Italy, Latvia, Luxembourg, Cyprus, Malta, Slovenia and Romania. Spain is the only jurisdiction that specifically uses the formal role of the victim as a criterion. In some other jurisdictions the impact of the initial crime or the chance of re-victimization is taken into account, this is at least the case in Ireland, Northern Ireland, the Netherlands, Portugal and Slova-

28 In Lithuania the experts disagreed in this matter, some found the obligation to provide information to extend beyond those victims with a formal role.

kia.<sup>29</sup> In the other jurisdictions there are no restrictions, this is the case in Austria, Belgium, the Czech Republic, Finland, France, Germany, Lithuania, Netherlands, Poland, Sweden, United Kingdom (England and Wales, and Scotland).<sup>30</sup> See table 3.20.

*Table 3.20/ Information concerning the release of the offender*

Member State	None	Victims with a formal role	Victims of serious crimes	All victims who indicated they want to be informed
Austria	0	0	0	1
Belgium	0	0	0	1
Bulgaria	1	0	0	0
Cyprus	1	0	0	0
Czech Republic	0	0	0	1
Denmark	1	0	0	0
Estonia	1	0	0	0
Finland	0	0	0	1*
France	0	0	0	1
Germany	0	0	0	1
Greece	1	0	0	0
Hungary	1	0	0	0
Ireland	0	0	1*	1
Italy	1	0	0	0
Latvia	1	0	0	0
Lithuania	0	0	0	1*
Luxembourg	1	0	0	0
Malta	1	0	0	0
Netherlands	0	0	1	1
Poland	0	0	0	1
Portugal	0	0	1	0
Romania	1	0	0	0
Slovakia	0	0	1*	1
Slovenia	1	0	0	0
Spain	0	1	0	0
Sweden	0	0	0	1
United Kingdom: Northen Ireland	0	0	1	0
United Kingdom: England and Wales, Scotland	0	0	0	1
<b>Total</b>	<b>12</b>	<b>1</b>	<b>3</b>	<b>12</b>

### 3.5.3 Organisational implementation

The respondents in the organisational implementation were asked to assess the accessibility and clarity of the information offered to victims in their home-countries. More precisely they were asked to assess the access to and clarity of information concerning the following topics:

<sup>29</sup> In the answers received from both Slovakia and Ireland it is unclear whether the opt-in system extends beyond victims suffering a severe trauma (Ireland) or the judgement that the victim may be in danger (Slovakia)

<sup>30</sup> The experts in Lithuania disagreed on this issue, one of the experts found that no such obligation exists.

- 
- the way to report an offense
  - the type of support they can obtain
  - their role in criminal proceedings
  - the procedure to receive compensation
  - the possibility to receive legal aid
  - the outcome of the report

The ‘access to’ and ‘clarity’ of information concerning these topics was assessed through statements. An example is ‘In my country victims can easily access information concerning their role in criminal proceedings’. The corresponding question concerning clarity was ‘The information concerning their role in the proceedings is easy to understand for victims’. In addition they were asked to express their opinion concerning the extent to which information reaches most victims on time. Answers were measured on a five-point scale (1 = completely disagree, 5 = completely agree).

The overall analysis reveals that respondents share the opinion that victims have an easy access to information concerning the following topics: type of services/ organisations available for support (51,6% versus 28,9%); where and how they can report an offence (72,3% versus 15%); legal advice and legal aid (47% versus 29,7%); rights after a first contact with the police officers (42,2% versus 32,7%) and with victim support workers (72,8% versus 13,4%). See table 3.21. However, the respondents find that victims still don’t have an easy access to information on their role in the criminal proceedings (44,8% versus 29,5% who do); the possibilities for obtaining compensation (44,8% versus 39,7%), the conditions to obtain protection (49,8% versus 30,6%) and the outcome of the report (42,6% versus 32,5%).

The respondents in most countries are at least satisfied about the access to information. The only countries in which respondents were negative about the access to information were Cyprus, Finland, Romania, Ireland, Italy and Malta. The access to information concerning the various topics was seen to be either low or medium in these countries. The table is included in the appendix.

*Table 3.21| Overall assessment - Right to receive information (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Type of services / organisations available	15	7,0	47	21,9	42	19,5	<b>83</b>	<b>38,6</b>	<b>28</b>	<b>13,0</b>	215	100
Report an offence	6	2,8	26	12,2	27	12,7	<b>106</b>	<b>49,8</b>	<b>48</b>	<b>22,5</b>	213	100
Role in the criminal proceedings	<b>18</b>	<b>8,6</b>	<b>76</b>	<b>36,2</b>	54	25,7	47	22,4	15	7,1	210	100
Conditions to obtain protection	<b>23</b>	<b>11,0</b>	<b>81</b>	<b>38,8</b>	41	19,6	52	24,9	12	5,7	209	100
Legal advice or legal aid	9	4,2	54	25,4	50	23,5	<b>83</b>	<b>39,0</b>	<b>17</b>	<b>8,0</b>	213	100
Compensation	<b>25</b>	<b>11,8</b>	<b>70</b>	<b>33,0</b>	33	15,6	65	30,7	19	9,0	212	100
Outcome of the Report	<b>18</b>	<b>8,6</b>	<b>71</b>	<b>34,0</b>	52	24,9	58	26,8	12	5,7	209	100
Rights awareness after contact police	17	8,1	52	24,6	53	25,1	<b>74</b>	<b>35,1</b>	<b>15</b>	<b>7,1</b>	211	100
Rights awareness after contact victim support	5	2,5	22	10,9	28	13,9	<b>110</b>	<b>54,5</b>	<b>37</b>	<b>18,3</b>	202	100

The results suggest that according to the respondents there is not much variation in the accessibility and clarity of the diverse topics covered by the Framework Decision. Moreover the results for access to and clarity of information concerning a given topic were closely correlated. In sum: respondents who perceive information to be easily accessible find it easy to understand as well. And if they find information concerning one topic to be easily accessed, that corresponds with their answer for other topics as well. See table 3.22 for the overall results, the table for the different countries is included in the appendix.

*Table 3.22| Overall assessment - Right to receive information (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Type of services / organisations available	10	4,8	36	17,3	48	23,1	<b>89</b>	<b>42,8</b>	<b>25</b>	<b>12,0</b>	208	100
Report an offence	6	2,8	24	11,4	43	20,4	<b>99</b>	<b>46,9</b>	<b>39</b>	<b>18,5</b>	211	100
Role in the criminal proceedings	<b>13</b>	<b>6,4</b>	<b>63</b>	<b>31,0</b>	56	27,6	57	28,1	14	6,9	203	100
Conditions to obtain protection	<b>21</b>	<b>10,4</b>	<b>66</b>	<b>32,8</b>	46	22,9	57	28,4	11	5,5	201	100
Legal advice or legal aid	8	3,9	53	25,6	46	22,2	<b>85</b>	<b>41,1</b>	<b>15</b>	<b>7,2</b>	207	100
Compensation	15	7,3	62	30,2	46	22,4	<b>63</b>	<b>30,7</b>	<b>19</b>	<b>9,3</b>	205	100
Outcome of the Report	<b>19</b>	<b>9,5</b>	<b>71</b>	<b>35,7</b>	39	19,6	63	31,7	7	3,5	199	100

In the respondents' opinion, non-governmental organisations are more proactive in the production of materials (posters, leaflets, flyers) that inform the victims of their rights (70,5% found this to be true, with 16,6% disagreeing) in comparison with the State (45,9% found it to be true, with nearly the same percentage 42,1% disagreeing).

The results of the survey suggest that a main issue lies in the timeliness of information. The mode score was 2 (Number of answers=205, Standard Deviation=1,088), with almost 50% of respondents disagreeing with the statement that information reaches most victims on time and only 26,4% agreeing with this statement. See table 3.23. According to the assessment of the respondents most of these countries also have problems providing information on time. This is the case in Belgium, Cyprus, Finland, France, Greece, Malta, Ireland, Italy, Romania, Portugal, Romania, Slovakia and Spain. The table is included in the appendix.

*Table 3.23| Overall assessment - Provision of information (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Information regularly provided by the State	36	17,2	52	24,9	25	12,0	<b>69</b>	<b>33,0</b>	<b>27</b>	<b>12,9</b>	209	100
Information regularly provided by NGO	11	5,2	24	11,4	27	12,9	<b>98</b>	<b>46,7</b>	<b>50</b>	<b>23,8</b>	210	100
Timeliness of information	<b>27</b>	<b>13,2</b>	<b>72</b>	<b>35,1</b>	52	25,4	45	22,0	9	4,4	205	100

### 3.5.4. Conclusions

Most jurisdictions appear to comply with the requirement to ensure information provision to victims from their first contact with law enforcement agencies. Eighteen member states have a general obligation to provide information to victims, which is also assigned to a responsible agency.

Similarly in most jurisdictions the victim is informed of the progress of the

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case, with a majority of member states having systems in place that inform victims of the outcome of the police investigation and similarly of the decision to prosecute, the date and place of the court hearing and the outcome of the court case. Less attention is paid to the possibility that victims do not want to be informed. Finally information concerning the offender's release is not disseminated to victims in many jurisdictions.

The results of the organisational implementation survey show that the success of dissemination of information depends on the topic under observation. The respondents are more often than not negative concerning the access to information about the victim's role in criminal proceedings, conditions to obtain protection, the outcome of the report and to a lesser extent concerning the possibilities for compensation. As these are all main topics of the Framework Decision this finding is not only noteworthy, but indeed troubling. Access to information is a prerequisite for subsequent action and a basic need of many victims. The fact that our respondents across Europe on average find this access to not be assured, is an indication of a deficit in the assistance provided to victims. In addition the timeliness of information is called into question, with most respondents expressing the opinion that information does not reach victims on time.

Here the organisational survey suggests that the promising results of the legal implementation survey need to be qualified. The systems for information dissemination may be there on paper, but according to most respondents they do not provide victims sufficient access to information in practice.

## 3.6 Article 5: Communication Safeguards

### 3.6.1 Introduction

As noted above the interests of cross-border victims lie at the heart of the Framework Decision. Cross-border victims are the reason that the European Union has competence in the area of victim issues. Suffering crime abroad

delivers additional problems to many victims. Of course there are language issues, as many people travelling in foreign countries will be less well versed in the language of their host country than they are of their own. This is compounded by the unfamiliarity victims may experience with the criminal justice process abroad. Although criminal justice procedures across Europe are similar in many ways, they also are all more or less different (e.g. Cavadino & Dignan, 2005). This means that additional communication safeguards for cross-border victims are of great importance to the protection of their interests.

Three other points should also be noted. First of all tourist victims form a high-risk category. Most available research suggests that you are about five to ten times more likely to become a victim of crime during your two weeks holiday abroad than during any other two weeks of the year (E.g. Van Dijk et al, 2002). This does not only apply to the relatively low-level property offences one may associate with tourist victimisation, but also to violent crime and sexual offences. Secondly advances in the position of cross-border victims may also be beneficial to the position of members of minorities. Recent research conducted by the Fundamental Rights Agency of the European Union (Goodey, 2009) shows that this is another high risk category. However reporting rates are lower and that also applies to utilization of services after victimisation (Van Dijk, 2001).

Thirdly instruments to reduce communication difficulties are in many cases also necessary for the criminal justice process to take its course. If the police or the prosecution can not understand the victim's testimony, they will often not be able to conduct their investigation. This suggests that instruments intended to minimize communication safeguards may not be primarily implemented with the victims' interest at heart.

The Framework Decision recognizes the importance of maximize communication safeguards in article 5.

Each Member State shall, in respect of victims having the status of witnesses or parties to the proceedings, take the necessary measures to minimise as far

as possible communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, to an extent comparable with the measures of this type which it takes in respect of defendants.

### 3.6.2. Legal implementation

Two possible avenues for minimizing communication difficulties are the availability of translators and interpreters, free of charge and the availability of information in a variety of languages. In all jurisdictions, translators and interpreters are available for victims, free of charge. The experts from Lithuania, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom have that information should also be made available in different languages. See table 3.25.

*Table 3.25/ Communication safeguards*

Member State	Translators and interpreters are available for victims, free of charge	Information should be made available in different languages
Austria	1	0
Belgium	1	0
Bulgaria	1	0
Cyprus	1	0
Czech Republic	1	0
Denmark	1	0
Estonia	1	0
Finland	1	0
France	1	0
Germany	1	0
Greece	1	0
Hungary	1	0
Ireland	1	0
Italy	1	0
Latvia	1	0
Lithuania	1	1
Luxembourg	1	1
Malta	1	0
Netherlands	1	1
Poland	1	0
Portugal	1	1
Romania	1	0
Slovakia	1	0
Slovenia	1	0
Spain	1	1
Sweden	1	0
United Kingdom	1	1
Total	27	6



It could be that measures designed to reduce communication difficulties solely apply to the victim as witness. Although this of course has benefits for victims, one can wonder whether these measures are motivated by the interest of the victims. Table 3.25 therefore shows whether member states restrict eligibility for communication safeguards to victims as witnesses or allow the inclusion of other victims as well. The former is the case in 12 jurisdictions, the latter in 15. See table 3.26.

*Table 3.26/ Eligibility for communication safeguards*

<u>Member State</u>	<u>No victims</u>	<u>At least for victims as witnesses</u>	<u>Other victims as well</u>
Austria	0	1	1
Belgium	0	1	0
Bulgaria	0	1	0
Cyprus	0	1	0
Czech Republic	0	1	0
Denmark	0	1	0
Estonia	0	1	1
Finland	0	1	1
France	0	1	1
Germany	0	1	1
Greece	0	1	1
Hungary	0	1	1
Ireland	0	1	0
Italy	0	1	0
Latvia	0	1	1
Lithuania	0	1	1
Luxembourg	0	1	0
Malta	0	1	0
Netherlands	0	1	1
Poland	0	1	0
Portugal	0	1	0
Romania	0	1	1
Slovakia	0	1	1
Slovenia	0	1	0
Spain	0	1	1
Sweden	0	1	1
United Kingdom	0	1	1
Total	0	27	15

### 3.6.3 Organisational implementation

Respondents were asked about the availability of safeguards to reduce the risk of information difficulties throughout the legal proceedings. In particular they were asked the extent to which they agreed with the following three statements:

- There are adequate resources available to minimise communication difficulties during legal proceedings.
- The available resources are efficient at minimising communication difficulties.
- The safeguards take in to account the specific characteristics and needs of the victim.

A value of 1 means the respondent strongly disagrees with the statement. A value of 5 means the respondent strongly agrees with the statement. A value of 3 means the respondent neither agrees nor disagrees.

The biggest problem appears to be in the availability of resources to minimise communication difficulties. A majority of 57,3% of respondents disagreed or completely disagreed that adequate resources are available. 53,5% either disagreed or completely disagreed with the statement that they are effective. However most respondents do agree that the specific characteristics of victims are taken in to account. 45,6% either agree or completely agree, while only 32,3% disagree or completely disagree. See table 3.27.

*Table 3.27| Overall assessment - Communication safeguards (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Resources available	34	16,1	87	41,2	38	18,0	45	21,3	7	3,3	211	100
Efficiency of the resources available	35	17,2	74	36,3	53	26,0	34	16,7	8	3,9	204	100
Particular characteristics of the victims in questioning	29	14,2	37	18,1	45	22,1	70	34,3	23	11,3	204	100

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Results vary quite significantly by country. In Italy, Malta and Portugal the modal response is low (disagree or completely disagree) for all three statements. Safeguards are perceived to be most adequate in Austria, the Czech Republic, Latvia and Poland. Again it is clear that responses within each country are correlated, so that a country with a low response to one statement is likely to have low responses to the other statements also. The table is included in the Appendix.

### **3.6.4 Conclusions**

Article 5 of the Framework Decision deals with the communication safeguards for providing information to victims. The outcome of the survey shows that best practice can be found in five member states, providing both translators and interpreters free of charge as well as information in different languages. In 12 member states the eligibility for these communication safeguards is restricted to victims as witnesses. In 15 others the communication safeguards are open to a wider group of victims.

Again the organisational survey sheds additional light on the findings of the legal implementation. A majority of the respondents is of the opinion that the resources to minimize communication difficulties are insufficient. Adequate resources are not available and if they are they are not effective, according to a majority of them.

## 3.7 Article 6: Specific Assistance to the victim

### 3.7.1 Introduction

In the section on the right to be heard we noted the importance of support and assistance provided to victims when they should want to participate in the criminal justice procedure. This can relate to the services provided by Victim Support organisations, a subject to which we will return when discussing article 13 of the Framework Decision.

In addition to victim support, victims may need legal assistance<sup>31</sup>, which they may not always afford. Article 6 of the Framework Decision relates to the possibilities of granting free legal aid to victims of crime. It reads as follows:

*Each Member State shall ensure that victims have access to advice as referred to in Article 4(1)(f)(iii), provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid as referred to in Article 4(1)(f)(ii), when it is possible for them to have the status of parties to criminal proceedings.*

### 3.7.2 Legal implementation

All member states provide free legal aid to some or all groups of victims. As a rule the member states use a means test for providing victims with free legal aid, with the income often being the sole criteria in many countries. In fact of the countries that provide legal aid free of charge to victims, only Sweden and Northern Ireland do not use income as a criterion. In the Netherlands free legal aid is available for those victims of violent and sexual offences, who would also be eligible for compensation from the Criminal Injuries Compensation Fund.

There is no legal aid, free of charge, for victims in England, Malta and Ireland as they do not have an active roll in the common law systems. Victims as parties are provided with legal aid free of charge in four jurisdictions, while five provide legal aid, free of charge to a certain type of victims. See table 3.28.

<sup>31</sup> We should point out here that there is not necessarily a sharp distinction between legal assistance and victim support. In a number of jurisdictions victim support employs lawyers or has the responsibility to undertake tasks of a similar nature.

*Table 3.28/ Free legal aid for victims*

Member State	There is no possibility for granting free legal aid	The income of the victim	The fact that the victim is a party to the proceedings	The fact that a victim is a witness in the case	There are no conditions, free legal aid is available for all victims	The type of crime suffered by the victim.
Austria	0	1	0	0	0	0
Belgium	0	1	0	0	0	0
Bulgaria	0	1	0	0	0	0
Cyprus	0	1	0	0	0	0
Czech Republic	0	1	0	0	0	0
Denmark	0	1	0	0	0	0
Estonia	0	1	0	0	0	0
Finland	0	1	1	0	0	1
France	0	1	0	0	0	0
Germany	0	1	1	1	0	1
Greece	0	1	1	0	0	0
Hungary	0	1	0	0	0	0
Ireland	1	0	0	0	0	0
Italy	0	1	0	0	0	0
Latvia	0	1	0	0	0	0
Lithuania	0	1	0	0	0	0
Luxembourg	0	1	0	0	0	0
Malta	1	0	0	0	0	0
The Netherlands	0	1	0	0	0	1
Poland	0	1	0	0	0	0
Portugal	0	1	0	0	0	0
Romania	0	1	0	0	0	1
Slovakia	0	1	0	0	0	0
Slovenia	0	1	0	0	0	0
Spain	0	1	0	0	0	0
Sweden	0	0	1	0	0	1
United Kingdom: England and Wales	1	0	0	0	0	0
UK: Scotland	0	1	0	0	0	0
UK: Northern Ireland	0	0	0	0	1	0
Total	2	18	5	1	1	5

### 3.7.3 Organisational implementation

We asked respondents to comment on the special assistance that is available to victims, for example legal advice, legal aid and other forms of advice. We asked them to comment on three aspects of the special assistance available, again by asking the extent to which they agreed with three statements:

- Most victims are aware of the possibility to receive legal advice and legal aid free of charge;
- The legal advice and legal aid is easily accessed by the victim;

- Most victims feel that the legal aid they receive is efficient.

Responses to this issue were generally negative. Views on the efficiency of special assistance fared worst, with 50,5% of respondents giving a negative response to the statement. For all three statements there were more negative than positive responses, with 41,4% disagreeing or completely disagreeing that victims are aware of the availability of special assistance, and 42,4% disagreeing or completely disagreeing that there is an easy access to this assistance. See table 3.29.

In accordance with the fairly negative response to the issues around specific assistance to the victim we find a large number of countries where responses on special assistance are poor. Five countries (Ireland, Italy, Portugal, Romania and Slovakia) received low scores on all three aspects of specific assistance, while no country scored highly on all aspects. The detailed table is included in the appendix.

*Table 3.29| Overall assessment - Specific assistance to the victim (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Victims awareness	30	14,6	55	26,8	37	18,0	66	32,2	17	8,3	205	100
Access to legal aid	22	10,7	65	31,7	52	25,4	56	27,3	10	4,9	205	100
Efficiency of the advice and legal aid	31	16,8	62	33,7	45	24,5	42	22,8	4	2,2	184	100

### 3.7.4 Conclusions

There are not many jurisdictions that offer legal advice and assistance free of charge to victims, merely due to the fact that they are victims. The assistance is mostly offered in a similar fashion that a jurisdiction offers free legal advice and assistance to other participants in trials, using the income as the main criterion.

The findings from the organisational questionnaire suggest that both the ac-

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cess to and effects of legal assistance and advice leave room for improvement. A majority of the respondents negatively assessed these features of provision of legal aid and assistance to victims.

## **3.8 Article 7: Victims' expenses with respect to criminal proceedings**

### **3.8.1 Introduction**

According to the Framework Decision the member states are obliged to reimburse expenses, which were incurred as a result of participation in criminal proceedings, to victims who have the status of parties or witnesses. It is obvious that refraining from doing so will be a negative experience for victims, as they then are forced to pay to participate or witness in their own trial. This is not only an additional cost of their current victimisation but will also negatively impact victims' willingness to report future crimes and participate in future investigations (see for example, Laxminarayan, 2010).

### **3.8.2 Legal implementation**

The majority of the member states (n=18) report that both victims as witnesses and victims as parties are eligible for reimbursement of their expenses. In Cyprus, Ireland and the United Kingdom victims can not be party to the proceedings, so here the provisions solely apply to victims as witnesses. The latter is also the case in Belgium, Denmark, Estonia and Italy. In addition in both Malta and Spain there is no legislation in place that obliges victims to be reimbursed. See table 3.30.

*Table 3.30 Victims eligible for reimbursement of expenses*

Member State	None	Only witnesses	Only parties	Both
Austria	0	0	0	1
Belgium	0	1	0	0
Bulgaria	0	0	0	1
Cyprus	0	1	0	0
Czech Republic	0	0	0	1
Denmark	0	1	0	0
Estonia <sup>32</sup>	0	1	0	0
Finland	0	0	0	1
France	0	0	0	1
Germany	0	0	0	1
Greece	0	0	0	1
Hungary	0	0	0	1
Ireland	0	1	0	0
Italy	0	1	0	0
Latvia	0	0	0	1
Lithuania	0	0	0	1
Luxembourg	0	0	0	1
Malta	1	0	0	0
Netherlands	0	0	0	1
Poland	0	0	0	1
Portugal	0	0	0	1
Slovakia	0	0	0	1
Slovenia	0	0	0	1
Spain	1	0	0	0
Sweden	0	0	0	1
United Kingdom	0	1	0	0
Total	0	7	0	18

Of the states that reimburse victims, a limited number (5) oblige the offender to refund the costs incurred by the victim. As a consequence victims are potentially left empty-handed if the offender is not sufficiently solvent. In the other states, the state either assumes full responsibility or steps in if the offender is not sufficiently solvent. Table 3.31 provides an overview of the results. A number of the latter have different provisions for victims as witnesses and victims as parties, with the former often being seen to be the sole responsibility of the state while in the latter the state only assumes responsibility in case of the offender's insolvency.

32 The experts found Estonian provisions only to apply to witnesses, while the Estonian Code of Criminal Procedure explicitly mentions victims as a category next to witnesses who may be reimbursed for expenses.



*Table 3.31/ Who is responsible for the payment of expenses?*

Member State	The offender	The state, either solely or in case of the offender's insolvency
Austria	0	1
Belgium	0	1
Bulgaria	1	0
Cyprus	1	0
Czech Republic	0	1
Denmark	0	1
Estonia	0	1
Finland	0	1
France	0	1
Germany	0	1
Greece	0	1
Hungary	0	1
Ireland	0	1
Italy	1	0
Latvia	0	1
Lithuania	0	1
Luxembourg	0	1
Netherlands	0	1
Poland	0	1
Portugal	0	1
Romania	0	1
Slovakia	1	0
Slovenia	1	0
Sweden	0	1
United Kingdom	0	1
Total	5	20

### 3.8.3 Organisational implementation

We asked respondents to give their views on the reimbursement of expenses to victims who participate in legal proceedings as witnesses or in other capacities. They were asked to comment on five aspects of the reimbursement process – awareness, ease of application, the timeliness of reimbursement, the size of resources available and the overall adequacy of the reimbursement process.

In general responses were negative. Only 13,8% of respondents agreed or completely agreed that the reimbursement system was adequate. For all five aspects the modal response was negative. 52,6% of responses were negative on the issue of victim awareness, 52,2% for the application procedure, 57,1% for timeliness, 54,1% for resource availability and 62,0% for adequacy. See table 3.32.

It is clear that there are some countries where the reimbursement system is perceived as poor in almost all respects. Equally, some countries perform fairly well on all aspects of the reimbursement system. Among the countries with the poorest responses are Belgium, Bulgaria, Italy, Malta, Portugal and Spain. Germany, Austria and Sweden are amongst the best performers. The table is included in the appendix.

*Table 3.32/ Overall assessment - Victims' expenses with respect to criminal proceedings (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Victims awareness	36	18,4	67	34,2	33	16,8	43	21,9	17	8,7	196	100
Applying procedure	31	16,7	66	35,5	29	15,6	47	25,3	13	7,0	186	100
Timeliness	39	23,4	56	33,5	36	21,6	25	15,0	11	6,6	167	100
Resources available	37	21,5	56	32,6	36	20,9	31	18,0	12	7,0	172	100
Adequacy	42	25,3	61	36,7	40	24,1	19	11,4	4	2,4	166	100

### 3.8.4 Conclusions

The right to reimbursement of expenses incurred during the criminal procedure is recognized in most EU member states. The majority (18) grants both victims as witnesses and victims as parties this right. Only 2 member states report that neither position ensures eligibility, 7 member states grant this to witnesses only.

As to the responsibility for refunding the victims' expenses, the responses are equally varied. Only 5 member states hold the perpetrator solely responsible for this. It is therefore fair to say that the reimbursement of the costs is generally seen as a responsibility of the state, if not immediately, then at least ultimately when the offender is not able or willing to pay.

Nevertheless in practice reimbursement of expenses leaves much to be desired, according to the respondents in the organisational survey. Generally speaking they find victims to be unaware of the possibilities for reimbursement, with the application procedures being cumbersome. Insufficient re-

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sources are available and reimbursement does not reach victims on time. Overall the reimbursement process was seen to be inadequate by 62% of the respondents, while only 14% found it to be adequate.

## 3.9 Article 8: Right to protection

### 3.9.1 Introduction: repeat and secondary victimisation

Article 8 of the Framework decision is devoted to the right to protection. This primarily relates to the victims' right to protection 'as regards their safety and protection of their privacy'. It reads as follows:

- *'Each Member State shall ensure a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.'*
- *To that end, and without prejudice to paragraph 4, each Member State shall guarantee that it is possible to adopt, if necessary, as part of the court proceedings, appropriate measures to protect the privacy and photographic image of victims and their families or persons in a similar fashion.*
- *Each Member State shall further ensure that contact between victims and offenders within court premises may be avoided, unless criminal proceedings require such contact. Where appropriate for that purpose, each Member State shall progressively provide that court premises have special waiting areas for victims.*
- *Each Member State shall ensure that, where there is a need to protect victims – particularly those most vulnerable – from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.*

In section 3.4.1 we discussed the phenomenon of secondary victimisation

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in the context of the criminal justice procedure. However, victims may also suffer from negative reactions from other sources. In fact, a negative reaction from the direct social surroundings is one of the most important factors in the development of psychological complaints after victimisation (Brewin et al, 2000). Of particular interest is the way that the media portray victims. This has been a particular complaint from co-victims of homicide (see Spungen, 1997; Rock, 1998) and victims of sexual violence (Temkin, 2002). In a study by Maercker & Mehr (2006) it was shown that a negative media reaction may contribute to psychological complaints of victims. Victims, in particular in those cases that attract a lot of media attention, may need protection and support from a sometimes intrusive media reaction.

Victims may also fear the offender's reaction. In many cases the victim is the most important witness in the case against the offender. Some offenders then will resort to threatening behaviour towards the victim (see for instance Zoellner, 2000). For victims of chronic violence, like violence in the family, security is both their primary need in reporting a crime, but also their primary concern (see Jordan, 2004). In cases of domestic violence the aftermath of the report is often the period in which serious, even fatal violence occurs (Campbell, 2002). For many victims in these situations the fear of the offender's reaction may even prevent reporting crime in the first place (Jordan, 2004). Victims may also find that the ability of the criminal justice system to prevent repeat violence is insufficient to be of assistance in their ordeal (f.e. Hartley, 2003).

Protection is not only an important feature in the case of chronic violence. Victims of organized crime and other forms of violence in which there is a high likelihood of retaliation on the part of the offender cause similar needs.

### 3.9.2 Legal implementation

#### *Protection of privacy*

There are a number of measures that provide protection from publicity for victims. One avenue is to restrict publication of the victim's details. In general, the criminal trial is governed by the principle of publicity which, amongst other things, requires that the trials should be open to public. It is meant to 'ensure a fair trial for the accused and inspire public confidence in the administration of justice.'<sup>33</sup> Exceptions to this rule are possible for the protection of the privacy of those involved in criminal proceedings. In particular this may apply in certain crimes or where publicity may cause social or cultural disgrace, or stigmatization for the victim.<sup>34</sup> According to the Report of the Commission, every member state has a possibility of ordering that proceedings be held in camera.<sup>35</sup> This implies that (part of) the criminal proceedings are held behind closed doors, without the public or the press being present. Brienen and Hoegen divided the jurisdictions across Europe according to the obligation of courts to provide hearings in camera. The following categories emerged:

- This can never be an obligation, but is part of their discretionary power
- This can be an obligation for certain types of offenders and/ or for certain offences
- This can be an obligation for certain types of victims and/ or if the victim so requests

The results of the questionnaire reveal that there is a wide divergence in the practice of the courts in the Member States of the EU. In 12 member states the respondents indicated that there is no obligation, but the courts have discretionary power to decide upon a hearing in camera.

Reasons for using this discretionary power lie in the protection of the private life of parties (for instance in Austria, Cyprus, Finland, Latvia, Lithuania), following a request of parties involved (Austria, Germany), the minor age of the victim (Finland) or the minor age of the offender (Latvia, Lithuania), in the mental disabilities of the victim (Finland), in the protection of the per-

<sup>33</sup> Brienen & Hoegen, p. 21.

<sup>34</sup> Brienen & Hoegen, p. 21.

<sup>35</sup> Report of the Commission, p.12. The jurisdictions that were included in Brienen & Hoegen's study also reported without exception that courts have the power to order the trial to be held in camera (p. 1132).

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sons involved (Austria, Latvia), in the vulnerability of certain witnesses (UK), in the sort of offence committed ('crimes against morals and sexual inviolability' in Latvia; 'sexual offences' in Lithuania and 'terrorism offences' in the UK), in the necessity to protect a professional or commercial secret (Latvia), in reasons of public order and national security (Austria) or in the fact that the victim or witness is subject to non-disclosure of identity (Lithuania).

In the other member states certain circumstances could oblige the courts to hold hearings in camera. This can be related to the offender's characteristics; his or her age (for instance Bulgaria, Greece, Slovenia) and his or her sanity (Poland).

Victim's characteristics can oblige a closed hearing as well. This is the case for young victims in Austria and for victims of sexual offences in Cyprus, Ireland, Luxembourg and Slovakia. In some jurisdictions the victim may request for a closed hearing, in Poland this option is restricted to victims of sexual offences.

The largest group of obligatory exceptions to the principle of publicity are related to types of offences. Examples of offences that warranted a closed session were: sexual offences (for instance in Bulgaria, Italy, Malta, Ireland), honour crimes (Bulgaria), libel or slander (Poland) and cases related to private life (Lithuania).

Closed hearings can also relate to the information that may be disclosed in the case. This can relate to the security of the nation (Cyprus), the protection of a state (Latvia, Lithuania) professional or commercial secrets (Lithuania) or the protection of public order and morals (Cyprus). Table 3.33 provides an overview of the results.

*Table 3.33/ Hearings in ‘camera’*

Member State	Solely, discretionary power court	Certain types of offenders and/ or offences	Certain types of victims and/ or on their request
Austria	0	0	1
Belgium	1	0	0
Bulgaria	0	1	1
Cyprus	0	1	1
Czech Republic	1	0	0
Denmark	0	0	1
Estonia	1	0	0
Finland	1	0	0
France	0	1	1
Germany	1	0	0
Greece	0	1	0
Hungary	1	0	0
Ireland	0	0	1
Italy	0	1	0
Latvia	0	1	0
Lithuania	0	1	1
Luxembourg	0	0	1
Malta	0	1	0
Netherlands	1	0	0
Poland	1	0	0
Portugal	1	0	0
Romania	1	0	0
Slovakia	0	0	1
Slovenia	0	1	1
Spain	1	0	0
Sweden	0	1	1
United Kingdom	1	0	0
Total	12	10	11

Another measure to prevent violation of victims’ privacy is to restriction of the disclosure of information relating to the victim. The three possible ways of limiting this disclosure – the pre-trial principle of secrecy, a prohibition to reveal the identity of victims in open court and a prohibition to reveal the identity of victim to the press - were derived from Brienen & Hoegen. The prohibition to reveal the identity of victims of certain types of offences in open court is a stronger safeguard for the victims than a mere restriction on press coverage. In the former case, the identity of the victim is only known to the people who participate in the proceedings, whereas in the latter case, the identity of the victim will become known to all the people who attend the trial.

In the Netherlands and Slovenia the respondents reported that there were no legislative measures available to restrict disclosure of the victim’s personal information. In 12 member states the pre-trial principle of secrecy applies.

Furthermore 16 countries prohibit the disclosure of the identity of victims of certain offences to the press and in extend this to open court. The reasons given for restricting disclosure of the victim's identity in open court and/or to the press were the following:

- the age of the victim (Cyprus, Estonia, Lithuania, Malta, UK),
- the age of the offender (Italy, Lithuania, Bulgaria),
- the protection of the private life of parties involved (Cyprus, Finland, Lithuania),
- the danger to the victim's safety (Italy, Lithuania, Slovenia, UK, Austria, Latvia) and/or
- the offence (domestic violence in Spain, honour crimes in Bulgaria, sexual crimes in Estonia, Ireland, Italy, Lithuania, Malta, UK and Bulgaria, cases related to national security in Greece, Cyprus and Bulgaria).

*Table 3.34/ Restrictions on disclosure of victims' details*

Member State	No measures available	Pre-trial principle of secrecy	Prohibition revealing identity of victims of certain offences in open court	Prohibition revealing identity of victims of certain offences to the press
Austria	0	0	1	1
Belgium	0	1	0	1
Bulgaria	0	0	1	1
Cyprus	0	0	1	1
Czech Republic	0	1	1	1
Denmark	0	1	0	0
Estonia	0	1	0	0
Finland	0	1	1	1
France	0	0	0	1
Germany	0	0	1	1
Greece	0	1	1	1
Hungary	0	1	0	0
Ireland	0	0	1	1
Italy	0	0	1	1
Latvia	0	0	1	0
Lithuania	0	0	1	1
Luxembourg	0	1	0	0
Malta	0	0	1	1
Netherlands	1	0	0	0
Poland	0	1	0	0
Portugal	0	0	0	1
Romania	0	1	0	0
Slovakia	1	0	0	0
Slovenia	0	0	0	1
Spain	0	1	0	0
Sweden	0	1	0	0
United Kingdom	0	0	1	1
<b>Total</b>	<b>2</b>	<b>12</b>	<b>13</b>	<b>16</b>



The final measure to protect the victim against the press are restrictions on press coverage of cases. Brienen and Hoegen revealed the following possibilities:

- Self-regulation by the media, either through tacit understanding or through an explicit code of ethics.
- Courts-imposed restrictions on press coverage in individual cases.
- General restrictions through legislation. Brienen and Hoegen found the latter category to relate to specific categories of offences, such as rape and sexual assault, or specific elements of the media, such as television broadcasting.<sup>36</sup>

The experts from Spain and France reported that there were no restrictions in place. Apart from those two countries, all the other member states have some form of restrictions of media coverage. In 17 member states the media have their own code of ethics, 16 member states allow courts to impose limits on the media and in 9 member states there are general restrictions on press coverage.

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<sup>36</sup> Brienen & Hoegen, p. 1132.

*Table 3.35/ Restrictions on press coverage*

Member State	No restrictions	Media code of ethics	Court may impose restrictions	General restrictions on press coverage
Austria	0	1	0	1
Belgium	0	1	0	1
Bulgaria	0	0	1	0
Cyprus	0	0	1	1
Czech Republic	0	1	1	1
Denmark	0	0	1	0
Estonia	0	1	1	0
Finland	0	1	1	0
France	1	0	0	0
Germany	0	1	0	0
Greece	0	1	0	1
Hungary	0	1	0	0
Ireland	0	0	1	0
Italy	0	1	1	0
Latvia	0	0	0	1
Lithuania	0	1	1	1
Luxembourg	0	1	0	0
Malta	0	0	1	0
Netherlands	0	1	1	0
Poland <sup>37</sup>	0	1	0	0
Portugal	0	0	0	1
Romania	0	0	1	0
Slovakia	0	1	1	0
Slovenia	0	1	1	0
Spain <sup>38</sup>	1	0	0	0
Sweden	0	1	1	1
United Kingdom	0	1	1	0
Total	2	17	16	9

*Protection from the offender*

Apart from the press, the victim and his family may also need to be protected against intimidation and the risk of retaliation by the offender. By separating the victim and the offender and by preventing physical proximity through various protection measures, the odds of the victim being intimidated or subjected to retaliation may be reduced. Brienen & Hoegen observed seven protection measures:

- Police protection of victim and family during the pre-trial and trial stages
- Preventive custody of the offender/ the possibility to refuse bail
- Provision of protection equipment like personal alarms to victims

37 The experts from Poland disagreed on this matter, it may be that the restrictions on press coverage are more extensive.

38 The experts from Spain give different answers to this question it may be that there is an effective media code of ethics.

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- Relocation of victims
  - Facilities at court, like police transport, separate seating and waiting areas
  - Measures to prevent offenders from tracing
  - Right to complete anonymity for victims

Since it is difficult to select the protection measures on the basis of their importance - e.g. does the right to complete anonymity ensure more or less safety than police protection? – the following table is ordered by number of protection measures available in a member state.

Brienen & Hoegen indicate that jurisdictions that only have police protection of the victim and preventive custody of the offender in place are to be regarded as underachievers. In their opinion, to comply with Recommendation 85(11) the provision of protection equipment and/or the possibility to relocate the victim has to be in place as well. Facilities at court, measures to prevent offenders from tracing the victim and the right to complete anonymity are indicators of best practices. In the light of this it is unfortunate to learn that member states like Hungary, Poland, Belgium (no police protection) and Finland, the Czech Republic and Slovenia (no preventive custody) do not even reach the minimum standard.

The provision of protection equipment is possible in 8 member states. 19 member states have the option to relocate victims to a another part of the country, 17 have facilities at court, 14 use measures to prevent offenders from tracing the victim and in 14 member states, the victim even can be granted the right to complete anonymity. Ten years ago, this measure was only possible in the Netherlands according to Brienen & Hoegen. We should however bear in mind that this far-reaching instrument is often only used for victims of a certain type, for instance victims of terrorism. See table 3.36 for an overview of the results.

*Table 3.36 | Measures for protection from the offender*

Member State	Police protection of victim and family	Preventive custody of offender	Provision of protection equipment	Relocation of victims	Facilities at court	Measures to prevent offenders from tracing	Right to complete anonymity for victims
Hungary	0	1	0	0	0	0	0
Luxembourg	1	1	0	0	0	0	0
Estonia	1	1	0	0	0	0	1
Germany	1	1	0	0	1	0	0
Ireland	1	1	0	1	0	0	0
Poland	0	1	0	0	0	1	1
Belgium	0	1	0	1	1	1	0
Finland	1	0	0	1	1	1	0
Latvia	1	1	0	1	0	0	1
Malta	1	1	0	1	1	0	0
Netherlands	1	1	0	0	1	0	1
Bulgaria	1	1	0	1	1	0	1
Czech Republic	1	0	0	1	1	1	1
Cyprus	1	1	0	1	1	1	0
Greece	1	1	0	1	1	0	1
Portugal	1	1	1	1	0	1	0
Slovakia	1	1	0	1	0	1	1
Denmark	1	1	1	1	1	1	0
Lithuania	1	1	0	1	1	1	1
Slovenia	1	0	1	1	1	1	1
Spain	1	1	1	1	1	0	1
Sweden	1	1	1	1	1	1	0
Austria	1	1	1	1	1	1	1
Italy	1	1	1	1	1	1	1
United Kingdom	1	1	1	1	1	1	1
Total	22	22	8	19	17	14	14

Article 8(3) relates to separate waiting areas. It contains the following requirement:

*Each Member State shall further ensure that contact between victims and offenders within court premises may be avoided, unless criminal proceedings require such contact. Where appropriate for that purpose, each Member State shall progressively provide that court premises have special waiting areas for victims.*

This obligation can be conditional. An example of a condition is that it applies to specific offences only, e.g. sexual violence or rape, or to the type of victim, such as minors.

The findings are sobering. Although Article 8(3) does not leave much room for interpretation, experts from 23 member states report that there is no ob-

ligation to provide separate waiting areas. In only 4 member states, there is a clear obligation to separate the victim from the offender on the court premises. For the United Kingdom, Lithuania and Romania this obligation is conditional and for the Netherlands it is an unconditional obligation. See table 3.37.

*Table 3.37/ The obligation to provide separate waiting areas*

Member State	No obligation	Conditional obligation	Unrestricted obligation
Austria	1	0	0
Belgium	1	0	0
Bulgaria	1	0	0
Cyprus	1	0	0
Czech Republic	1	0	0
Denmark	1	0	0
Estonia	1	0	0
Finland	1	0	0
France	1	0	0
Germany	1	0	0
Greece	1	0	0
Hungary	1	0	0
Ireland	1	0	0
Italy	1	0	0
Latvia	1	0	0
Lithuania	0	1	0
Luxembourg	1	0	0
Malta	1	0	0
Netherlands	0	0	1
Poland	1	0	0
Portugal	1	0	0
Romania <sup>39</sup>	0	1	0
Slovakia	1	0	0
Slovenia	1	0	0
Spain	1	0	0
Sweden	1	0	0
United Kingdom <sup>40</sup>	0	1	0
Total	24	2	1

39 The experts in Romania had different opinions concerning the extent to which the law obliges court rooms to have separate waiting areas.

40 The experts in England and Wales had different opinions on this matter. However the Victims Code of Practice states that separate accommodation should be available “where possible”. We have taken that to imply a conditional obligation.

41 Brienen & Hoegen, p. 1147-1148.

**A legal instrument to discourage intimidation or retaliation by the offender is the injunction or protection order. Such orders can vary in scope and can, for instance, entail prohibition of contacting the victim or his relatives or suspension of the parental rights of the offender. Apart from the differences in scope, there are also differences as to the legal status of the orders. Where certain orders are a civil law remedy, others can be imposed as a condition for bail, a community sentence or a suspended sentence and yet others can be granted by a criminal justice agency.<sup>41</sup> The advantage of a civil law remedy**

over the other two options is that civil protection orders do not need to be embedded in criminal proceedings.

11 member states allow victims the right to obtain a protection order through civil proceedings. In 16 member states the public prosecutor or the criminal courts can impose this measure as a condition for bail, a community sentence or a suspended sentence, Finally in 22 member states a criminal justice agency may grant these orders. It goes without saying that member states who have all three options at their disposal provide the largest amount of protection to victims.

Once more, some striking differences with Brienen & Hoegen's study can be observed. Their findings indicated that all jurisdictions included in their study – therefore also Belgium, Denmark, Ireland, Malta, Portugal, Spain and Sweden - allowed victims to obtain protection orders through civil remedies.<sup>42</sup> This is at odds with the current findings, see table 3.38.

*Table 3.38| The legal status of protection orders*

Member State	A civil law remedy	A condition to bail, a community sentence or a suspended sentence	Granted by a criminal justice agency
Austria	1	1	0
Belgium	0	1	1
Bulgaria	0	0	1
Cyprus	1	1	1
Czech Republic	1	1	1
Denmark	0	0	1
Estonia	1	0	0
Finland	0	0	1
Germany	1	1	1
Greece	1	1	1
Hungary	0	0	1
Ireland	0	1	1
Italy	1	0	1
Latvia	0	1	0
Lithuania	1	1	1
Luxembourg	1	1	1
Malta	0	1	1
Netherlands	1	1	1
Poland	0	1	1
Portugal	0	1	1
Slovakia	0	0	1
Slovenia	0	1	1
Spain	0	0	1
Sweden	0	0	1
United Kingdom	1	1	1
Total	11	16	22

42 Brienen & Hoegen, p. 1147.

Another legal instrument to prevent intimidation by the offender is to criminalize threats by the offender towards the victim/witness. This may be done in three ways:<sup>43</sup>

- the offender may be charged with the general offence of threatening another person;
- the threat may be seen as an aggravating circumstance of the crime for which the offender is on trial;
- threatening a witness or a civil claimant may be regarded as a specific statutory offence.

Hungary is the single member state that considers the threat to be an aggravating circumstance. The disadvantage is that sanctioning through this system depends on the outcome in the initial trial. Without a conviction in the underlying case, the threat remains unpunished. Some member states (Austria, Belgium, Bulgaria, Germany, Latvia, the Netherlands, Slovakia) consider threats against victims and/or witnesses as the general offence of threatening another person. More protection is offered when a threat is regarded as both a general offence and an aggravating circumstance (Greece, Slovenia) or as a specific offence (Denmark, Finland, Lithuania, Ireland, Italy, Malta, Poland, Sweden, Czech Republic, Cyprus, Estonia, Luxembourg, Portugal, Spain, UK). See table 3.39.

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<sup>43</sup> See Brienen & Hoegen, p. 1148-1149.

*Table 3.39 Threats against victims/ witnesses*

Member State	General offences	Aggravating circumstance	Specific offence
Austria	1	0	0
Belgium	1	0	0
Bulgaria	1	0	0
Cyprus	1	1	1
Czech Republic	1	1	1
Denmark	0	0	1
Estonia	1	1	1
Finland	0	0	1
Germany	1	0	0
Greece	1	1	0
Hungary	0	1	0
Ireland	0	1	1
Italy	0	1	1
Latvia	1	0	0
Lithuania	0	0	1
Luxembourg	1	1	1
Malta	1	0	1
Netherlands	1	0	0
Poland	1	0	1
Portugal	1	1	1
Slovakia	1	0	0
Slovenia	1	1	0
Spain	1	1	1
Sweden	1	0	1
United Kingdom	1	1	1
Total	19	12	15

### 3.9.3 Organisational implementation

This section considers the protection given to victims, and where appropriate their families and other persons in similar positions. It considers protection of their safety and their privacy against the risk of reprisals and other forms of intrusion. We asked respondents to comment on protection given when reporting a crime and testifying in court, on protection of victim's privacy, on protection from the media, and on whether contact with the offender is minimised.

In all aspects the number of negative responses outweighed the positive. Over 60% of respondents disagreed or completely disagreed that protection from the media is adequate. 59,5% gave negative responses to whether privacy is assured. 49,5% gave negative responses to whether contact with the offender is minimised. The same figures for protection when reporting a crime and when testifying in court were 47,9% and 47,6% respectively.



*Table 3.40 | Overall assessment - Right to Protection (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Report a crime	<b>39</b>	<b>18,7</b>	<b>61</b>	<b>29,2</b>	46	22,0	52	24,9	11	5,3	209	100
Testify in court	<b>32</b>	<b>15,5</b>	<b>66</b>	<b>31,9</b>	56	27,1	46	22,2	7	3,4	207	100
Privacy assured	<b>26</b>	<b>13,0</b>	<b>93</b>	<b>46,5</b>	39	19,5	39	19,5	3	1,5	200	100
Media	<b>40</b>	<b>19,9</b>	<b>85</b>	<b>42,3</b>	38	18,9	35	17,4	3	1,5	201	100
Contact with offender	<b>48</b>	<b>23,1</b>	<b>55</b>	<b>26,4</b>	41	19,7	53	25,5	11	5,3	208	100

### 3.9.4 Conclusion

Compliance with Article 8 was measured on seven criteria. Three of them related to protection of the victim against publicity, the other four related to protection of the victim against intimidation or threat by the offender.

Although all the member states have the possibility to hold hearings in camera, it is usually left up to the discretion of the courts (14 member states), which is the weakest form of protection. The highest level of protection - to make hearings in camera obligatory if the victim so requests - was reported in 8 member states. Furthermore, even though most member states (23) reported some form of restrictions on press coverage of cases, many of them (17 member states) relied on a media code of ethics. Finally most member states place limits on the disclosure of the victim's personal information. The measure that was favoured the most was the pre-trial principle of secrecy (17 member states).

As to the protection of the victim against threat and intimidation by the offender, 14 member states had 5 or more protection measures in place. The measures that were most favoured were police protection, preventive custody and relocation of the victim. The right to complete anonymity was implemented by no less than 14 member states, although this right may often apply to certain types of victims. All in all, all member states seem to endorse the importance of protection measures and they often apply more than one measure to make sure that the victim is protected against the offender.

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Separate waiting areas however are not available to victims in most member states. 24 member states reported no obligation to provide for separate waiting areas in court premises. This is a particularly striking finding, considering the straightforward phrasing of the relevant Framework article.

All of the states have one or more options for the victims to obtain protection orders, but the legal status differs. The strongest legal protection against threatening behaviour against victims/witnesses is to regard it as a specific offence. Fifteen member states perceive threatening behaviour in this fashion, sometimes in combination with a general offence, an aggravating circumstance or both.

Overall, the member states appear to be aware of the significance of protection of victims against publicity and the offender. This appears from the fact that a large majority has possibilities to hold hearings in camera, to restrict press coverage of cases, to limit disclosure of victims' personal information and to protect the victim through various practical and legal protection measures. However member states regularly opt for weaker mechanisms (hearings in camera at the discretion of the judge, restrictions on press coverage through a media code of ethics) or they do not provide the optimal combination of measures (restrictions on disclosure of victim's information, protection orders, threatening behaviour). Finally it is clear that a large majority of the member states do not comply to the requirement concerning separate waiting areas.

The fact that member states do not always opt for the strongest mechanism for the protection of victims and that hardly any comply with the provision to provide separate waiting areas may well contribute to the negative assessment of the majority of the respondents in the survey. On all counts - protection from the offender, of the victim's privacy, from the media - a majority found current protection measures to be inadequate.

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## 3.10 Article 9: Compensation

### 3.10.1 Introduction

Compensation of the harm done is an important need for many victims (see generally Pemberton, 2009). Victims of crime will generally view the severity of the crime in terms of the harm they have suffered, rather than issues like the culpability of the offender (the wrong, see Duff, 2003). For victims of property crimes it is often the most important reason for contacting the police following victimisation (e.g. Wittebrood, 2006). But for victims of violent crime it can be an important concern as well. This not only relates to the physical harm incurred, but also to the symbolic value compensation may have (Strang, 2002).

This symbolic value is also the reason why many victims prefer receiving compensation from the offender over the state (see already Shapland et al, 1985). According to Kaptein (2004) receiving compensation from the offender may be seen as an alternative interpretation of retribution, which literally means repaying. The victim may receive a sense of justice through the effort the offender must exert to repay the damages (see also Darley & Pittman, 2003).

The importance of compensation should neither be overstated or understated. Research in a variety of settings has shown that many victims do not ascribe the highest priority to receiving compensation (see Strang, 2002; Beven et al, 2005, Van Dijk and van Mierlo, 2009; Van Mierlo & Pemberton, 2009). Nevertheless for some victims it is of paramount concern (see Pemberton, 2009), while recent research shows that many victims view compensation as a sign of acknowledgment and respect for the harm they suffered (Mulder, forthcoming).

Implementation deficiencies in restitution (see also below) greatly reduce the advantages of obliging the offender to pay compensation. In cases where the sentence contains the obligation for offenders to pay compensation, but where the compensation is not paid in full, or in a timely fashion, victims are dissatisfied with the procedure (see Smith, Davis & Hillenbrand, 1992).

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Article 9 of the Framework Decision relates to the issue of compensation for victims during the course of the criminal proceedings. This means that compensation for victims outside of the criminal proceedings, through insurance or criminal injuries compensation funds, is not covered by the article. The main focus of the questions in the survey relate to section 2 of this article:

*Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims.*

The benefits of compensation through the criminal justice system from the offender to the victim are twofold. First it prevents victims -or at least ameliorates the necessity for victims- from having to file civil proceedings against the offender to recoup their damages. Second the criminal justice agencies often have more possibilities to ensure payment of compensation than the victims themselves.

However, the implementation of measures to achieve compensation by the offender often leaves much to be desired (see Brienen and Hoegen, 2000). Compensation measures are often not enforced, and where they are, the offender's insolvency may mean that the compensation process takes a long time, even years. This greatly reduces the satisfaction or sense of justice victims may receive from being granted compensation during the procedure.

### **3.10.2 Legal implementation**

There are two avenues by which member states can encourage payment of compensation by the offender. First of all the question of compensation can be considered by the prosecution or the judge as a reason to mitigate or suspend sentences. In this way the offender is stimulated to pay compensation as this may reduce his sentence. In addition the prosecution may have the possibility or even the duty to attempt to obtain compensation for the victim. Paying compensation can entail the prosecution to dismiss the case. In jurisdictions that strictly adhere to the legality principle, the latter is not possible as prosecutors in these states have no discretionary power to discontinue prosecution.

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Second measures may be in place that allow the criminal justice system to consider payment of compensation to victims within the criminal trial, which prevents victims from having to initiate civil proceedings. This may be achieved through a form of the adhesion procedure, in which the victim ('the injured party') may adhere his or her civil claim for compensation to the criminal case. This is also known as the 'continental' model and is in place in most of the jurisdictions in the European Union.

In so-called common law countries a similar opportunity for obtaining compensation is absent. There is no way for victims to become party to the criminal proceedings by adhering their civil case. Nevertheless in these countries (within the European Union this applies to the UK, Ireland, Malta and Cyprus) the sentence of the offender may contain provisions relating to the payment of compensation to the victim, a so-called compensation order. Brien and Hoegen note that 'in this model the ties between the civil liability of the offender to the victim and the eventual awarding of compensation have been loosened and the question of compensation is more or less integrated into the criminal proceedings.' Although sentences in many of the 'continental model' countries may contain similar obligations for the offender, these obligations stem from the civil claim that is adhered to the criminal procedure. In Brien and Hoegen's classification only the Netherlands was a hybrid model, in which the compensation measure is in theory similar to the compensation order.

#### *Compensation and prosecution*

Brien and Hoegen classify the possibilities of the criminal justice system to stimulate offender's payment of compensation into three categories, which they further subdivide. First of all there are jurisdictions in which the payment of compensation does not affect the decision to prosecute. In other words the question of compensation is not considered by the prosecution. Second there are jurisdictions where the question of compensation is considered. It may be the case that the payment of compensation is a reason not to prosecute and/ or is a condition for dismissal of the case. In addition the fact that no compensation is paid may be a reason to prosecute the case. Third there are

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jurisdictions where the prosecution may have the power to mediate between offenders and victims with the goal of obtaining compensation for the victim or even have the duty to do so.

Table 3.41 provides an overview of the results. According to the experts Bulgaria, Cyprus, Denmark, Estonia, Greece, Ireland, Latvia, Malta, Spain and the United Kingdom do not consider the question of compensation to the victim in the decision to prosecute the offender. Brienens and Hoegen already showed Cyprus, Greece, Malta and Spain to strictly adhere the legality principle, which bars the prosecutor from considering the question of compensation. Moreover, in their survey Denmark and Ireland, although they do not apply the legality principle, do not allow consideration of compensation in decisions to prosecute or not prosecute.

According to the experts payment or non-payment of compensation may influence the decision to prosecute in Austria, Belgium, the Czech Republic, Finland, France, Germany, Hungary, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden. Although Germany and Austria adhere to the legality principle they allow for compensation as a ground for dismissal, although the condition is rarely imposed.

There appears to have been an increase in the number of jurisdictions which extend the duty for prosecutors to obtain compensation between offender and victim. This duty may also take the form of mediation between victim and offender to obtain compensation. According to the experts, it is now currently available in fourteen of the twenty-seven EU member states, including the Czech republic, Finland, Germany, Hungary, Lithuania, Luxembourg, Poland, Romania, Slovenia and Sweden as well. In Brienens and Hoegen's survey, only four countries (Austria, Belgium, the Netherlands and France) of the twenty-two surveyed had implemented this.

*Table 3.41| Compensation and prosecution*

Member State	No consideration of the question of compensation	(Non-) Payment of compensation may influence the decision to prosecute	Prosecutors have the power to mediate between the offender and the victim or the duty to attempt to obtain compensation
Austria	0	1	1
Belgium	0	1	1
Bulgaria	1	0	0
Cyprus	1	0	0
Czech Republic	0	1	1
Denmark	1	0	0
Estonia	1	0	0
Finland	0	1	1
France	0	1	1
Germany	0	1	1
Greece	1	0	0
Hungary	0	1	1
Ireland	1	0	0
Italy <sup>44</sup>	0	1	0
Latvia	1	0	0
Lithuania	0	1	0
Luxembourg	0	1	1
Malta	1	0	0
Netherlands	0	1	1
Poland	0	1	1
Portugal	0	1	0
Romania	0	1	1
Slovakia <sup>45</sup>	0	1	0
Slovenia	0	1	1
Spain	1	0	0
Sweden	0	1	1
United Kingdom <sup>46</sup>	1	0	0
Total	10	17	14

44 The experts in Italy disagreed with each other concerning the role compensation may play in the decision to prosecute.

45 The Slovakian experts disagreed with each other, it may be that the role of the prosecution in obtaining compensation for the victim is larger.

46 The experts in the United Kingdom disagreed with each other concerning the role compensation may play in the decision to prosecute.

### *The adhesion procedure*

The adhesion model offers the injured person the opportunity of presenting his civil claim for damages against the offender in conjunction with the criminal proceedings, and the criminal court then decides on both the criminal and civil liability of the offender. It is the most widespread model in Europe and is used in Austria, Belgium, the Czech republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

There are two issues relevant to the implementation of the adhesion procedure. First, there is the status of the compensation awarded through the pro-

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cedure, in comparison to the sanction for the offender, the fine or the costs that the offender may have to pay. Is the compensation awarded in addition to the sanction or can it also be awarded as a substitute for the sanction? And does paying compensation have a preference over paying a fine and/ or paying the costs of the procedure?

Second there is the role of the state in the enforcement of the adhesion procedure. Are victim expected to enforce payment themselves? Does the state provide assistance and/ or resume responsibility or does she even pay the compensation up-front before collecting it from the offender?

In most member states the compensation awarded through the compensation procedure is solely an additional measure to the penal sanction. This is the case in Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovenia, Slovakia and Sweden. According to the experts in France and in the Netherlands it is also possible to award compensation as a substitute for a criminal sanction. In Brienen and Hoegen's survey, there were also no jurisdictions that have implemented the paying of compensation as a substitute for a penal sanction. The results suggest that the Framework Decision has not changed this to in most EU member states.

As to the enforcement of the compensation awarded, the victim is left to his own devices in most member states. This is the case in Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, Germany, Greece, Italy, Latvia, Luxembourg, Poland, Portugal, Romania, Slovakia and Slovenia. In six states the experts agreed that the state assumes a role in enforcing awarding compensation. The state provides assistance in Sweden, Denmark, France and Hungary and assumes responsibility in Lithuania and the Netherlands. In the latter jurisdiction the introduction of the victim section into the code of criminal procedure, will extend the states responsibility. After adoption of this law, the state will provide payment up front. See table 3.42.



*Table 3.42/ Enforcement of the compensation awarded*

The victim is responsible for enforcement	State provides assistance	State assumes responsibility	State provides payment up-front
Austria	Denmark	Lithuania	
Belgium	France	The Netherlands	
Bulgaria	Hungary		
Czech Republic	Sweden		
Estonia			
Finland			
France			
Germany			
Greece			
Italy			
Latvia			
Lithuania			
Luxembourg			
Poland			
Portugal			
Slovakia			
Slovenia			

*The compensation order*

The compensation order is found in common law jurisdictions and in the case of the EU, this relates to Ireland, the United Kingdom, Cyprus and Malta. In the United Kingdom paying a compensation order has both priority over paying a fine or paying costs, while in the other jurisdictions the hierarchy between the order and the other sanctions is left open. In addition in the United Kingdom the compensation order is collected in a similar fashion to a fine, with the state assuming responsibility. This is also the case in Ireland, but not in Malta or Cyprus.

**3.10.3 Organisational implementation**

This section considers compensation afforded to victims of crime. This includes the recovery of property belonging to victims, as well as compensation from the offender to the victim. We consider four aspects of the process – its adequacy, timeliness, awareness about the compensation procedure, and ease of making requests for compensation. See table 3.43.

There is no clear consensus on awareness of compensation. On this issue

there were an equal number of positive and negative responses. On all other aspects the positive responses are outweighed by the negative. This is clearest for timeliness, where over 75% of respondents either disagreed or completely disagreed that compensation was timely.

*Table 3.43/ Overall assessment - Compensation (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Adequacy	43	22,6	86	45,3	39	20,5	17	8,9	5	2,6	190	100
Timeliness	68	34,9	79	40,5	33	16,9	12	6,2	3	1,5	195	100
Victims Awareness	23	11,6	56	28,1	41	20,6	69	34,7	10	5,0	199	100
Request Procedure	30	15,5	66	34,0	37	19,1	45	23,2	16	8,2	194	100

### 3.10.4 Conclusions

Most member states have the possibility to stimulate the offender to pay compensation to the victim. This can be achieved by considering the question of payment of compensation in prosecution, by the possibility to attempt mediation between victim and offender relating to compensation or even the duty to do so. In this respect most member states appear to comply to article 9.

As to the main mechanisms to achieve compensation through the criminal justice system, the adhesion procedure and the compensation order, the results are sobering. The compensation awarded through the adhesion procedure is solely an additional measure, which, in most member states, has to be enforced by victims themselves. The compensation order is well implemented in the United Kingdom, where it has priority over paying a fine and paying costs. In seven countries the state plays a role in the enforcement of the offender's obligation to provide compensation. In addition to the United Kingdom, this is the case in Sweden, Denmark, France, Hungary, Lithuania and the Netherlands.

According to the majority of the respondents the compensation procedures in their countries are inadequate and two thirds of them find the timeliness

of compensation much to be desired. As the latter is one of the main problems when the state offers no assistance in the enforcement of the offender's obligation to pay compensation it stands to reason that this may well improve when more states opt for an active role in this respect.

### 3.11 Article 10: Penal mediation in the course of criminal proceedings

#### 3.11.1 Introduction

Article 10 of the Framework decision concerns penal mediation, more often referred to as victim-offender mediation. The Framework Decision encourages member states to promote mediation in criminal cases and ensure that agreements reached in mediation are taken into account in the criminal cases. The Article wording is as follows:

- 1. Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.*
- 2. Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.*

Moreover, the Framework decision offers this definition of mediation in criminal cases, in article 1, section E:  
*mediation in criminal cases' shall be understood as the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person.*

It is very difficult to do justice to the subject of penal (victim-offender) mediation in the course of one short section. Victim-Offender mediation and other types of restorative justice procedures (Marshall, 1999) are the subject of a vast and growing academic literature (for overviews, see f.e. Johnstone & Van Ness, 2007).

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We should stress a number of points, however. In the first place, although victim-offender mediation has shown positive results for victims, the main driver for these instruments has not been the position of victims, but rather the position and treatment of offenders. As Dignan (2005) points out, the underlying theories do not really have much bearing on victims and victims' issues. This has led a number of authors (f.e. Green, 2007; Pemberton, Winkel and Groenhuijsen, 2007) to urge for caution in the application of restorative justice initiatives under the guise of improving the position of victims. As Ashworth (2002) noted restorative justice procedures run the risk of using the victim in the 'service of the offender'.

In the second place positive findings should always be viewed in the light of the type of victim participating and the fact that participation is always voluntary (Pemberton, Bastiaens, Vervaeke and Winkel, 2010). It is highly questionable whether the positive results of participating victims can be generalized to other types of victims. For traumatized victims, victims of chronic violence, victims who do not share the same (cultural) background as the offender, victims of repeat offenders, participation in a victim-offender mediation procedure may not be as appropriate as the case in the type of crime that is mostly included in existing victim-offender mediation procedures (see Pemberton, 2008; Pemberton, Kuijpers, Winkel and Baldry, 2009).

The framework decision article allows member states a large degree of discretion in complying with this requirement. This follows from the fact that member states themselves can determine in which offences mediation may be appropriate. As Groenhuijsen and Pemberton (2009) note, this could lead to a variety of practices across the European Union. However as reviews of victim-offender mediation and other restorative justice practices have already shown (see Miers and Willemsens, 2004; Willemsens and Walgrave, 2007) most member states apply similar criteria in determining appropriate offences for mediation in criminal matters. Generally speaking mediation is regarded as appropriate in less severe cases, which involve juvenile offenders. Severe violence and in particular sexual or domestic violence are deemed too serious for referral to mediation programmes. Moreover, in line

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with other international documents on mediation in criminal cases, like the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, UN ECOSOC Res. 2002/12 or Recommendation (1999)19 concerning Mediation in Penal Matters of the Council of Europe, referral to mediation depends on the consent of victim and offender.

Where mediation is allowed in more serious cases, it has a qualitatively different function than in less severe cases. Groenhuisen (2000) divided mediation in criminal cases into three categories. In the first and second mediation is either a part of the criminal justice process or even a replacement. The latter is rarely observed, but the former is used for less severe cases. Here the function of mediation is to reach an agreement that may influence the ongoing criminal justice procedure against the offender, who is technically still a suspect. Groenhuisen's third category applies to a wider range of offences. Here mediation is implemented outside of the criminal justice system. The results are not intended to impact the criminal justice procedure. This model may also include severe cases of violence, even homicide. Mediation often takes place (a long time) after the criminal justice procedure is concluded. It is important to note that this type of victim-offender mediation does not meet the definition for mediation in criminal matters that is contained in the Framework Decision. In the Framework's definition mediation in criminal cases should take place prior to or during criminal proceedings and the results should be taken into account during the criminal proceedings. For the purposes of this analysis therefore the practices, whereby victim-offender mediation is implemented outside of the criminal justice system, will not be included.

### **3.11.2 Legal implementation**

The current survey confirmed the notion that most EU member states consider penal mediation to be appropriate for lesser crimes, but not for grave offences. According to the experts the exceptions are Finland, Germany, Luxembourg and Poland. In Finland the exact circumstances of the offence are taken into account in determining the suitability of mediation. In Germany the victims interest is the main criteria and Luxembourg finally bars

domestic violence cases. In Poland mediation is possible in all cases. In a number of other member states, Bulgaria, Cyprus, Denmark, Lithuania, Malta, the Netherlands, Spain and the United Kingdom mediation is not used in criminal cases, at least following the definition of the Framework Decision. In the Netherlands for example mediation is solely a complementary measure. In many of the other member states of the European Union, Austria, Belgium, the Czech Republic, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Portugal, Slovakia, Slovenia and Sweden penal mediation is allowed, but only for less severe cases. In many states the maximum limit of the possible penalty is a criterion. In Hungary, Portugal and Slovakia the limit is five years imprisonment, in Slovenia three years and in Belgium two years. In Finland, Germany, Luxembourg and Poland there are no restrictions in principle on the severity of cases. Table 3.44 provides an overview of the results.

*Table 3.44 | Is penal mediation allowed?*

No	Yes, but only in less severe cases	Yes
Bulgaria	Austria	Finland
Cyprus	Belgium	Germany
Denmark	Czech Republic	Luxembourg
Lithuania	Estonia	Poland
Malta	France	
The Netherlands	Greece	
Romania	Hungary	
Spain	Ireland	
United Kingdom	Italy	
Portugal	Latvia	
Slovenia	Portugal	
Sweden	Slovakia	
	Slovenia	
	Sweden	

In some of the countries the results of mediation have to be taken into account in the criminal procedure. This is the case in Austria, Germany, Hungary, Italy, Latvia, Poland and Sweden. Together with the suitability for severe cases this suggests that Germany and Poland have implemented the most far-reaching forms of penal mediation. It is allowed in all cases and the results have to be taken into account.

In some of the other countries the results are not taken into account, namely,

Portugal, Slovakia and Sweden.<sup>47</sup> The mediation procedures in these jurisdictions do not comply with the requirements of the Framework Decision.

In most jurisdictions the use of the results of mediation in criminal cases is up to the discretion of the prosecutor. This is the case in Belgium, Czech Republic, Estonia, Finland, France, Greece, Ireland and Luxembourg. See table 3.45.

*Table 3.45: Are the results of penal mediation taken into account in the criminal procedure?*

Not taken into account	This is up to the discretion of the prosecutor	Results of mediation have to be taken into account
Portugal	Belgium	Austria
Slovenia	Czech Republic	Germany
Sweden	Estonia	Hungary
	Finland	Ireland
	France	Latvia
	Greece	Poland
	Ireland	Sweden
	Luxembourg	
	Portugal	
	Slovakia	

### 3.11.3 Organisational implementation

We asked respondents to comment on awareness of and access to penal mediation between with victim and offender. Awareness of mediation was perceived to be poorer than access to it. 63,7% disagreed or completely disagreed that victim awareness of penal mediation was adequate. See table 3.46.

*Table 3.46| Overall assessment - Penal mediation (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Victims awareness	45	23,3	78	40,4	30	15,5	34	17,6	6	3,1	193	100
Access	42	22,2	64	33,9	34	18,0	42	22,2	7	3,7	189	100

<sup>47</sup> The experts in Sweden disagreed on this issue, it is possible that the results are taken into account.

### 3.11.4 Conclusions

Not all member states allow penal mediation in criminal cases. Penal me-

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mediation is not used in Bulgaria, Cyprus, Denmark, Lithuania, Malta, the Netherlands, Romania, Spain and the United Kingdom. This does not imply that these countries do not comply with the Framework decision in this respect, as this allows Member States the discretion to determine for which offences, if any, they find penal mediation to be appropriate. Although the phrasing of the article is vague, most mediation practices seem to be similar, with member states allowing mediation for less severe cases, not for grave offences.

The results of the mediation are not taken into account in Portugal, Slovakia and possibly Sweden, which suggests that the mediation procedures in these countries do not comply with Framework Decision requirements.

## 3.12 Article 11: Victims resident in another state

### 3.12.1 Introduction

As noted before, at the heart of the Framework Decision lies the concern with the position of cross-border victims. The original reason the European Commission had competence in the field of victims' rights lies in these situations, in which victims resident in another European member state are victimized abroad. Article 11 of the Framework Decision deals with this particular issue. Section 2 of this article states the following:

*Each Member State shall ensure that the victim of an offence in a Member State other than the one where he resides may make a complaint before the competent authorities of his State of residence if he was unable to do so in the Member State where the offence was committed or, in the event of a serious offence, if he did not wish to do so.*

*The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the national law of the State in which the offence was committed.*

The article implies that cross-border victims may report crimes in their



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country of residence, even when the authorities in their home country have no jurisdiction. For certain types of crime, for instance treason or terrorism, most countries already can claim jurisdiction for offences committed abroad. Similarly, when the offender is a resident or a national of the country of residence, this is also the case. However, the article specifically stipulates, that the possibility to make a complaint is not restricted to these situations. Indeed the article would not have had any added value for victims if that had been the case.

### **3.12.2 Legal implementation**

In the initial answers to Article 11 section 2 the problems of difference of interpretation were particularly striking. In no less than 11 jurisdictions the experts differed in their opinion. Even in the countries where there was agreement (Poland is a case in point) the answers given do not reflect a correct interpretation of the article. In a number of instances the information provided by the Member states to show transposal of this article, relate to cases in which they do have competence, not to the situations in which they do not.

We have therefore chosen to interpret the answers of the respondents in a conservative fashion. Only in those cases where the respondents were unanimous about the obligation to accept complaints for cases in which their jurisdiction does not have competence and where we could verify the legal base, they are included in the list of countries who have implemented this Framework requirement. This is the case in Austria, Belgium, the Czech Republic, Finland, France, Hungary, Latvia, Luxembourg and Slovakia. See table 3.47.

*Table 3.47/ Police obligation to accept complaint for crime committed abroad*

No	Yes
Bulgaria	Austria
Cyprus	Belgium
Denmark	The Czech Republic
Estonia	Finland
Germany	France
Greece	Hungary
Ireland	Italy
Latvia	Luxembourg
Lithuania	Slovakia
Malta	
Netherlands	
Poland	
Portugal	
Romania	
Slovenia	
Spain	
Sweden	
United Kingdom	

### 3.12.3 Organisational implementation survey

We asked respondents to consider the support available to victims when the country in which the offence occurred is different from the victim's country of residence. We consider the provision of information to victims, cooperation between member states, cooperation between relevant organizations, victim awareness, and the adequacy of police procedures in this situation.

The respondents gave a more negative than positive response. This is most apparent on the issue of information to victims – 64,5% either disagree or completely disagree that this is adequate. Further, among the respondents there is a higher proportion of respondents who neither agree nor disagree with the statements.

*Table 3.48/ Overall assessment – Victims resident in another Member State (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Information	53	28,5	67	36,0	29	15,6	29	15,6	8	4,3	186	100
Cooperation between MS	26	18,1	45	31,3	43	29,9	27	18,8	3	2,1	144	100
Cooperation between institutions	19	12,9	49	33,3	44	29,9	30	20,4	5	3,4	147	100
Victims awareness	27	17,2	58	36,9	42	26,8	24	15,3	6	3,8	157	100
Police procedures	14	10,2	39	28,5	32	23,4	39	28,5	13	9,5	137	100

### **3.12.4 Conclusions**

The majority of the European Union member states do not offer victims the opportunity to report crimes committed abroad once they return home. Most of the countries solely offer victims this opportunity in cases in which they themselves have jurisdiction. As this framework requirement lies at the heart of the Framework Decision improvements on this issue are called for. This is also born out by the results of the organisational survey. Most respondents find the measures taken to meet the needs of cross-border victims to be insufficient.

## **3.13 Article 13: Specialised services and victim support organisations**

### **3.13.1 Introduction**

One of the most important elements of the development of victims' rights in Europe concerns Victim Support. The recognition that many victims need assistance, support and information in the aftermath of crime, and will often not receive this provided the impetus for the development of victim support organisations across Europe. In comparisons, victim support is the most valued element of the assistance offered to victims of crime (see f.e. Ringham & Salisbury, 2002; Winkel, Spapens & Letschert, 2006).

But victim support is not only an important development in its own right. It was in fact in a large part due to activities of victim support organisations, assembled in the European Forum for Victim Services that the European Union adopted the Framework Decision on victims of crime. And also at the national level, victim support organisations have been relentless campaigners for improvement of the position of victims.

The Framework Decision emphasizes the need for victim assistance either through public services or through victim support organisations.

Article 13 states:

*1. Each Member State shall, in the context of proceedings, promote the involvement of victim support systems responsible for organising the initial reception of victims and for victim support and assistance thereafter, whether through the provision of specially trained personnel within its public services or through recognition and funding of victim support organisations.*

*2. Each Member State shall encourage action taken in proceedings by such personnel or by victim support organisations, particularly as regards:*

*(a) providing victims with information;*

*(b) assisting victims according to their immediate needs;*

*(c) accompanying victims, if necessary and possible during criminal proceedings;*

*(d) assisting victims, at their request, after criminal proceedings have ended.*

And according to article 1, section B

*‘victim support organisation’ shall mean a non-governmental organisation, legally established in a Member State, whose support to victims of crime is provided free of charge and, conducted under appropriate conditions, complements the action of the State in this area;*

### **3.13.2 Legal implementation**

Member states can be said to comply with article 13 whether they have victim support organisations or not. In Brienen and Hoegen’s survey some of the countries surveyed did provide services to victims, but these tasks were the responsibility of government agencies, like the social services. However, where the tasks outlined in section 2 of article 13 are granted to victim support organisations in a member state, we are of the opinion that in gauging the level of compliance, at least two features are crucial. That is whether the organisation in question has national coverage and whether it at least offers general services to all victims of crime. If a member state does not meet one or both of these criteria victims in certain regions of their country or certain types of victims will not be

able to receive the types of services outlined in section 2 of article 13.

In addition to these criteria the survey asked about the existence of specialised services, as well as the possibility that victim support organisations are consulted in national policy concerning crime victims.

There are a number of countries in which a victim support organisation does not exist, according to the experts. Cyprus, Denmark, Greece, Italy, Latvia, Lithuania, Poland, Slovenia and Spain do not deliver services to victims through a non-governmental organisation. See table 3.49.

In most of the countries that have a victim support organisation, this organisation has achieved national coverage. This is the case in Austria, Belgium, Estonia, Finland, Germany, the Netherlands, Portugal, Slovakia, Sweden and the United Kingdom. In addition most victim support organisations provide general services for all victims of crime as well as specialised services meeting the needs of specific groups. This is the case in Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, Germany, Luxembourg, the Netherlands, Portugal and the United Kingdom. Finally input of Victim Support Organisations is considered important in the development of national policies concerning crime victims. Victim Support is consulted on policies concerning crime victims in Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, Germany, the Netherlands, Portugal and the United Kingdom. The latter is a marked improvement on the situation reported by Brienen and Hoegen. In 1999 victim support organisations were only consulted in Belgium, the Netherlands and the United Kingdom.

*Table 3.49/ The existence and position of Victim Support Organisations in Member States*

Member State	There is no national VSO	There is a national VSO	The VSO has achieved national coverage	The VSO provides general services for all victims of crime	The VSO provides specialised services meeting the needs of specific groups	The VSO is consulted on national policies concerning crime victims
Austria	0	1	1	1	1	1
Belgium	0	1	1	1	1	1
Bulgaria	0	1	0	1	1	1
Cyprus	1	0	0	0	0	0
Czech Republic	0	1	0	1	1	1
Denmark	1	0	0	0	0	0
Estonia	0	1	1	1	1	1
Finland	0	1	1	1	1	1
Germany	0	1	1	1	1	1
Greece	0	0	0	0	0	0
Hungary	0	1	0	1	0	0
Ireland	0	1	0	0	0	0
Italy	1	0	0	0	0	0
Latvia	1	0	0	0	0	0
Lithuania	1	1	0	0	0	0
Luxembourg	0	1	0	1	1	0
Malta	0	1	0	1	0	0
Netherlands	0	1	1	1	1	1
Poland	1	0	0	0	0	0
Portugal	0	1	1	1	1	1
Slovakia	0	1	1	0	0	0
Slovenia	1	0	0	0	0	0
Spain	1	0	0	0	0	0
Sweden	0	1	1	1	0	0
United Kingdom	0	1	1	1	1	1

### 3.13.3 Organisational implementation

This section considers the provision of victim support services, from the initial reception of the victim, to support through the judicial process and assistance thereafter. Respondents were asked to comment on the funding of victim support organisations, access to them, whether the services were adequate, and support during and after the judicial process.

The majority of the respondents were positive the support given victim support. 57,0% found access to be sufficient (only 25% did not) and 49,5% found the support to be adequate, 30,1% did not. However a majority found funding to be inadequate, 59,8% versus 24,5%.

*Table 3.50 | Overall assessment – Victim Support Organisations (Number and % of answers)*

Topics	Completely disagree		Disagree		Do not agree, or disagree		Agree		Completely agree		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Funding	<b>48</b>	<b>23,5</b>	<b>74</b>	<b>36,3</b>	32	15,7	38	18,6	12	5,9	204	100
Access	15	7,2	38	18,4	36	17,4	<b>84</b>	<b>40,6</b>	<b>34</b>	<b>16,4</b>	207	100
Adequacy	19	9,2	41	19,9	44	21,4	<b>81</b>	<b>39,3</b>	<b>21</b>	<b>10,2</b>	206	100
Support during	13	7,0	37	19,9	46	24,7	<b>69</b>	<b>37,1</b>	<b>21</b>	<b>11,3</b>	186	100
Support after	17	9,7	36	20,6	56	32,0	<b>58</b>	<b>33,1</b>	<b>8</b>	<b>4,6</b>	175	100

### 3.13.4 Conclusions

Member states can be said to comply with article 13 whether they have victim support organisations or not. The article specifically stresses that the victim support services may also be the responsibility of governmental agencies. Where victim support organisations do exist two criteria should be applied: national coverage and general services for all types of victims. If countries do not meet these criteria, victims in certain regions or certain types of victims will not be able to access the services provided by victim support. According to the opinion of the experts consulted in this survey Austria, Belgium, Estonia, Finland, Germany, the Netherlands, Portugal and the United Kingdom meet both criteria. However, like other articles in the Framework Decision, the phrasing is vague. Member states only have to ‘promote’ or ‘encourage’. This means that the member states who fall short on one or both criteria can still comply with the literal text of the Framework article.

The work of victim support organisations is appreciated by the experts in the survey, with both a majority finding the level of services and access to be adequate. They however consider the funding of victim support across Europe to leave room for improvement.



## **4. Overall conclusions and recommendations**



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# 4. Overall conclusions and recommendations

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In this final chapter the conclusions concerning the Framework Decision articles will be summarized. This will be followed by Victim Support Europe's recommendations concerning improvements of the Framework Decision

## 4.1 Overall conclusions

### **Article 1: The term victim**

The differences of opinion concerning the interpretation of the scope of the term 'victim' complicate a comparison between member states. It seems likely that the experts from Denmark, Malta, Slovenia and Slovakia interpreted the definition in a strict fashion.

In the other member states the closest family members are included in the term victim, according to the experts. In some of the countries (Cyprus, Finland, Greece, Latvia, Lithuania, Poland and Portugal) this does not apply to the same-sex partner of the direct victim. This may well reflect the standing of same-sex unions in these member states. First responders are included in Bulgaria, the Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania and Luxembourg.

### **Article 2: Respect and recognition**

Transposal of article 2 section 1 of the Framework Decision, which relates to respect and recognition, entails the full transposal of all Framework articles. Therefore the legal questionnaire does not query this topic separately. However the answers of the experts across Europe to the organisational questionnaire suggest that the amount of respect afforded to victims and recognition of the harm they suffered still leaves much to be desired.

### **Article 2: Vulnerable victims**

As to vulnerability the results show that most member states find mental disability or the type of crime suffered to constitute grounds for special treat-

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ment of victims. This concurs with the way the Council of Europe defines vulnerability. In a number of the member states the special treatment may not be accompanied by a definition of vulnerability as such. However it is not hard to argue that what matters most for victims is not the definition of vulnerability but the special treatment that should follow that definition.

### **Article 3: Right to be heard**

Jurisdictions have considerable leeway in the way they implement the right to be heard as expressed by article 3(1) of the Framework Decision. All member states have implemented measures that provide victims with avenues for participation. However the diversity, even within the same type of measures make a direct comparison between jurisdictions in the manner they provide participation difficult if not hazardous.

Providing the courts with information concerning the victims need for compensation is mostly a right for the victim, rather than a duty for the prosecutor, but the court is obliged to take compensation issues into account in nearly all of the European Union. More and more countries are implementing forms of Victim Impact Statements.

Most countries have implemented either a form of private prosecution or the right to review the decision to not prosecute. Only in Malta and Belgium does neither right exist.

### **Article 3: Questioning**

Most member states place no restrictions on repetitive questioning. Of those that do only the Czech Republic restricts repetitive questioning for all victims, while the rest places restrictions on the repetitive questioning of child victims.

Special attention is paid to the questioning of child victims in all member states, although the instruments used vary. The same is true in most member states concerning the questioning of victims with mental disabilities.

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Special attention to the questioning of victims of sexual and domestic violence is less widespread. In ten countries experts said that no special attention is paid to their situation.

Cross-border victims have access to translators across the European Union. However this is not necessarily a measure that is taken in the interest of cross-border victims. Similarly, about half the member states allow victims to make a statement immediately after the commission of a crime, but this is a feature of their criminal justice systems rather than a measure specifically intended to serve cross-border victims' needs.

Most of the respondents are not satisfied with the manner in which questioning of victims is undertaken in their jurisdictions. A majority finds the questioning to be unnecessarily intrusive and extensive. This in turn hampers victims participation in the criminal justice system. This also applies to vulnerable victims. Measures taken to provide additional protection are inadequate according to most respondents.

#### **Article 4: Information provision**

Most jurisdictions appear to comply with the requirement to ensure information provision to victims from their first contact with law enforcement agencies. Eighteen member states have a general obligation to provide information to victims, which is also assigned to a responsible agency. Similarly in most jurisdictions the victim is informed of the progress of the case, with a majority of member states having systems in place that inform victims of the outcome of the police investigation and similarly of the decision to prosecute, the date and place of the court hearing and the outcome of the court case. Less attention is paid to the possibility that victims do not want to be informed. Finally information concerning the offender's release is not disseminated to victims in many jurisdictions.

The results of the organisational implementation survey show that the success of dissemination of information depends on the topic under obser-

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vation. The respondents are more often than not negative concerning the access to information about the victim's role in criminal proceedings, conditions to obtain protection, the outcome of the report and to a lesser extent concerning the possibilities for compensation. As these are all main topics of the Framework Decision this finding is not only noteworthy, but indeed somewhat troubling. Access to information is a prerequisite for subsequent action and a basic need of many victims. The fact that our respondents across Europe on average find this access to be assured, is an indication of a deficit in the assistance provided to victims. In addition the timeliness of information is called into question, with most respondents expressing the opinion that information does not reach victims on time.

Here the organisational survey suggests that the promising results of the legal implementation survey need to be qualified. The systems for information dissemination may be there on paper, but according to most respondents they do not provide victims sufficient access to information in practice.

### **Article 5: Communication safeguards**

Article 5 of the Framework Decision deals with the communication safeguards for providing information to victims. The outcome of the survey shows that best practice can be found in five member states, providing both translators and interpreters free of charge as well as information in different languages. In 12 member states the eligibility for these communication safeguards is restricted to victims as witnesses. In 15 others the communication safeguards are open to a wider group of victims.

Again the organisational survey sheds additional light on the findings of the legal implementation. A majority of the respondents is of the opinion that the resources to minimize communication difficulties are insufficient. Adequate resources are not available and if they are they are not effective, according to a majority of them.

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## Article 6: Specific assistance

There are not many jurisdictions that offer legal advice and assistance free of charge to victims, merely due to the fact that they are victims. The assistance is mostly offered in a similar fashion that a jurisdiction offers free legal advice and assistance to other participants in trials, using the income as the main criterion.

The findings from the organisational questionnaire suggest that both the access to and effects of legal assistance and advice leave room for improvement. A majority of the respondents negatively assessed these features of provision of legal aid and assistance to victims.

## Article 7: Reimbursement of expenses

The right to reimbursement of expenses incurred during the criminal procedure is recognized in most EU member states. The majority (n=18) grants both victims as witnesses and victims as parties this right. Only 2 member states report that neither position ensures eligibility, 7 member states grant this to witnesses only.

As to the responsibility for refunding the victims' expenses, the responses are equally varied. Only 5 member states hold the perpetrator solely responsible for this. It is therefore fair to say that the reimbursement of the costs is generally seen as a responsibility of the state, if not immediately, then at least ultimately when the offender is not able or willing to pay.

Nevertheless in practice reimbursement of expenses leaves much to be desired, according to the respondents in the organisational survey. Generally speaking they find victims to be unaware of the possibilities for reimbursement, with the application procedures being cumbersome. Insufficient resources are available and reimbursement does not reach victims on time. Overall the reimbursement process was seen to be inadequate by 62% of the respondents, while only 14% found it to be adequate.

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## Article 8: Protection

Compliance with Article 8 was measured on seven criteria. Three of them related to protection of the victim against publicity, the other four related to protection of the victim against intimidation or threat by the offender.

Although all the member states have the possibility to hold hearings in camera, it is usually left up to the discretion of the courts (14 member states), which is the weakest form of protection. The highest level of protection - to make hearings in camera obligatory if the victim so requests - was reported in 8 member states. Furthermore, even though most member states (23) reported some form of restrictions on press coverage of cases, many of them (17 member states) relied on a media code of ethics. Finally most member states place limits on the disclosure of the victim's personal information. The measure that was favoured the most was the pre-trial principle of secrecy (17 member states).

As to the protection of the victim against threat and intimidation by the offender, 14 member states had 5 or more protection measures in place. The measures that were most favoured were police protection, preventive custody and relocation of the victim. Striking is that the right to complete anonymity was implemented by no less than 14 member states. All in all, all member states seem to endorse the importance of protection measures and they often apply more than one measure to make sure that the victim is protected against the offender.

Separate waiting areas however are not available to victims in most member states. 24 member states reported no obligation to provide for separate waiting areas in court premises. This is a particularly striking finding, considering the straightforward phrasing of the relevant Framework article.

All of the states have one or more options for the victims to obtain protection orders, but the legal status differs. The strongest legal protection against threatening behaviour against victims/witnesses is to regard it as a specific

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offence. Fifteen member states perceive threatening behaviour in this fashion, sometimes in combination with a general offence, an aggravating circumstance or both.

Overall, the member states appear to be aware of the significance of protection of victims against publicity and the offender. This appears from the fact that a large majority has possibilities to hold hearings in camera, to restrict press coverage of cases, to limit disclosure of victims' personal information and to protect the victim through various practical and legal protection measures. However member states regularly opt for weaker mechanisms (hearings in camera at the discretion of the judge, restrictions on press coverage through a media code of ethics) or they do not provide the optimal combination of measures (restrictions on disclosure of victim's information, protection orders, threatening behaviour). Finally it is clear that a large majority of the member states do not comply to the requirement concerning separate waiting areas.

The fact that member states do not always opt for the strongest mechanism for the protection of victims and that hardly none of them complies with the provision to provide to the requirement concerning separate waiting areas may well contribute to the negative assessment of the majority of the respondents in the survey. On all counts - protection from the offender, of the victim's privacy, from the media - a majority found current protection measures to be inadequate.

### **Article 9: Compensation from the offender**

Most member states have the possibility to stimulate the offender to pay compensation to the victim. This can be achieved by considering the question of payment of compensation in prosecution, by the possibility to attempt mediation between victim and offender relating to compensation or even the duty to do so. In this respect most member states appear to comply to article 9.

As to the main mechanisms to achieve compensation through the criminal justice system, the adhesion procedure and the compensation order, the results

are sobering. The compensation awarded through the adhesion procedure is solely an additional measure, which, in most member states, has to be enforced by victims themselves. The compensation order is well implemented in the United Kingdom, where it has priority over paying a fine and paying costs. In seven countries the state plays a role in the enforcement of the offender's obligation to provide compensation. Except for the United Kingdom, this is the case in Sweden, Denmark, France, Hungary, Lithuania and the Netherlands.

According to the majority of the respondents the compensation procedures in their countries are inadequate and two thirds of them finds the timeliness of compensation much to be desired. As the latter is one of the main problems when the state offers no assistance in the enforcement of the offender's obligation to pay compensation it stands to reason that this may well improve when more states opt for an active role in this respect.

### **Article 10: Penal mediation**

Not all member states allow penal mediation in criminal cases. Penal mediation is not used in Bulgaria, Cyprus, Denmark, Lithuania, Malta, the Netherlands, Romania, Spain and the United Kingdom. This does not imply that these countries do not comply with the Framework decision in this respect, as this allows Member States the discretion to determine for which offences, if any, they find penal mediation to be appropriate. Although the phrasing of the article is vague, most mediation practices seem to be similar, with member states allowing mediation for less severe cases, not for grave offences.

The results of the mediation are not taken into account in Portugal, Slovakia and possibly Sweden, which suggests that the mediation procedures in these countries do not comply with Framework Decision requirements.

### **Article 11: Victims resident in another state**

The majority of the European Union member states do not offer victims the opportunity to report crimes committed abroad once they return home. Most



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of the countries solely offer victims this opportunity in cases in which they themselves have jurisdiction. As this framework requirement lies at the heart of the Framework Decision improvements on this issue are called for.

This is also born out by the results of the organisational survey. Most respondents find the measures taken to meet the needs of cross-border victims to be insufficient.

### **Article 13: Victim Support Organisations**

Member states can be said to comply with article 13 whether they have victim support organisations or not. The article specifically stresses that the services rendered by victim support may also be the responsibility of governmental agencies. Where victim support organisations do exist two criteria should be applied: national coverage and general services for all types of victims. If countries do not meet these criteria, victims in certain regions or certain types of victims will not be able to access the services provided by victim support. According to the opinion of the experts consulted in this survey Austria, Belgium, Estonia, Finland, Germany, the Netherlands, Portugal and the United Kingdom meet both criteria. However, like other articles in the Framework Decision, the phrasing is vague. Member states only have to ‘promote’ or ‘encourage’. This means that the member states who fall short on one or both criteria can still comply with the literal text of the Framework article.

The work of victim support organisations is appreciated by the experts in the survey, with both a majority finding the level of services and access to be adequate. They however consider the funding of victim support across Europe to leave room for improvement.

## **4.2 Victim Support Europe Recommendations**

This section will address each article of the Council Framework Decision on the Standing on Victims in Criminal Proceedings individually.

### *Article 1 - Definitions*

*For the purposes of this Framework Decision:*

- (a) ‘victim’ shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State;*
- (b) ‘victim support organisation’ shall mean a non-governmental organisation, legally established in a Member State, whose support to victims of crime is provided free of charge and, conducted under appropriate conditions, complements the action of the State in this area;*
- (c) ‘criminal proceedings’ shall be understood in accordance with the national law applicable;*
- (d) ‘proceedings’ shall be broadly construed to include, in addition to criminal proceedings, all contacts of victims as such with any authority, public service or victim support organisation in connection with their case, before, during, or after criminal process;*
- (e) ‘mediation in criminal cases’ shall be understood as the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person.*

### **Outcome of the project:**

The outcome of the project survey shows that not all jurisdictions have a legal definition of victim. Some Member States instead grant rights to for instance, “the injured party” of a crime, or include others than the direct victim, for instance parents, children, partner or other family members, in the victim provisions.

### **Victim Support Europe recommends:**

- Extending the interpretation of ‘victim’ to include, where appropriate, the primary victim’s family
- Given the content of article 10 and the ambiguity of the subject, VSE recommends adding a new definition of ‘restorative practices’ or ‘restorative justice’

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### *Article 2 – Respect and recognition*

- 1. Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.*
- 2. Each Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.*

### **Outcome of the project:**

The research team made the assumption that fulfillment of section 1 of this article implies a correct and complete transposal of all Framework articles.

Respondents from the vast majority of Member States feel that victims are not given an appropriate role in the criminal justice system and do not feel adequately recognised by the professional personnel involved in the criminal justice system. The research team therefore determines that this part of the article is generally not fulfilled.

The Framework gives no definition or criteria of who should be seen as ‘particularly vulnerable’ and Member States have adopted varied interpretations of the concept, referring to for instance to the victim’s age, mental disability or the type of crime suffered. Some States have not adopted a definition at all.

There is a wide range of responses regarding whether or not specialist treatment is available in Member States due to the vulnerability of the victim. If the experts in the field are uncertain whether or not there are specialist treatment available, how are the victims themselves to be aware of any protective measures? Subsequently, the research team believes that this part of the article has not been fulfilled either.

### **Victim Support Europe recommends:**

- Victim Support Europe agrees that only when all articles are fully implemented are victims' rights to respect and recognition fulfilled within each Member State
- The role of the victim throughout the criminal justice process should be respected and recognised as equal to that of the accused. The Framework Decision is legally binding and it is the responsibility of each Member State to ensure that all articles are implemented
- Special measures should be made available to all victims and witnesses who, having been offered the measures, have expressed a will to receive them
- Children should automatically receive special measures, without having to express an opinion to this effect
- Adequate and concise information should be made available to ensure that the victim/witnesses can make an informed decision on any participation in the case, for instance whether or not to accept special measures while giving evidence

#### *Article 3 – Hearing and provision of evidence*

*Each Member State shall safeguard the possibility for victims to be heard during proceedings and to supply evidence.*

*Each Member State shall take appropriate measures to ensure that its authorities question victims only insofar as necessary for the purpose of criminal proceedings.*

### **Outcome of the project:**

There is a significant increase in jurisdictions that have implemented Victim Impact Statements as a way for victims to make their voice heard and tell the court what impact the crime has had on their lives.

The absence of legal assistance, free of charge, can form an important barrier

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for victims who wish to provide information to the courts. The survey discovered that free assistance is only available in a few countries; in most Member States free assistance have been restricted to certain victims depending on factors such as age, crime categories, income levels or role in proceedings.

In some areas, many Member States have provided a high level of protection of victims' rights in reference to article 3; most Member States have for instance implemented a right to private prosecution. Good practices were also found in the right to review a decision not to prosecute.

Overall, most Member States seem to comply with article 3(1). In some instances (right to review) the majority of states even excels, but in other instances (free assistance, information on compensation) there is still room for improvement.

Article 3(2) addresses questioning. Repetitive questioning of victims is a widely and well-recognised source of secondary victimisation. Extensive and intrusive questioning carries a serious risk of re-victimising a victim and prolonging the period of recovery. In the long run, it can also deter other victims to engage with the criminal justice system and as such hamper victims' participation in the system. Still, the results from the questionnaire demonstrate that most Member States place no restrictions on repetitive questioning of the victim. Virtually all Member States have introduced legislation regarding child victims, and as a rule children are treated and questioned with more consideration than adults. However, the manner in which children are questioned varies substantially. The same can be said for questioning of victims with mental disabilities. Less attention is given to the questioning of victims of sexual and domestic violence.

### **Victim Support Europe recommends:**

- Victims should be consulted on the decision to prosecute, and any decision to not proceed with a case should be fully explained
- All victims should be given the opportunity, if they so wish, to provide

the court with information on how the crime has affected them. This information should be taken into account by the court

- Strict regulations must be introduced to not only limit the scope of questions asked, but also the manner and frequency with which they are asked
- Personal characteristics of the victim/witness should be taken into account when deciding the manner of questioning, for instance the victim must be able to understand and respond to all questions. Criminal justice agencies must be held to account to ensure they follow these regulations

*Article 4 - Right to receive information*

*1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests. Such information shall be at least as follows:*

- (a) the type of services or organisations to which they can turn for support;*
- (b) the type of support which they can obtain;*
- (c) where and how they can report an offence;*
- (d) procedures following such a report and their role in connection with such procedures;*
- (e) how and under what conditions they can obtain protection;*
- (f) to what extent and on what terms they have access to:
  - (i) legal advice or*
  - (ii) legal aid, or*
  - (iii) any other sort of advice, if, in the cases envisaged in point (i) and (ii), they are entitled to receive it;**
- (g) requirements for them to be entitled to compensation;*
- (h) if they are resident in another State, any special arrangements available to them in order to protect their interests.*

*2. Each Member State shall ensure that victims who have expressed a wish to this effect are kept informed of:*

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- (a) *the outcome of their complaint;*  
(b) *relevant factors enabling them, in the event of prosecution, to know the conduct of the criminal proceedings regarding the person prosecuted for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected;*  
(c) *the court's sentence.*

3. *Member States shall take the necessary measures to ensure that, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary.*

4. *In so far as a Member State forwards on its own initiative the information referred to in paragraphs 2 and 3, it must ensure that victims have the right not to receive it, unless communication thereof is compulsory under the terms of the relevant criminal proceedings.*

### **Outcome of the project:**

Access to information is a vital element to any victim engagement in the criminal justice system; only if victims know their rights and abilities within the legal system can they make use of them. However, many victims today feel uninformed and uncertain as to their role and responsibilities in the justice system.

Most jurisdictions seem to comply theoretically with the requirement to ensure information is provided to victims on their first contact with law enforcement agencies; most Member States have a general obligation to provide information to victims and the responsible agency if often identified. Similarly, most States have regulations to inform the victim of the progress and outcome of the case. Member States pay less attention to the possibility that victims do not want to be informed and most jurisdictions do not provide information to the victims regarding the offender's release.

Regardless of the theoretical regulations, the survey shows that in practice,

the requirement to keep victims informed is not always fulfilled. Organisations throughout Europe confirm that in most of the European Union Member States, victims do not have an easy access to information concerning the criminal proceedings, with emphasis on their role.

### **Victim Support Europe recommends:**

- All victims should be kept fully informed of all activities in the case and be given at least the following information, both orally and in writing:
  - How and where to report a crime
  - How and where to access emotional support and practical assistance
  - How and where to access legal aid and advice
  - Whether or not the police has initiated an investigation into the crime
  - Whether or not the police has sent the case to the prosecutor
  - Whether or not the prosecutor has charged the alleged offender
  - If and when the court case will take place
  - Explanations of the role and rights of a victim during the court proceedings, for instance if it possible to get special measures when giving evidence, if victims can give an impact statement etc
  - Whether or not emotional support and assistance will be available to the victim in conjunction with the court proceedings, and if so how to access this support
  - Full explanation of the final verdict and the reasoning behind it
  - If applicable, information about when the offender has served the sentence and arrangements for his/her release into society
- All victims should be given the right to abstain from receiving information, either generally or by specifying what particular piece of information they do not wish to receive
- Cooperation between criminal justice agencies must improve to ensure that the agencies are aware of what information the victim has been given
- Since the responsibility of sharing information transfers between



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different criminal justice agencies during the victim's journey through the criminal justice system, working protocols should be put in place to ensure smooth links and that the victim is kept up-to-date

- Improvements must be made to ensure victims who are victimised in a country other than the one where they live can access clear and timely information
- Victims should be able to file a complaint if they are not kept adequately informed

#### *Article 5 - Communication safeguards*

*Each Member State shall, in respect of victims having the status of witnesses or parties to the proceedings, take the necessary measures to minimise as far as possible communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, to an extent comparable with the measures of this type which it takes in respect of defendants.*

#### **Outcome of the project:**

Two possible avenues for minimizing communication difficulties was identified by the research team: the availability of translators and interpreters, free of charge; and the availability of information in a variety of languages.

Most, but not all, jurisdictions have enacted measures to reduce communication difficulties for all victims, for instance by providing translators and interpreters free of charge. Regarding the access to communication safeguards, most Member States offer them to all victims, while a large number of countries only provide this for victims who are also witnesses.

Despite of the above mentioned theoretical regulations enabling victims' access to translators etc., the majority of respondents feel that there are scarce and inefficient resources to minimise communication difficulties for victims.

### **Victim Support Europe recommends:**

- An assessment should be done of the communication needs of the individual victim
- All victims must be able to access translators and interpreters free of charge
- Information should be timely and given in a language understood by the victim
- This article should be extended to ensure that all victims are entitled to access measures minimising their communication difficulties and advance their understanding of the proceedings, not just victims having the status of witnesses or parties

#### *Article 6 - Specific assistance to the victim*

*Each Member State shall ensure that victims have access to advice as referred to in Article 4(1)(f)(iii), provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid as referred to in Article 4(1)(f)(ii), when it is possible for them to have the status of parties to criminal proceedings.*

### **Outcome of the project:**

To be able to protect victims' rights and allow victims to be fully represented, it is vital that they can access legal aid and support throughout the criminal process. The outcome of the survey shows that all Member States provide free legal aid to some or all groups of victims, but access is often limited to victims with a certain income or a certain crime category. Many respondents also expressed that the advice and legal aid provided to victims is not easily accessed.

### **Victim Support Europe recommends:**

- Legal aid and other forms of advice should be readily available to all victims, regardless of income or crime suffered

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- The application process must be simplified to ensure that victims are able to access timely and appropriate legal advice and support

#### *Article 7 - Victims' expenses with respect to criminal proceedings*

*Each Member State shall, according to the applicable national provisions, afford victims who have the status of parties or witnesses the possibility of reimbursement of expenses incurred as a result of their legitimate participation in criminal proceedings.*

#### **Outcome of the project:**

The right to reimbursement of expenses incurred during the criminal procedures is recognised in most Member States in one way or the other; however the eligibility of reimbursement varies. The majority of the Member States taking part in this research project report that both victims who are witnesses and victims who are parties are eligible for reimbursement of their expenses. However, there are a number of States that only reimburse victims who are called as witnesses and another group of States only reimburses victims who act as parties in the proceedings. A few States declare that they do not reimburse victims at all.

Regarding the responsibility for refunding the victim's costs, the responses are equally varied between demanding the offender and/or the States to pay. Most Member States will reimburse the costs themselves, if not immediately, then at least in cases where the offender is not able or willing to pay.

#### **Victim Support Europe recommends:**

- Timely and adequate reimbursement should be made available to all victims, regardless of their status in the proceeding
- It should be the responsibility of the State, not the offender, to ensure that victims are reimbursed for their incurred costs. If the State, as a secondary measure, would like to have this money collected from

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the offender to reimburse the State, they are free to do so but the offender's inability to pay should not impact on the victim

*Article 8 - Right to protection*

- 1. Each Member State shall ensure a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.*
- 2. To that end, and without prejudice to paragraph 4, each Member State shall guarantee that it is possible to adopt, if necessary, as part of the court proceedings, appropriate measures to protect the privacy and photographic image of victims and their families or persons in a similar position.*
- 3. Each Member State shall further ensure that contact between victims and offenders within court premises may be avoided, unless criminal proceedings require such contact. Where appropriate for that purpose, each Member State shall progressively provide that court premises have special waiting areas for victims.*
- 4. Each Member State shall ensure that, where there is a need to protect victims — particularly those most vulnerable — from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.*

**Outcome of the project:**

Compliance with Article 8 was measured by the research team based on seven criteria. Three of them related to protection of the victim against publicity, the other four related to protection of the victim against intimidation or threat by the offender. Overall, the Member States seem to be aware of the significance of protection of victims against publicity and the offender, but the manner in which this is done differs between the countries. Although all Member States claim to have the possibility to hold hearings in camera, this decision is usually left up to the discretion of the courts, which is the weak-

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est form of protection. The highest form of protection – to make hearings in camera obligatory if the victim so requests – was reported in eight Member States.

Regarding protection from the media, most Member States reported having some form of restriction on press coverage on cases, but most of them relied on the media's self-regulation and following the code of ethics.

Concerning the victim's protection against threat and intimidation by the offender, around half of all Member States have protective measures in place. The most common measures are police protection, preventive custody and relocation of the victim. In no less than 14 Member States do victims have the right to complete anonymity. As for separate waiting rooms, more than half of all surveyed Member States report that there is no obligation to provide separate waiting rooms, which is very disappointing.

Regarding the practical impact of the protective measures mentioned above, a large proportion of organisations responding to the questionnaire claim that the police protection is insufficient to make the victim feel safe to testify in the court. In addition, respondents in a majority of Member States express their concern that most victims, families and related person feel that their privacy is not assured. Respondents from virtually all Member States feel that victims' privacy is insufficiently protected from the media.

### **Victim Support Europe recommends:**

- European Court Room specifications should be developed, specifying minimum standards and conditions for new court buildings. The layout of the court should ensure that the victim/witness can move freely to and from the witness room into the court room and back out without any risk of intimidation. Victims should be given separate waiting rooms, separate entrances, toilets, eating facilities etc.
- The increase of special protective measures and different ways to communicate e.g. webcams and CCTV should be used, if appropriate,

to protect the privacy of the victim

- Victims have a right to privacy and protection of the family and personal life. To fulfil this right, only information that is relevant to the case at hand should be disclosed to the court and to the defence. Medical records and previous events, unrelated to the crime, should therefore never be disclosed. Any breach of this should be dealt with by statutory regulations
- In line with the victim's right to privacy, the victim should be able to determine what information should be disclosed to the media. As such, the media should not be allowed to print images of the victim without his/her consent. Victims may be in a very vulnerable situation after the crime and it may be difficult to take a decision with such big repercussions, but they should be given support and assistance to be able to make an informed decision about what information they want publicised
- The media should be restricted in their reporting on the crime and should not be allowed to give intrusive personal details about the crime or about the victim or their family. For instance, 'victims' last words' should not be printed without consent from the victim's family. Victim Support Europe acknowledges that this may be seen to limit the media's freedom of speech, but these regulations are vital to ensure that the victim's right to privacy and protection are not infringed. Intrusive media coverage is also likely to deter other victims from reporting a crime and engage with the criminal justice authorities, which will have a negative impact on the criminal justice system as a whole

*Article 9 - Right to compensation in the course of criminal proceedings*

- 1. Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.*
- 2. Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims.*

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*3. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.*

### **Outcome of the project:**

Most, but not all, Member States have the possibility to compel the offender to pay compensation to the victim. This can be achieved by considering the question of payment of compensation in prosecution, by attempting mediation between victim and offender regarding the compensation, or even proscribing a duty to do so. The ‘adhesion procedure’ allows the criminal justice system to consider payment of compensation to victims as part of the criminal trial, which prevents victims from having to initiate civil proceedings. However, in most Member States, the compensation awarded through the compensation procedure is solely an additional measure to the penal sanction.

There has been a dramatic increase in the number of jurisdictions where mediation between offender and victim or the duty to obtain compensation has been implemented. However, regarding the practical implementation of the main mechanisms to achieve compensation through the criminal justice system, the adhesion procedure and the compensation order, the results are sobering. The survey demonstrates the problems facing victims trying to enforce any compensation awarded under this Article. The compensation is merely seen as an additional measure, which, in most Member States, the victim has to enforce themselves.

Most respondents from organisations throughout the Member States claim that the compensation does not adequately compensate victims’ needs, and that the time taken for compensation to be processed and awarded is unreasonable. Many victims are also given insufficiently information and support to complete the application for compensation. The subsequent processing of the information is very time consuming and confusing for the victim.

### **Victim Support Europe recommends:**

- Every Member State should have a body responsible for providing clear information about the way victims of crime can apply for compensation and who can support them in filling in their application
- Ideally, the same body should be responsible for processing such applications, and a time limit should be set within which the victim can expect to have a decision on the application
- The State should be responsible for paying compensation to the victim. If appropriate, the State could then reclaim this money from the offender, without the need to involve the victim in this process. The victim can request to be informed when the offender has reimbursed the full amount to the State

#### *Article 10 - Penal mediation in the course of criminal proceedings*

- 1. Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.*
- 2. Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.*

### **Outcome of the project:**

There is a wide range of mediation practices across the European Union. Not all Member States allow penal mediation in criminal cases. This does however not imply that these States do not comply with this article, since the wording allows Member States a large degree of discretion. They can determine themselves for which offences, if any, they find penal mediation to be appropriate. Where mediation has taken place, it is however a requirement to ensure that any agreement made between the victim and offender is taken into account, which means that some States are in breach of this article.



## Victim Support Europe recommends:

- Member States can develop mediation measures in addition to (and not instead of) all other support measures for victims specified within the Framework Decision. Article 10 can not be implemented as an overarching measure, relieving the State from the duty to implement other victim measures
- Emotional and practical support should be offered to ensure that the victim can make a free and informed decision whether or not to engage in mediation
- Emotional support should also be offered before, during and after the mediation process

## Article 11 - Victims resident in another Member State

*1. Each Member State shall ensure that its competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a State other than the one where the offence has occurred, particularly with regard to the organisation of the proceedings. For this purpose, its authorities should, in particular, be in a position:*

- *to be able to decide whether the victim may make a statement immediately after the commission of an offence,*
- *to have recourse as far as possible to the provisions on video conferencing and telephone conference calls laid down in Articles 10 and 11 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (1) for the purpose of hearing victims resident abroad.*

*2. Each Member State shall ensure that the victim of an offence in a Member State other than the one where he resides may make a complaint before the competent authorities of his State of residence if he was unable to do so in the Member State where the offence was committed or, in the event of a serious offence, if he did not wish to do so. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority in the territory in which the offence was committed. The*

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*complaint shall be dealt with in accordance with the national law of the State in which the offence was committed.*

### **Outcome of the project:**

The Framework Decision provides a legally binding requirement to enable and facilitate cooperation regarding cross-border compensation. Member States have interpreted this article differently, with some countries stating that they need jurisdiction over the case by for instance the offender being a resident or a national of the country in order for that country's authority to deal with the compensation application. This is not the intention of the article.

Many organisations active in the Member States do not seem to know whether or not the national procedures are sufficient to minimise difficulties for victims resident in another State. In addition to the organisations themselves, most victims do not seem to be aware of their right to file a complaint in their own country.

The research survey clearly demonstrates that there is a great lack of knowledge and awareness regarding support and compensation procedures for cross-border victims, both within criminal justice agencies and the victims themselves.

Overall, the majority of the EU Member States do not offer victims the opportunity to report crimes committed abroad once they return home, which is a clear breach of this article. Subsequently, most Member States can not be seen to have implemented this article adequately.

### **Victim Support Europe recommends:**

- Existing EU legislation regarding cross-border compensation must be acknowledged and improved implementation must be demanded across all EU Member States
- Overall improvement of knowledge within this area is needed

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amongst professional institutions, practitioners and victims. The same can be said regarding the Directive 2004/80/EC relating to Compensation to Crime Victims. To address this, the EU could for instance arrange educational networks and lectures to improve coordination of cross-border operation and procedures between all bodies involved in giving support to victims.

*Article 12 - Cooperation between Member States*

*Each Member State shall foster, develop and improve cooperation between Member States in order to facilitate the more effective protection of victims' interests in criminal proceedings, whether in the form of networks directly linked to the judicial system or of links between victim support organisations.*

**The role played by Victim Support Europe:**

This wording of this article is very vague and does not put any tangible demands on each Member States. As such, it was not covered by the research project. Victim Support Europe consists of 26 victim support organisations from 21 European countries, providing assistance and information to victims of crime. Victim Support Europe promotes the establishment and development of victim rights and victim services throughout Europe. We encourage membership from all Member States across Europe and work to ensure that victims are entitled to the same level of support services regardless in which country the victim lives and where the crime occurred. We have a long way to go to ensure victims' equal right to support services across Europe, but we are continuing to grow, and by working together and learning from each other, we hope to improve service provision to people affected by crime throughout all the EU Member States.

*Article 13 - Specialist services and victim support organisations*

*1. Each Member State shall, in the context of proceedings, promote the involvement of victim support systems responsible for organising the initial reception of victims and for victim support and assistance thereafter, whether through the provision of*

*specially trained personnel within its public services or through recognition and funding of victim support organisations.*

*2. Each Member State shall encourage action taken in proceedings by such personnel or by victim support organisations, particularly as regards:*

*(a) providing victims with information;*

*(b) assisting victims according to their immediate needs;*

*(c) accompanying victims, if necessary and possible during criminal proceedings;*

*(d) assisting victims, at their request, after criminal proceedings have ended.*

### **Outcome of the project:**

Member States can be said to comply with article 13 whether or not they have a national victim support organisation, since the services can be provided by governmental agencies. The research team assessed compliancy with this article by using two criteria: victim services should be given to all victims (and not just particular crime types) and the service should have national coverage. Due to the vague wording, asking States to ‘promote’ and ‘encourage’, countries can fulfil the article regardless of whether or not one or both of these criteria are fulfilled.

The overall impression from the voluntary sector is that the needs of victims are better met in those countries that have established an independent national victim support organisation. The majority of respondents feel that victim support services are insufficiently funded.

### **Victim Support Europe recommends:**

- Each Member State must provide funding to establish a national non-governmental organisation for the support of victims
- The exact role and responsibility of victim support organisations should be confirmed, to ensure expectations are met
- Quality measures should be set to ensure that national victim support organisations offer all citizens affected by crime in Europe the highest level of practical and emotional support

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- Cooperation agreements should be developed between victim support organisations and criminal justice agencies, to ensure victim support plays a tangible role in the criminal justice system

*Article 14 – Training for personnel involved in proceedings or otherwise in contact with victims*

1. Through its public services or by funding victim support organisations, each Member State shall encourage initiatives enabling personnel involved in proceedings or otherwise in contact with victims to receive suitable training with particular reference to the needs of the most vulnerable groups.
2. Paragraph 1 shall apply in particular to police officers and legal practitioners.

### **Outcome of the project:**

It is vital that people who deal with victims are aware of the reactions and needs of people affected by crime, since insensitive behaviour can re-victimise the person and prolong the time of recovery. The research demonstrates that, in general, professionals dealing with victims in the criminal justice system do not have enough knowledge about the needs of victims and the impact of crime. The respondents claim that more training is needed, but there are not enough resources to train all personnel.

In addition to the questions specifically dealing with article 14, the different responses within each Member State in relation to the other articles and the high level of “do not know / no opinion” answers clearly demonstrates the lack of training and information about the Framework Decision amongst practitioners and experts within the field. This is surprising and must be addressed.

### **Victim Support Europe recommends:**

- Training should be mandatory for all professionals in contact with victims and should be part of foundation training
- Due to their extensive knowledge and practical experience in the field

of victim awareness, victim support organisations are ideally placed to assist in the provision of this training

*Article 15 - Practical conditions regarding the position of victims in proceedings*

- 1. Each Member State shall support the progressive creation, in respect of proceedings in general, and particularly in venues where criminal proceedings may be initiated, of the necessary conditions for attempting to prevent secondary victimisation and avoiding placing victims under unnecessary pressure. This shall apply particularly as regards proper initial reception of victims, and the establishment of conditions appropriate to their situation in the venues in question.*
- 2. For the purposes of paragraph 1, each Member State shall in particular have regard to facilities within courts, police stations, public services and victim support organisations.*

**Outcome of the project:**

The survey clearly demonstrates that the majority of the respondents feel that the conditions for victims when giving evidence are unsatisfactory. Most respondents felt that the Member States have an overall knowledge regarding how to minimise the pressure put on victims and prevent secondary victimisation; however the training given to professionals on the subject matter is insufficient.

**Victim Support Europe recommends:**

- Member States should make equal amounts of effort to prevent primary and secondary victimisation
- Each Member State must take all necessary steps to avoid placing victims under unnecessary pressure. In particular, the initial reception of victims, provision of waiting areas and circumstances for giving statements and evidence should be carefully arranged in order to minimise the risk for secondary victimisation
- As stated under article 8, European Court Room specifications should

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be developed regarding the lay-out of the court to ensure victims and witnesses can move freely to and from the witness room into the court room and back out without any risk of re-victimisation or intimidation. For instance, witnesses should not be forced to cross the court room in front of the accused in order to access the witness box; and separate entrance/exit and waiting facilities should be arranged

- Specialised training how to avoid secondary victimisation should be mandatory for all professionals in contact with victims
- Due to their extensive knowledge in the field, victim support services should be given a provident role in providing information on how the risk of secondary victimisation can be minimised in practice

# 5. Appendix



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# 5. Appendix

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## *Article 4: Information*

*Table 1: Overall assessment – Provision of information (Mode and Percentiles)*

		Information provided by the State	Information provided by NGO	Timeliness of information
N	Valid	209	210	205
	Missing	0	0	0
Mode		4	4	2
Standard Deviation		1,339	1,107	1,088
Percentiles	25	2	3	2
	50	3	4	3
	75	4	4	4

Table 2: Right to receive information (mode value per country)

Country	Easy ACCESS to information on:								
	Type of services / organisations available	Report an offence	Role in the criminal proceedings	Conditions to obtain protection	Legal advice or legal aid	Compensation	Outcome of the Report	Rights awareness after contact police	Rights awareness after contact victim support
Austria	High <sup>48</sup>	High	High	High	High	High	High	High	High
Belgium	High	High	Low and High	Low	Medium	Low	Medium	Medium	High
Bulgaria	High	Medium	Low	Low and High	Low	Low and High	Low and High	High	High
Cyprus	Medium	High	Low	Low and Medium	Medium	Low and Medium	Low	Medium	Medium
Czech Republic	High	Low	High	High	High	High	High	Medium	High
Denmark	Medium	High	High	Medium	High	High	Medium	High	High
Estonia	High	High	Medium and High	High	High	High	High	High	High
Finland	Low	High	Low	Low	Low, Medium and High	Low	High	Low	High
France	Medium	High	Low	Low	High	Low, Medium and High	Medium	Low	High
Germany	Medium and High	High	Medium	Low	Medium	Low	Low	Medium	High
Greece	Low and Medium	High	Low and High	Medium	High	High	High	Low	High Low
Hungary	High	High	Low	High	High	High	High	High	Low
Ireland	Low	High	Low	Low	Low and High	Low	Low	Low and High	High High
Italy	Low	High	Low	Low	Low	Low	Low	Low	Low
Latvia	High	High	High	High	High	High	High	High	High
Lithuania	Low and High	High	Medium	High	High	High	High	High	High
Luxembourg	High	High	Medium and High	Low, Medium and High	High	High	Low	Low, Medium and High	High
Malta	High	High	Low	Low	Low	Low	Low	Low	High
Netherlands	High	High	High	Low and Medium	High	Medium and High	Low	Low and High	High
Poland	High	High	Low, Medium and High	High	High	Low	High	High	High
Portugal	High	High	Low	Low	High	Low	Low	High	High
Romania	Low and High	Low	Low	Low and High	Low	Low	Low	Low	Low, Medium and High
Slovakia	Low and High	High	Low	Low	Low	Low	Low	High	High
Slovenia	High	High	High	High	High	Low and High	High	High	High
Spain	High	High	Low	High	High	Low	Low	High	High
Sweden	High	High	Low, Medium and High	Low, Medium and High	Medium	High	Medium	Medium	High
United Kingdom	High	High	Medium	Low	Medium	High	Low	Medium	High

48 Answers were measured on a five-point scale (1 = completely disagree, 5 = completely agree) and to ease the analysis, were afterwards recoded on a three-point scale (1 = Low level of implementation; 2 = Medium; 3 = High).

Table 3: Right to receive information (mode value per country)

Country	CLARIFY of information on:						
	Type of services / organisations available	Report an offence	Role in the criminal proceedings	Conditions to obtain protection	Legal advice or legal aid	Compensation	Outcome of the Report
Austria	Medium and High	High	High	Medium	High	High	Low
Belgium	Medium and High	High	Medium	Low	Medium	Medium	Low
Bulgaria	Medium	Low and High	High	High	High	High	Low and High
Cyprus	Low and Medium	Medium	Low	Low	High	Low	Low and Medium
Czech Republic	High	Low	High	High	High	High	High
Denmark	Low, Medium and High	Medium	High	Medium	High	Medium	Medium
Estonia	High	High	High	High	Medium	High	High
Finland	Low	High	Medium	Low, Medium and High	Medium	Medium	High
France	High	Medium and High	Low	Low	High	Low and High	Low
Germany	High	High	Low	Medium	High	Low and High	Low
Greece	Low and High	High	High	Low	High	Low	Low and High
Hungary	High	High	High	High	High	High	High
Ireland	High	High	Low	Low	Low	Low	Low
Italy	Low	High	Low	Low	Low	Low	Low
Latvia	High	High	High	High	High	High	High
Lithuania	High	High	High	High	High	High	High
Luxembourg	High	High	Medium and High	Low, Medium and High	High	High	Low
Malta	Low and High	Medium and High	Low	Low	Low	Low	Low
Netherlands	High	High	Medium	Low and Medium	Medium and High	High	Medium and High
Poland	Medium	Medium	Low	Low	High	Low and Medium	High
Portugal	High	High	Low	Low	High	Low	Low
Romania	High	High	High	Low	Low	Low	Low
Slovakia	High	High	Low	High	High	Low	Low and High
Slovenia	High	High	High	High	High	Medium	High
Spain	High	High	Low	High	High	Medium	Low
Sweden	High	High	Medium and High	Medium and High	Low, Medium and High	High	High
United Kingdom	High	High	High	Low	Medium	High	Low

*Article 5: Communication Safeguards**Table 4: Communication safeguards (mode value per country)*

Country	Topic		
	Resources available	Efficiency of the resources available	Particular characteristics of the victims in questioning
Austria	Low and High	High	High
Belgium	Low	Low	Medium
Bulgaria	Low	Low	High
Cyprus	Low	Low	Low and High
Czech Republic	High	High	Low
Denmark	Low	Low	Low, Medium and High
Estonia	Low	Medium	High
Finland	Low	Low	Low, Medium and High
France	Low	Low	High
Germany	Low	Medium	Medium
Greece	Low	Low	Low and High
Hungary	Low	Low and High	High
Ireland	Low	Low	Medium
Italy	Low	Low	Low
Latvia	Medium	Medium	High
Lithuania	Low	Low and Medium	High
Luxembourg	Low, Medium and High	Medium	Low
Malta	Low	Low	Low
Netherlands	Low	Low	High
Poland	Medium	Medium	High
Portugal	Low	Low	Low
Romania	Low and High	Low	Medium
Slovakia	Low and High	Low	Low
Slovenia	Low and Medium	Medium	High
Spain	High	Low	High
Sweden	Low and High	Low and Medium	Low and High
United Kingdom	Low	Low	High

*Article 6: Specific Assistance to the victim*

*Table 5: Specific assistance to the victim (mode value per country)*

Country	Topic		
	Victims awareness	Access to legal aid	Efficiency of the advice and legal aid
Austria	Low and Medium	High	High
Belgium	High	High	Low
Bulgaria	High	Low	Low
Cyprus	Low	Medium	Low
Czech Republic	High	High	Medium and High
Denmark	Low, Medium and High	Low, Medium and High	Low
Estonia	High	Low and High	High
Finland	High	Low	Low and Medium
France	High	Medium	High
Germany	Low	Low and High	Medium and High
Greece	Low	Low and Medium	Low
Hungary	High	Low and Medium	Low
Ireland	Low	Low	Low
Italy	Low	Low	Low
Latvia	Medium	Medium	Medium
Lithuania	Low and High	Low	High
Luxembourg	High	Low	Low and High
Malta	High	Low	Low
Netherlands	Low	Medium	Medium
Poland	Low	Low and High	Low
Portugal	Low	Low	Low
Romania	Low	Low	Low
Slovakia	Low	Low	Low
Slovenia	Medium and High	Low and High	Medium
Spain	High	High	Low and Medium
Sweden	Low and High	High	High
United Kingdom	Low	Medium	Low

*Article 7: Victims' expenses with respect to criminal proceedings*

*Table 6: Victims' expenses with respect to criminal proceedings (mode value per country)*

Country	Topic				
	Victims awareness	Applying procedure	Timeliness	Resources available	Adequacy
Austria	Medium and High	High	High	High	Low, Medium and High
Belgium	Low	Low	Low	Low	Low
Bulgaria	Low	Low	Low	Low	Low
Cyprus	Low	Low	Low and Medium	Low	Low
Czech Republic	High	Medium	Low, Medium and High	Low and Medium	Low
Denmark	Medium	High	Low, Medium and High	Low	Low, Medium and High
Estonia	Medium	High	Medium	High	Low, Medium and High
Finland	Low and High	Low	Low	Low	Low
France	Low and High	Low	Low	Low	Low
Germany	High	High	High	High	Medium and High
Greece	Medium and High	Low	Low	Low	Low
Hungary	High	High	Low	High	Low and Medium
Ireland	Low	Low and Medium	Low	Low	Low
Italy	Low	Low	Low	Low	Low
Latvia	Medium	Medium	Medium	Low	Medium
Lithuania	Low and Medium	High	Low and High	High	Low
Luxembourg	Low	Low	Low	High	High
Malta	Low	Low	Low	Low	Low
Netherlands	Low	Low and High	Medium and High	Low	Low
Poland	Low and High	Low	Low	Low	Low
Portugal	Low	Low	Low	Low	Low
Romania	Low and High	Low and High	Low	Low	Low
Slovakia	Low	Low and High	High	High	Low and High
Slovenia	Low	High	High	High	Medium
Spain	Low	Low	Low	Low	Low
Sweden	High	High	Low and High	Medium and High	High
United Kingdom	High	High	Low and High	Medium	Low



