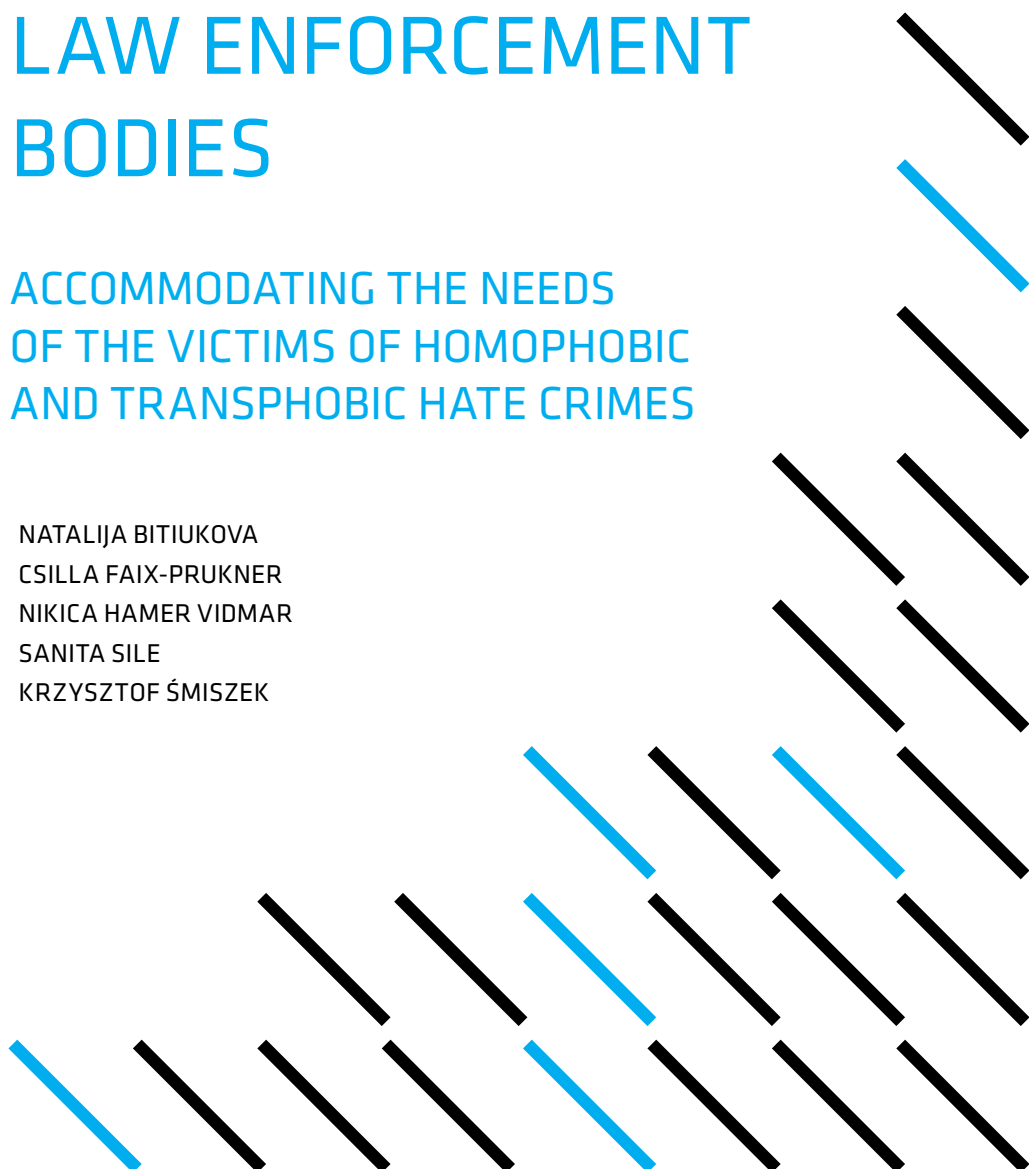




TOOLKIT FOR THE LAW ENFORCEMENT BODIES

ACCOMMODATING THE NEEDS
OF THE VICTIMS OF HOMOPHOBIC
AND TRANSPHOBIC HATE CRIMES

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Introduction

KRZYSZTOF ŚMISZEK (PhD)

About the project

It is with great pleasure that we present the *Toolkit on the Needs of Victims of Hate Crime, Motivated by Sexual Orientation and Gender Identity*. This publication is a result of the work of a group of international experts who took part in a project called 'Accommodating the Needs of the Victims of Homophobic and Transphobic Hate Crimes – Raising the Competencies of Law Enforcement Institutions'. The project was supported by the European Commission within the General Programme 'Fundamental Rights and Justice' and carried out by Campaign Against Homophobia (Poland), Zagreb Pride (Croatia), Hatter Society (Hungary), Lithuanian Gay League (Lithuania) and Mozaika (Latvia).

The main reason for bringing this project to life was the adoption of *Directive 2012/29/EU by the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* (hereinafter – the Victims' Rights Directive). This new legal framework places new obligations on the state's law enforcement officials as well as introduces specific measures that should be applied in cases of victims of sexual orientation and gender identity (SOGI) motivated hate crimes.

The purpose of the project was two-fold. First, the project aimed to carry out a solid investigation of the specific needs of LGBT victims in light of the provisions of the Directive. To this end, the project employed innovative tools through which

project experts surveyed hate crimes victims on their actual experiences while in contact with police officers, judges, prosecutors and legal practitioners. The innovative nature of the project lies in the fact that, for the first time, the needs of victims of SOGI-motivated hate crimes were established, and not only the extent to which the LGBT community faces hate crimes and hate speech in their everyday lives, but also the relationships between the victims and the state officials when processing the reported crimes. According to the daily experiences of LGBT and human rights NGOs (non-governmental organisations) in Europe, many victims of hate crimes complain about inappropriate behaviour by law enforcement officials when disclosing victim's sexual orientation or gender identity. This kind of behaviour is not always intentional or aimed at a violation of the victim's dignity. However, it usually leads to infringement of the victim's sense of security and faith in the effectiveness of the state. Thus, the project focused on the real experiences of SOGI-motivated hate crimes victims in order to detect and flag up all potential manifestations of violations of rights that might occur in the relationship between the state and reporting individuals.

Second, the project was to provide expert knowledge to all potential law enforcement officials who might have contact with SOGI-motivated hate crimes victims and equip them with relevant tools and expertise in order to avoid generating secondary victimisation and unnecessary trauma during the investigation and court procedures. The tools used in this project component were of different natures – theoretical (mostly included in the toolkit) and practical (unique training sessions devoted to the specifics of SOGI-motivated hate crimes and the psychological and social situations of LGBT victims). The training sessions were designed not only based on the needs and experiences of victims but also on the results of the thorough and detailed survey concerning the educational needs of police officers, prosecutors, judges and practising lawyers. The training programmes were also designed in line with national legal frameworks in the field of victims' protection and obligations as laid down by the EU law.

The need for targeted training as well as deepened knowledge of the specific situations of LGBT victims comes not only from the research carried out within the project. Other recourses confirm that if we really want to respond appropriately to the detrimental phenomenon of homophobic, biphobic and transphobic crimes then there is an urgent need for action aimed at levelling-up the skills of state officers in this area. According to the report 'EU LGBT survey' [1] conducted by the Fundamental Rights Agency of the European Union in 2013, in the last five

years one-quarter (26%) of all respondents had been attacked or threatened with violence at home or elsewhere. This figure rises to 35% among all transgender respondents. Almost one-third (29%) of those who did not report the most serious incidents of SOGI-motivated violence that happened in the last five years, feared a homophobic or transphobic reaction from the police. The report 'A Study for an Impact Assessment on Ways of Improving the Support, Protection and Rights of Victims across Europe' [2] proves that there is a need to improve crimes victims' rights such as being recognised and treated with respect and dignity, receiving protection and support. The 'Feasibility study to assess the possibilities, opportunities and needs of standardising national legislation on violence against women, violence against children and sexual orientation violence' [3] reveals that the access to the above-mentioned rights and exercising them is even more difficult when it comes to LGBT individuals. The Victims Right's Directive (VRD) names LGBT persons as one of the vulnerable groups, whose specific needs should be taken into account during criminal proceedings. The 'Feasibility study to assess...' report states that legal enforcement entities and crime victim services in EU lack competence in working with sexual orientation motivated hate crime victims. There is a need for training, new policies and research. Fear of being mistreated or discriminated by law enforcement representatives is one of the main reasons for a huge rate of unreported cases of SOGI-motivated crimes. Therefore, securing victims' rights is crucial in order to increase the number of reported cases.

One of the results of the project was launching a close cooperation between national LGBT NGOs and state officials – police forces, prosecutors, judges and the academic staff who contributed to the toolkit and training agenda. Having on board all these different experts with wide expertise and varying perspectives allowed us to establish a number of 'project products' that, in our humble opinion, cover the most relevant needs of all actors involved when SOGI-motivated hate crime happens and is reported.

The project, directed at first glance at the law enforcement bodies and enhancement of their capacities and competences, was also designed to increase the level of trust of LGBT individuals towards law enforcement officials and minimise the phenomenon of underreporting SOGI-motivated hate crimes. As it was mentioned above, the rate of underreported SOGI-motivated hate incidents is worrying and without taking into account its roots as well as exploring its motives we will never be able to provide proper counter actions. As the research shows, some of the weakest links here are the low competency of the law enforcement officers and the

existing prejudices towards LGBT victims of crimes. That is why one of the project's main goals was to launch and strengthen the cooperation between civil society and state representatives.

About the Directive

The Victims' Rights Directive was adopted in order to strengthen the European legal framework on victims' rights by establishing minimum standards on the rights, support and protection of victims of crime. The Directive replaces the Council Framework Decision on the standing of victims in criminal proceedings. All Member States of the European Union had an obligation to implement the Directive provisions into their national legal systems by 16 November 2015.

As the European Commission underlined in its guidance document [4], 'The goal (of the Directive) is to improve the real, day-to-day situations of millions of victims of crime across Europe to the greatest extent possible'. The main principle of the Directive is that victims have a whole range of needs that should be addressed to help them recover: to be recognised and treated with respect and dignity; to be protected and supported; to have access to justice; and to obtain compensation and restoration. When designing the Directive provisions it was assumed that all the victims' needs should be met by providing a holistic set of measures. The measures should be employed not only during the actual criminal proceeding but also at the stage before and after it is concluded.

It is important to recognise that one of the biggest achievements of the Directive is the individual perspective that needs to be employed when assessing the situation of the victim. This means that all the instruments and actions undertaken by the law enforcement officers must accommodate the specific situation of the victim. As a result of this approach the provision of information, support, protection and procedural rights must be targeted, specifically taking account all the unique circumstances of the crime.

The purpose of the Directive is also to ensure that victims of crime should be recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contact with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. As was discussed above, the phenomenon of underreporting of specific crimes may have different drivers. Homophobia, biphobia and transphobia contribute to the low level of trust in the effectiveness of the legal system and state representatives.

State officers' prejudices towards the LGBT community may constitute one of the major obstacles that deters victims from reporting hate crimes. The Directive is very clear about this and obliges the EU Member States to tackle the manifestations of discrimination in the day-to-day business of the law enforcement and justice services. This should lead to elimination of fear and lack of trust when it comes to individuals reporting the crimes. As it is laid down by the Preamble to the Directive, crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as gender expression, gender identity or sexual orientation. To this end, removing homophobic, transphobic and biphobic biases from the daily work of justice officers should be one of the priorities recognised by the Member States and should as a result lead to encouraging SOGI-motivated crimes victims to report the violation of the law.

In order to ensure that all the leading principles introduced by the Directive are properly and fully implemented, Member States have to decide whether there is a need to amend their already existing laws or to introduce new legal acts that would transpose the Directive provisions into national legal systems. The liberty of choosing relevant ways of implementation is left to the national legislators. However, it has to be borne in mind that at the end of the implementation process there must be effective measures in force that enable victims of SOGI-motivated hate crimes to make a complaint, report the case and actively participate in the procedure as well as receive all the information and support that might be needed.

What needs to be underlined is that the Directive applies in relation to criminal offences and to criminal proceedings and it does not criminalise certain acts or behaviours in the Member States. It means that the decision of recognition and penalisation of homophobic, biphobic and transphobic violent acts is left to the exclusive competence of national legislators. There are still some EU Member States who have not yet included grounds of sexual orientation, gender identity and gender expression in their criteria of discriminatory crimes. However, the Directive sets standards of police and judicial procedures and introduces an obligation for state agents to avoid discriminatory treatment when processing the complaints lodged by the LGBTI victims of crimes. This means full respect for the dignity and sexual and gender identity of the individuals who report the crime. The EU, by adopting the Directive, invited the Member States to adopt a coherent and comprehensive national policy on the rights of crime victims, including access to support,

protection and participation throughout the criminal proceedings. This may be achieved by introducing nationwide codes of conduct/guidelines for professionals in regular contact with victims of crime (police, judicial authorities, victims support services, etc.) or by setting clear responsibilities for the entities concerned. These guidelines, if adopted, should be made public, promoted and followed up by appropriate training for the professionals.

One of the Directive's main objectives is setting standards of support provision to the victims of crime. The Directive puts the right to support at the core of rights of individuals experiencing violence. The purpose is to ensure that victims, and their family members, have access to confidential support services free of charge. These should provide information and advice, emotional and psychological support and practical assistance. Support should be available from the earliest possible moment after a crime has been committed, irrespective of whether it has been reported. Equally, victims may require support both during proceedings and for an appropriate period thereafter, depending on the victim's individual needs.

The Directive also requires Member States to facilitate referrals of victims to victim support organisations that are capable of providing relevant assistance of different natures. This is an important aspect of delivering services as the absence of a referral system is often a bottleneck for victims requiring proper support. This requirement encourages the Member States to strengthen their cooperation with NGOs active in the field of victim support.

One of the core standards set up by the Directive is the obligation to provide information to victims of crimes from the first contact with competent authority. The European Commission underlines that the rationale behind this provision requires the criminal justice authorities to provide extensive information proactively ex officio, rather than the onus being on victims to seek out such information for themselves. Victims must be granted 'effective access to information'. This puts the burden of preparing and providing relevant information onto the state authorities. It also obliges the Member States' agencies to anticipate what kind of specific information might be needed by each individual victim of crime. What is even more important is that the information provided by the authorities has to be effectively understood by the victims. It creates an obligation to accommodate all the relevant legal texts to the needs of a recipient.

The Directive sets also a number of other standards, e.g. the possibility for victims to make their complaint in a language that they understand, the obligation to provide information related to a decision to end criminal proceedings

(including the reasons for this) and the time and place of the trial and the nature of the charges. The victim should be also offered the opportunity to be notified of the offender's release or escape from detention and any protection measures available. The Directive introduces also the right to be informed of the applicable protection measures in line with the individual and the risk assessment, the right for interpretation (when a victim holds a formal role), the right to reimbursement of expenses (in certain situations) as well as the right to legal aid and to avoid contact with an offender. The Directive also sets up a standard of protection in relation to the victim's privacy.

About the Toolkit

Taking into account all the above-mentioned standards laid down by the Directive and the difficulties that they may create when being implemented into the daily work of the justice services, the project partners decided to produce a practical toolkit. This publication is meant as a practical and useful support for stakeholders who are involved in all the formal and informal procedures in which crime victims are present and might require special attention. The toolkit was designed by international experts and recognised specialists in different fields relevant to the goal of the Directive. As was presented above, the European legislator decided to introduce a holistic approach in order to meet different needs of victims of crimes. This broad perspective covers the variety of spheres that might be violated or affected when a crime is committed – psychological, psychical, emotional or even material, which is why the project organisations invited authors with different expertise and experiences to contribute to the toolkit.

The toolkit was elaborated to serve as a useful instrument for all relevant representatives of public authorities, including justice system and any other professionals who are or might be involved in contact with victims of crime motivated by sexual orientation, gender identity and gender expression grounds.

The first part of the toolkit focuses on the special needs of the victims of crimes motivated by hatred and prejudices; it explains and identifies the results of the traumatic experience and in which way it affects the victim. In our view it is crucial to understand the specificity of the bias-motivated crime as well as the special situation of the victim. Before getting into procedural technicalities, all the relevant state representatives need to find answers for a number of specific questions. What is the emotional condition of the victim? Does the victim need any psychological or

medical support? Does the victim need the company of a person close to them in order to create a safe space to talk about what happened? Do all the circumstances create a safe space with relation to effective communication? Is there a well-founded fear of any further hostile reaction of the perpetrator?

Fear is one of the main reasons for ineffective communication with the victim. In the first part of the toolkit the authors explain what is at its roots: fear of experiencing further trauma and further victimisation as well as the complicated legal procedures required for proving the offence. The authors also explain the mechanism of fear and victimisation and their manifestations. Understanding these aspects of working with victims of crime is crucial to effectively proceed with a court case. The toolkit explains the potential results of the trauma of SOGI-motivated crime and what influence it has on the condition of the victim. Knowing this helps to understand different behaviours of the victim and helps to avoid misunderstanding and misinterpretation. Trauma may interfere with a victim's ability to engage with the criminal justice system and procedures. It may make the victim appear to be an unreliable witness or it may lead to failing to recall important aspects of the event or coping by complete disengagement. Some victims may present as not having any symptoms, so the professionals might interpret this as the victim not being affected by the trauma. Only once the professionals are aware of the variety of reactions that may appear after experiencing crime, can they fully understand the individual's situation.

This part of the toolkit also provides a number of explanations why victims of crime are often reluctant when it comes to reporting their violent experience, and this is of special importance in crimes motivated by prejudice towards LGBT persons. Understanding the phenomenon of underreporting seems to play a crucial role in designing proper tools for state officials involved in justice system. Fear of revealing details about the victim's intimate life, fear of the reaction from their social circle and further victimisation, fear that they will not be understood and receive support – are only few reasons that deter LGBT victims of crime from making complaints. The toolkit explains why adequate support and referrals are important and what role they can play in providing holistic assistance to the victims. It also has to be underlined that comprehensive assistance delivered to the victim may also contribute significantly to the successful police and court proceeding and effective restoration of public order.

The authors of the publication provided their thoughts in relation to the meaning of the requirement of individual assessment. As the Directive regulates,

the purpose of the assessment is to identify vulnerable victims and their specific protection needs and to determine whether and to what extent the victim would benefit from special measures. It is a completely new approach that has to be implemented into the daily work of the public authorities and might be a huge challenge without support from the experts.

The toolkit focuses on the situation of LGBT victims of crime and the special needs that might appear when processing their complaints. Since the Directive came into force it is no longer left to the 'good will' of the state to introduce special procedures and tools that would prevent discriminatory reactions of the representatives of justice system. The Directive obliged Member States to become inclusive and understand the needs of LGBT people who happened to be victims of crime. In order to help in understanding the meaning of respective Directive requirements, the toolkit authors contributed with a detailed description of how to implement these into real life and what they actually mean. Part II of the toolkit is devoted to this aspect.

It is important to emphasise that the toolkit is not intended to replace national legislation in any way, but to be either adapted to the national legal context and incorporated into the national law through the applicable law-making process or to supplement national law by serving as a convenient reference. The use of this toolkit should be accompanied with the training for professionals working with the victims of homophobic and transphobic hate crimes. Without adequate training, there is an increased risk that the victim may suffer re-victimisation due to unsuitable questions and behaviours from people they meet.

The toolkit is intended to serve as a guide on how to adequately respond to the needs of LGBT victims of crime. To this end we devoted Chapter 3 to the very practical aspects of interactions between the LGBT crime victim and the state agent. The chapter contains detailed proposals of how to behave in order to respect the dignity and privacy of the victim but at the same time achieve the goal of the proceeding, which is identifying the nature and details of the offence as well as detecting the perpetrator. Low social competencies and lack of 'soft skills' of the representatives of the justice system could constitute one of the most frequent obstacles in achieving the goals of the Directive. The toolkit contains proposals of the questions and specific behaviours that might be used in order to make the procedure friendly and effective. The chapter contains guidelines on how to make initial contact, how to set the scene for the interrogation and identify the special needs of the individual victim, how to treat the LGBT victims in a respectful manner. Special attention is

given to the nature of hate crimes and crimes motivated by prejudices. In all dealings with cases involving a homophobic or transphobic element, it is essential that state agents adopt a style of address or reference that demonstrates respect for the victim's, sexual orientation, gender identity and gender expression.

What is essential for the successful implementation of the Directive into the national legal system, providing adequate assistance to crime victims is crucial for the state agencies to engage in the dialogue with civil society representing the LGBT community. In some European countries it may still appear to be a challenge but only understanding the importance of this kind of cooperation can bring about the necessary change.

The toolkit also provides a detailed list of terms connected to the theme of LGBT that should be learned and understood by the state representatives when handling complaints. Being familiar with these definitions should contribute to the effectiveness of their daily work.

We strongly believe that the toolkit will be a useful publication and contribute to a better understanding of the needs of LGBT victims of hate crime. We also hope that it will be of benefit to the relevant justice services who are legally obliged to proceed with complaints professionally without prejudice and discrimination. However, the toolkit should serve as a starting point for a change of policies and institutional approach in order to provide adequate response to the special needs of LGBT victims of crime. This manual should be accompanied with the special training and internal awareness-raising campaigns that will lead to levelling-up the skills and competence of public authorities responsible for ensuring public order.



Chapter 1:

Needs of the victims of SOGI-motivated hate crimes

NIKICA HAMER VIDMAR

Introduction

According to Recital 61 and Article 25 of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, Member States are obliged to enable professionals and practitioners in contact with victims (police officers, court staff, judges and prosecutors involved in criminal proceedings, lawyers, representatives of victim support and restorative justice service) to respond to victims generally, and hate crime victims particularly, in an appropriate and professional manner. It is not just a matter of skills: it also requires a profound understanding of discrimination and its causes as well as of the complex traumatisation of victims of violent crimes committed with a discriminatory motive. General training on how to deal with victims of crime does not suffice, there should also be special training provided to increase awareness of the needs of victims so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify specific protection needs of victims and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. This should include training on the specific support services to which victims should

be referred, or specialist training where their work focuses on victims with specific needs and specific psychological training. Where relevant, such training should be gender sensitive.

Accordingly, the DG Justice guidance document related to the transposition and implementation of the Victim's Rights Directive training on rights and needs of victims should be part of the basic training for police officers and court staff. Good practice for lawyers, judges and prosecutors, is that victim awareness training should also form part of the basic curriculum in law or bar school. Specialised courses regarding the rights and needs of victims of crime should also be offered as part of ongoing professional development. Professionals could be encouraged to take part in training courses, including cross-disciplinary training if, for instance, taking and completing specific victim awareness courses was a requirement for professional promotion and specific judicial positions. Victim awareness training is recommended to all staff and/or volunteers within victim support and restorative justice services. A requirement for specialised victim awareness training could, for instance, form part of the funding or service delivery agreement between state and individual support organisation(s).

Actions of the Member States regarding training should be complemented by guidelines, recommendations and exchange of best practice in accordance with the Budapest roadmap.

Directive goals

In accordance with the Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings ('the Budapest roadmap'), Directive 2012/29/EU of the European Parliament and the Council from 25 October 2012, on establishing minimum standards on the rights, support and protection of victims of crime (replacing Council Framework Decision 2001/220/JHA), aims to revise and supplement the principles set out in Framework Decision 2001/220/JHA. The Directive aims to take significant steps forward in the level of protection of victims throughout the EU, in particular within the framework of criminal proceedings (Recital 4). The purpose of this Directive, as stated in Article 1, is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contact with

victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including their residence status.

The Victims' Rights Directive is more detailed and ambitious than the Framework Decision and as the legal effect of the Framework Decision is limited, the Victims' Rights Directive has 'direct effect' (as well as indirect effect) so the victims of crime can invoke its provisions in national courts.

Reactions of the victims

As stated in Recital 9 of the Victims' Rights Directive, crime is a wrong against society as well as a violation of the individual rights of victims. Crime and violence that is directed against a person can cause different reactions and those incidents can be perceived as much more than just a stressful event. Many of them are traumatic and extraordinarily stressful because they make a person feel helpless, lose a sense of security and feel in danger for their life.

Traumatic experiences often involve a threat to life but any situation that leaves a person feel overwhelmed can be traumatic, even if it does not involve physical harm. Experiencing a traumatic event can cause physical, emotional, or psychological harm. It is not the objective facts that determine whether an event is traumatic but person's subjective emotional experience. The more frightened and helpless a person feels, the more likely they are to be traumatised.

Victims are under stress for several reasons:

- After experiencing trauma;
- Because of the consequences of the criminal offence and/or victimisation;
- Because of the procedures required for the purpose of proving the offence.

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) from the American Psychiatric Association the following definitions apply:

- **TRAUMATIC STRESSOR** – Any event (or events) that may cause or threaten death, serious injury or sexual violence to an individual, a close family member or a close friend.
- **STRESS** – The pattern of specific and non-specific responses a person makes to stimulus events that disturb his or her equilibrium and tax or exceed his or her ability to cope.

- **STRESSOR** – Any emotional, physical, social, economic or other factor that disrupts the normal physiological, cognitive, emotional or behavioural balance of an individual.
- **STRESSOR, PSYCHOLOGICAL** – Any life event or life change that may be associated temporally (and perhaps causally) with the onset, occurrence or exacerbation of a mental disorder.

Victimisation is a stressful event resulting in significant psychological and emotional stress. Emotional stress is a dominant response of victims of crime. Exposure to such stressors or traumatic events carries a risk of depression, anxiety, anger, acute stress disorder or post-traumatic stress disorder.

People react differently to stress and trauma according to their personalities, life experiences, living environment (more or less tolerant and/or accepting), current living condition, their health, their family and friends support (or lack of it), age, their employment status or the fact that they have existential problems or other stressful events in their lives. All of that requires individual approach in accordance to the victim's needs.

According to the DSM-V, psychological distress following exposure to a traumatic or stressful event is quite variable and victims can exhibit different symptoms followed by different emotional reactions. Because of variable expressions of clinical distress following exposure to catastrophic or aversive events, disorders have been grouped under the categories trauma and stressor-related disorders.

Persons who directly experience the traumatic events and are exposed to actual or threatened death, serious injury, sexual violation, or those who have witnessed those events happening to others or have learned that the event(s) happened to a close family member or close friend, can develop acute stress disorder. Traumatic events that are experienced directly include, but are not limited to: exposure to war as a combatant or civilian, threats or actual violent personal assaults (e.g., sexual violence, physical attack, active combat, mugging, childhood physical and/or sexual violence, being kidnapped, being taken hostage, terrorist attack, torture), natural or human made disasters (e.g., earthquake, hurricane, airplane crash) and severe accident (e.g., a severe motor vehicle accident or industrial accident).

In order for the acute stress disorder to be recognised, nine (or more) of the following symptoms have to be present:

- **INTRUSION SYMPTOMS** (recurrent, involuntary, and intrusive distressing memories of the traumatic event(s)) – recurrent distressing dreams in which the

content and/or effect of the dream are related to the event(s); dissociative reactions (e.g. flashbacks) in which the individual feels or acts as if the traumatic event(s) were recurring; intense or prolonged psychological distress or marked physiological reactions in response to internal or external cues that symbolise or resemble an aspect of the traumatic event(s).

- **NEGATIVE MOOD** – persistent inability to experience positive emotions (e.g., the inability to experience happiness, satisfaction or loving feelings).
- **DISSOCIATIVE SYMPTOMS** – an altered sense of the reality of one's surroundings or oneself (e.g., seeing oneself from another's perspective, being in a daze, time slowing); the inability to remember an important aspect of the traumatic event(s) (typically due to dissociative amnesia but not to other factors such as head injury, alcohol or drugs).
- **AVOIDANCE SYMPTOMS** – efforts to avoid distressing memories, thoughts or feelings about or closely associated with the traumatic event(s); efforts to avoid external reminders (people, places, conversations, activities, objects, situations) that arouse distressing memories, thoughts or feelings about or closely associated with the traumatic event(s).
- **AROUSAL SYMPTOMS** – sleep disturbance (e.g. difficulty falling or staying asleep, restless sleep); irritable behaviour and angry outbursts (with little or no provocation), typically expressed as verbal or physical aggression towards people or objects; hyper vigilance; problems with concentration; exaggerated startle response.

In order for the acute stress disorder to be recognised, duration of the disturbance (symptoms) should last from 3 days to 1 month after a trauma exposure. Symptoms typically begin immediately after the trauma but persistence for at least 3 days and up to a month is needed to meet disorder criteria. These disturbances cause clinically significant distress or impairment in social, occupational or other important areas of functioning. Emotional, psychological and social consequences of crime continue for weeks, months or even years and can influence mental health, interpersonal relationships, life quality, employment, finances and can lead to social isolation.

Bearing in mind the symptoms that occur as a reaction to violence, a traumatic experience – especially avoidance symptoms, negative mood and dissociative symptoms – it should not be surprising that victims are reluctant to report the crime to the police.

Trauma symptomatology may interfere with a victim's ability to engage with the criminal justice system, procedures and professionals. Hyperarousal may make the victim appear to be an unreliable witness; intrusive thoughts may lead to the victim being overwhelmed by the simplest of tasks; avoidance may result in the victim failing to recall important aspects of the event or coping by complete disengagement. Some victims may present themselves as not having any symptoms so the professionals might interpret this as the victim not being affected by the trauma.

Victims' reactions to traumatic experiences are different and individual but they can be grouped into several categories:

- **EMOTIONAL REACTIONS** – fear, sadness, anxiety, helplessness, insecurity, a sense of loss of control, guilt, depression, distrust in other people, oversensitivity, changes of mood, irritability, intense emotional reactions.
- **PHYSICAL REACTIONS** – arm or entire body tremors, dizziness, psychomotor disturbances-sweating, heart palpitations, high blood pressure, digestive problems, headaches, muscle tension, sweating, hyperarousal, difficulty with speaking, difficulty with breathing (shortness of breath); shock.
- **COGNITIVE REACTIONS** – (thinking and memory): difficulty with concentration, forgetfulness, confused thinking, confusion, distraction, non-consistent thinking, disorientation, dissociation.
- **BEHAVIOUR** – reticence, refusing communication, isolation, crying, impatience, aggression, verbal outbursts, increased consumption of alcohol, psychoactive substances and drugs.
- **PSYCHOLOGICAL ASPECTS OF GIVING EVIDENCE** – there are many reasons why giving evidence and testimony for victims and witnesses can be difficult:
 - Limitation of perception, selectivity;
 - Limitations of the senses (the amount and speed of stimuli exchanges);
 - Capacity for simultaneous perception;
 - Quality of stimuli;
 - Previous experience, expectations, prejudices, attitudes;
 - Attention of the observer/victim/witness, motivation;
 - Memory capacity – persistence of memory, memory lapses, filling holes in memory;
 - Time and distance cannot be remembered but only estimated;
 - Possibility of recall – no one can recall exactly everything;

- Defence mechanisms (negation, rationalisation, projection, denial, repression);
- Inability to recall important aspects of the traumatic event (dissociative amnesia);
- Emotional state (fatigue, anxiety, stress) at the moment of victimisation and at time moment of giving a testimony:
 - physical condition (general health, the impact of psychoactive substances abused);
 - selection while giving a testimony;
 - communication problems.

Victims under stress:

- May not be able to give a detailed and precise statement;
- Cannot recall any information (or not enough information);
- Can be focused on irrelevant details, confused and distracted;
- Have small capacity to remember details;
- Have problems understanding questions;
- Can appear confused when talking;
- If they have some health problems, their condition due to stress may deteriorate (e.g. seizures);
- Lose concentration during a conversation;
- Can experience flashbacks;
- Can look as if they did not care – dulling as a way to cope with violence (defence mechanisms);
- Can be hostile towards their attacker/accuser;
- Can be under medication, illegal drugs or alcohol.

ACCORDING TO RECITAL 17 OF THE VICTIM'S RIGHTS DIRECTIVE, GENDER-BASED VIOLENCE IS VIOLENCE that is directed against a person because of their gender, gender identity or gender expression, or that affects persons of a particular gender disproportionately. It may result in physical, sexual, emotional or psychological harm or economic loss to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and it includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'.

The vulnerability of the victim of a violent crime is likely to be increased because of the negative impact that such events have on victims. Violent crimes are usually sudden and unanticipated, so cause a wide range of trauma symptoms.

Hate crimes that are mostly committed by unknown perpetrators and that occur in public places, usually without any warning or at any time of day or night, make victims especially vulnerable and unprotected. Hate crimes violate their basic human rights such as free and secure movement. Such incidents and violent crimes lead to development of a sense of fear and insecurity, uncertainty and unpredictability. The uncertainty and unpredictability of possible unpleasant or violent incidents (violence, insults or humiliation) results in development of long-term consequences, and leads to reactions that encourage a victim's avoidance of communication, their distrust, fear of visiting the public places, especially if they are not accompanied by a close person.

Hate crime as bias-motivated crime, motivated by prejudices, when a perpetrator targets a victim because of the membership or perceived membership to a certain group because of victims characteristics or origins (race, religion, language, beliefs, nationality, ethnicity, gender, gender identity or expression, social status, sexual orientation, health, disability, residence status) is also directed not only at specific person but also at a whole community that carries a specific feature. It makes it different from an 'ordinary crime' because the whole community or group is targeted and can feel victimised and endangered and insecure.

Recital 9 stipulates that victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation and they should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

Secondary victimisation or re-victimisation refers to additional damage suffered by victims due to harmful conduct by society, public workers, police officers or other persons with whom victims enter into contact. It is a negative social reaction in consequence of the primary victimisation and is experienced as a further violation of legitimate rights or entitlements of a victim. Secondary victimisation refers to behaviours and attitudes of professionals (and others providing service to victims) that are 'victim blaming' and insensitive, and which traumatise victims of violence. Secondary victimisation is sometimes called a 'second assault' when the criminal proceeding causes psychological harm to the crime victim. It refers to performance of services that leave victims feeling 'violated' and that damage the victim's psychological wellbeing. Secondary victimisation can be achieved with

inappropriate questions or comments and (insensitive) remarks by the criminal procedure, testimony situation, confrontation with the perpetrator, presence of the spectators, if victims are not treated with respect and politeness and in case of minimisation of the harm caused by the victimisation. Secondary victimisation can be generated deliberately or intentionally. In that situation it can be viewed as an extension of behaviour correlated to hate crime or just as an absence of tolerance and respect, especially when talking about hate crime victims.

There is also the possibility that criminal procedures cause re-traumatisation of the victim, which refers to a significant increase of frequency of post-traumatic stress reactions to the original trauma and exacerbation of existing symptoms (caused by the trauma/violence). Re-traumatisation can be caused by victims being questioned about the elements of the crime over and over again in order to check for consistency. That can be very emotionally unsettling and can impede concentration and memory, and victims rate some questions (very detailed description of violence and intimidating questions) as very traumatic because it causes relapse into a state of trauma.

Re-traumatisation should be distinguished from victimisation by a second traumatic event, a concept of repeated victimisation. Repeated victimisation occurs when a victim has an experience of any subsequent victimisation. Those persons who have experienced one trauma are at heightened risk of additional subsequent traumatic incidents. Trauma can have a pervasive negative effect on psychological functioning, particularly emotional stability. In particular, those victims that have experienced multiple episodes of violence are at a greater risk of experiencing negative psychological outcomes such as PTSD symptoms, poorer adjustment, lifestyle instability, sexual dysfunction, depression and suicide attempts. Because of this, police and support agencies should assess prior trauma exposure when assessing risk of re-victimisation and victims' protection needs.

Reasons for non-reporting of hate crimes

- Victims do not believe that the police would treat them in a sympathetic and non-discriminatory manner; there is a lack of trust in skills and attitudes of the police.
- Police are perceived as not taking hate crime seriously; they think that the police would not do anything.
- They do not trust the police, they fear the police.

- Victims are reluctant to report to the police because they suffer from feelings of fear, guilt or shame. This makes it particularly stressful for them to speak up.
- They do not believe in the justice system.
- Victim's self-assessment of insufficient severity of violence – some victims think that the violence/incident was too minor or not serious enough, too trivial and not worth reporting or simply because it never occurred to them they do not think they should report it.
- They fear that they will be mocked or experience hostility.
- They feel shame, discomfort, and/or fear of disclosing their sexual orientation and/or gender identity.
- Fear of revealing details about their sex life.
- Fear of the reaction from the social environment and further victimisation, hostility.
- Fear that they will not be understood and receive support.
- Fear of the offender.
- Fear of the long-term criminal process.
- Fear of the reactions of family and friends.
- Lack of information about available assistance and support organisations as well as the lack of relevant services and insufficient support for victims and, in accordance with that, lack of information about their rights that leads to lack of awareness of their rights.
- Possible previous negative experiences.
- Dealing with consequences of victimisation by themselves.
- Personal reasons.
- Mistrust in institutions, fear of institutions.
- Fear of stigmatisation.
- They question whether engaging in criminal proceedings would ultimately be rewarding and worthwhile.
- Victims doubt they will benefit from proceedings if they report hate crimes, and see proceedings as bureaucratic, costly and/or time consuming.
- Victims do not report and disclose a crime if they believe it would be ineffective or would result in negative consequences, such as endangering themselves or their loved ones, causing emotional distress or resulting in a stigma or blame.
- Some victims evaluate the nature of crime to determine whether they have been victimised and then they weigh the pros and cons of various options. Such analysis may include the effectiveness of disclosing, social norms, accessibility

of options and anticipated reactions – it is typical for LGBT victims that such analysis produce negative results.

According to FRA research results, reporting is ‘more difficult’ for hate crime victims. This is consistent with claims by academics that crimes committed with a discriminatory motive are more debilitating than other forms of victimisation. These difficulties tie in with other factors such as victims’ lack of awareness of their rights and their lack of awareness of support services available to them – partially due to an actual lack of victim support services. In short, victims have little confidence in the criminal justice system.

As victims can be reluctant about reporting a crime, according to Recital 25, delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatisation should not result in refusing acknowledgement of the victim’s complaint.

This assessment of the impact on victims relates to the fact that victims are targeted for what they are perceived to be (they are being targeted on the basis of something that they have no control over). This particular meaning of hate crime underlines the importance of acknowledging victims of hate crime as victims of discrimination.

Some positive effects of victimisation disclosure are improved psychological and physical health. This results in cognitively and emotionally processing trauma, which leads to assimilation and decreased distress and better chance to get needed support and help.

Victims mostly disclose to partners, family members, informal support providers (friends and family). They disclose in order to receive support and assistance but some disclose because support providers were available and present at the moment.

Victims of certain types of crimes are more likely to disclose to informal support providers (friends and family) than to formal ones (police and medical personnel). Victims reach out for help when they believe that it will help them feel better, that they will get needed assistance and information of some expected results in justice.

Negative social reactions to a victim’s disclosure can have more negative effects on recovery than positive reactions would have positive effects. Some research shows that victims received more positive reactions from informal support providers than formal providers (from whom they received more negative reactions; maybe because of the organisational functions of those formal providers that are not in line with victim’s needs).

Table 1. Types and places of violence

Forms of violence against LGBT persons	Where does violence occur?
Economic violence (family)	In the victim's home
Psychological violence (unknown persons)	Public, indoor and outdoor places, including public transport
Physical violence (unknown persons)	At school, in college, in the workplace
Sexual violence (over 50% of unknown persons)	Near or at community places for LGBT persons

Support for the victims

Taking into account all those above-mentioned reactions of victims and the reasons for not reporting crimes, provision of support and help for victims is something that is unavoidable and necessary.

The right to support is one of the core rights in the Victims' Directive. The purpose of the Article 8 (to be read together with Article 9) is to ensure that victims, and their family members, have access to confidential support services free of charge. These should provide information and advice, emotional and psychological support and practical assistance. Victim support is often crucial to the recovery of victims to help them cope with the aftermath of a crime and with the strain of any criminal proceedings. Without proper support, a victim's recovery will be much more difficult and lengthy. Support should be available from the earliest possible moment after a crime has been committed, irrespective of whether it has been reported. Equally, victims may require support both during proceedings and for an appropriate period thereafter, depending on the victim's individual needs. Support will be valuable, for example if medical treatment is ongoing due to the severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to their statements during criminal proceedings. Research [5–12] shows that providing support at an early stage after a person has suffered a crime can considerably reduce the medium- and long-term consequences for the individual and for society as a whole (in terms of human suffering, burden for health care and social services, loss of earnings, absence from work). Support can also prove to be particularly important with regard to a victim's decision to report a crime and to cooperate with the police investigation and trial.

Victims must have access to victim support based on their needs. Their family members must have access in accordance with their needs and the degree of harm

suffered as a result of the crime. The competent authorities have a margin of discretion to determine how to assess such needs because a formal needs assessment is not explicitly required in Article 8. In practice, there may be an implicit demand to establish internal procedures or protocols for assessing the support needs of victims and their families (link to Article 22 on individual assessment). The assessment would normally be carried out by victim support services.

As stated in Recital 37, support should be available from the moment competent authorities are aware of the victim and throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and the rights set out in this Directive. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution across the Member State to allow all victims the opportunity to access such services. Victims who have suffered considerable harm due to the severity of the crime could require specialist support services. Because of the specific needs of hate crime victims, it is important to provide specialised support services that provide trauma support and counselling and targeted support for victims with specific needs. That is specially stated in Recital 38 for persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents: they should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about the rights set out in the Victim's Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. The types of support offered could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short- and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims. It is also defined in the Article 9, paragraph 2 that Member States shall encourage victim

support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime. Specialist support services should, as a minimum, provide targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

Article 3 paragraph 3 states that Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood. Such help and assistance is very important in order for victim not to feel left alone in the process, especially in the case of a hate crime. The presence of that person in the courtroom can also be reassuring and encouraging.

According to Recital 39, victim support services are not required to provide extensive specialist and professional expertise themselves. If necessary, victim support services should assist victims in calling on existing professional support, such as psychologists.

In order to provide adequate support to victims there are two important steps: referral and information.

Referral

As stated in Recital 40, although the provision of support should not be dependent on victims making a complaint about a criminal offence to a competent authority such as the police, such authorities are often best placed to inform victims about the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including ensuring that data protection requirements can be and are adhered to. Repeat referrals should be avoided.

Paragraph 2 in Article 8 (Right to access victim support services) requires Member States to facilitate referrals to victim support organisations (VSOs) by the competent authority that received the complaint or by other relevant entities. This is an important aspect of delivering services as the absence of a referral system is often a bottleneck for victims requiring proper support. A well-functioning police referral mechanism to victim support services is a cornerstone of any effective support system.

In some Member States these referrals (most often from the police) are not formalised, while in others there are well established practices with the police automatically referring victims to the relevant VSO so that they can proactively assist individual victims.

According to the FRA findings there are three models:

- **FIRST MODEL** – Usually, the police informs the victim of available support services and leaves it up to the victim to contact the service. While this model respects the autonomous decision of victims to seek support or not, it is less appropriate when the victim is distressed and therefore not fully capable of grasping all the information offered or of calmly considering what action to take. Some victims are attempting to restore a basic feeling of control and security. They should not be burdened with the need to take difficult decisions for which they are not well prepared. This model exists in Croatia.
- **SECOND MODEL** – This requires police to ask the victim to consent to the passing on of their contact data and some basic information on the offence to a support service. This enables the service to, in due course, get in contact with the victim and offer support and advice proactively. This model is developed in many countries, especially in cases of domestic violence or concerning minors. In most Members States, data is transferred from the police to victim support in at least some cases (such as domestic violence, and mostly only with victim's consent).
- **THIRD MODEL** – This goes yet further, entitling the police to inform a relevant victim support service without the victim's consent. This model is appropriate only when victimisation is so severe that one can assume that the victim is not in a position to judge whether to consult a support service, such as in the context of trafficking or domestic violence. Such a model requires a robust legal basis. This model is developed in the Netherlands and UK, in Croatia only in cases of

In some EU Member States, VSOs operate either directly at police stations or in their immediate vicinity, which makes referral easier. One such example is the close cooperation between the police and Victim Support Sweden (Swedish Association for Victim Support, Brottsofferjourernas Riksförbund, BOJ). Belgium, Estonia, Finland, France and the Netherlands use similar models.

When communicating with victim, police should explain what services can be offered and refer victims to a VSO unless the victim does not want such support.

Referral systems do not always work because of a combination of constraints regarding personal data protection rules, lack of information, a lack of training for police officers on the importance of support and referrals to appropriate services or a lack of simple referral protocols. Competent authorities should ensure robust data protection systems and impose confidentiality requirements to safeguard the personal data of victims referred to VSOs, so that VSO can proactively contact victim.

National referral arrangements between the police and VSOs should ensure all victims are offered, as soon as possible, preferably automatic access to general/specialist victim support services, taking into account consent of the victim and data protection requirements. For example, some Member States with more than one victim support organisation have effective referral agreements, whereby one organisation acts as a focal point, directing victims to the most appropriate service, according to their needs. It is also important not to duplicate referrals, to avoid victims being contacted by several VSOs simultaneously. Member States should make referral arrangements according to their national conditions and the availability of victim support services.

EC recommendation is to have a more structured, sustainable approach and model of a one-stop-shop victim agency (Recital 62), which could be established to serve as the main contact for victims and should be responsible for keeping the victim informed, liaising between the victim and all authorities and agencies involved. This is an approach promoted by the Istanbul Convention, as such one-stop shops have been tried and tested for services to victims of domestic violence and could be adapted to victims of other types of crime. Using such models could achieve a structured model of information exchange between the authorities and VSOs instead of exchanging data on a case-by-case basis.

Recital 62 encourages close cooperation with civil society organisations, including recognised and active NGOs working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. For victims of crime to receive the proper degree of assistance, support and protection, public services should work in a coordinated manner and should be involved at all administrative levels – EU, national, regional and local levels. Victims should be assisted in finding and addressing the competent authorities in order to avoid repeat referrals.

Member States should consider developing 'sole points of access' or 'one-stop shops', that address victims' multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.

They should also provide appropriate training for police officers dealing with referrals to ensure safe and smooth handling of each case (see Article 25).

Referrals 'by other relevant entities' in contact with victims of crime is understood to include public agencies or entities, such as hospitals, schools, embassies, consulates, welfare or employment services, who are in contact with victims and identify the need for the victim to seek the specialised services of a VSO. Some victim that require specialist support because of their vulnerability or particular circumstances should be referred to confidential specialist support services free of charge. Specialist services can be provided by separate entities or within the framework of general support services; or through a referral mechanism whereby general support services can call on existing specialist services to support victims with specific needs.

The current practice of existing VSOs in the EU shows that victim support is provided mainly by NGOs working on a voluntary basis. Article 8, Paragraph 4 provides that general and specialist support may be provided by governmental or NGOs, on a professional and/or voluntary basis. Access to support should not involve excessive procedures or formalities for victims as these might reduce effective access to such services. Support may be provided in a variety of ways, such as face-to-face meetings, by telephone, online or other remote means to maximise the geographical distribution and availability of services. For example, there is a wide range of specialist services for victims, particularly for victims of domestic violence and rape and sexual violence.

Paragraph 5 of Article 8 requires Member States to ensure that a victim's access to support is neither dependent on having made a formal complaint regarding the crime, nor conditional on the authorities launching a criminal investigation. This provision is particularly important for victims in very exposed or vulnerable positions due to threats or intimidation from the offender (e.g., in cases of violence in close relationships, hate crimes, and organised crime where victims seek medical care or assistance from a VSO directly, and do not want to report the offender for fear of repeated violence). The victim is free to choose whether to report a crime but, as stated in Recital 63, reporting of crimes should be encouraged and facilitated by reliable support services, modern communication technologies and well-

trained practitioners to allow safe and easy reporting. In addition, any measures enabling third parties (including civil society organisations) to report crimes should be considered.

According to the FRA report, specific procedures do not appear to be in place for referring victims of hate crimes – instead, such procedures deal with all victims of crime. The complex, highly fragmented and compartmentalised state of support services raises the question of how effective referral mechanisms can be that do not take the specific situation of hate crime victims into account. If a very low proportion of victims is turning to the victim support service this shows that referrals are not effective and that there should be proactive measures taken. Investigating good practice from countries where victim support services proactively contact victims could be especially useful for hate crime victims in order to assure provision of specialised support and not the support from generic support organisations. Police cooperation should be established with civil society organisations/non-profit organisations and specialised reporting channels appointing liaison or contact officers specifically tasked with establishing links and communication flows to individuals or groups at risk. The establishment of specialised units or officers as a means of improving police services and their response to hate crime are highly recommended.

Information about rights of victims

Article 4 (Right to receive information from the first contact with a competent authority) requires the criminal justice authorities to provide extensive information proactively, rather than just expect victims to seek out such information for themselves. Victims must be granted ‘effective access to information’. Its concept is similar to the common law concept of a ‘Bill of Rights’, which would list rights to be provided by Member States without the request of the victim. The right applies from the first contact with the competent authorities. The term ‘competent authority’ is broader than the Framework Decision’s ‘law enforcement authority’ (i.e. the police). The competent authorities, acting in criminal proceedings under the Victim’s Directive, are determined by national law. This does not exclude, for example, customs or border agencies, if they have the status of law enforcement authorities under national law. This is particularly important in cases of trafficking human beings or in customs/smuggling offences. Hospitals, employment centres and similar facilities should not be deemed competent authorities in criminal

proceedings. First contact can be made when the victim reports a crime at a police station, but also when in contact with the police at the scene of crime without the victim having made a formal complaint. Contact with the authorities also includes helpline phone calls and online/internet contact.

According to Recital 21, information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner that can be understood by the victim. Such information and advice should be provided in simple and accessible language. It should also be ensured that the victim can be understood during proceedings. Without prejudice to rules relating to limitation periods, the delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatisation should not result in refusing acknowledgement of the victim's complaint. According to Recital 26, when providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information on the current status of any proceeding is particularly important for the victim. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute. Unless otherwise required, it should be possible to provide the information communicated to the victim orally or in writing, including through electronic means. According to Recital 27, information should be sent to a victim's last known correspondence address or electronic contact details given to the competent authority by the victim. In exceptional cases, for example due to the high number of victims involved in a case, it should be possible to provide information through the press, through an official website of the competent authority or through a similar communication channel.

According to Recital 28, Member States should not be obliged to provide information where disclosure of that information could affect the proper handling of a case or harm a given case or person, or if they consider it contrary to the essential interests of their security. Recital 29 states that competent authorities should ensure victims receive updated contact details for communication about their case unless the victim has expressed a wish not to receive such information. According to Recital 32, specific information about the release or the escape of the offender should be given to victims, upon request, at least in cases where there might be a danger or an identified risk of harm to the victims, unless there is an identified risk of harm to the offender that could result from the notification.

Where there is an identified risk of harm to the offender which would result from the notification, the competent authority should take into account all other risks when determining an appropriate action. The reference to 'identified risk of harm to the victims' should cover such factors as the nature and severity of the crime and the risk of retaliation.

In Article 5 (Right of victims when making a complaint) Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned – an important factor for recognition of hate crime and elements of discrimination. Article 5 also suggests the provision of different communication channels for reporting a crime.

Individual assessment

Provision of Individual assessment of victims to identify specific protection needs (according to Article 22) is one of the major achievements in the Victims' Directive as it makes clear that there needs to be a case-by-case approach towards victims.

The purpose of individual assessment is to determine whether a victim is particularly vulnerable to secondary and repeat victimisation, to intimidation and to retaliation during criminal proceedings. It is important to understand this in order to establish the appropriate extent and scope of questions the victim is asked in this assessment. The assessment implies a two-step process (which could be combined): (1) to determine whether a victim has specific protection needs; (2) to determine if special protection measures should be applied, and what these should be.

According to Article 22, the individual assessment shall, in particular, take into account: (a) the personal characteristics of the victim; (b) the type or nature of the crime; and (c) the circumstances of the crime. Victims with a history of previous victimisation are at elevated risk of repeat victimisation and should be considered high-risk victims regardless of crime type. In the context of the individual assessment, particular attention shall be paid to the following: victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with

disabilities, shall be duly considered. Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, can such a risk be effectively identified.

Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require.

According to Recital 56, a number of different aspects have to be taken into account during the assessment process, such as the personal characteristics of the victim: his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime: whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive; sexual violence; violence in a close relationship; whether the offender was in a position of control; whether the victim's residence is in a high crime or gang-dominated area; or whether the victim's country of origin is not the Member State where the crime was committed.

According to Recital 57 and 58, victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures. Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.

The role of the police is very important in how they are tasked with investigating and recording comprehensively all indications of bias motives that may account for the commission of a crime. Police officers should have a sufficient understanding of the concepts and various forms of hate crime and should be aware of how they should proceed in cases involving possible discriminatory motives of offenders. They are committed to countering discrimination in general and to identify and record hate crime in particular.

According to the DG Justice guidance document, Member States should establish national models to introduce individual assessments of all victims of crime, adapted according to the criteria set out in Article 22. These models should be based on a tool and on practical guidance on how to assess the individual needs of all victims of crime. The tool should be flexible enough to take the needs and wishes of the victim into account. Member States should make sure that the correlation between victims' personal characteristics and the possibility of the occurrence of a crime committed (e.g., with bias or discriminatory motive) is taken into consideration. The purpose of the assessment is to identify vulnerable victims and their specific protection needs and to determine whether and to what extent the victim would benefit from special measures. The purpose of special measures is not only to prevent secondary and repeat victimisation, intimidation or retaliation, but also to give victims a sense of the dignity and humanity of the judiciary system, sending a message to the victim that their feelings and experiences are worth respect and appreciation. This particularly refers to victims of gender-based crime because of their identity and/or other characteristics that could be a reason for victimisation. This could be a reason for additional vulnerability and should be taken into account when delivering individual assessment and providing protection measures.

Member States should identify which police/criminal justice authority or victim support service should conduct the individual assessment and provide sufficient training to the appointed agency. Good practice shows that the police or victim support services are ideally placed to conduct the needs assessment. To ensure the assessment takes place promptly after the crime, there must be robust national referral mechanisms whereby the police refer the victim to support services for assessment (link to Article 8). Good practice demonstrates that factors such as gender, age, maturity, ethnicity, language skills, relationship/dependency between the victim and the offender, previous experience of crime, etc., should be taken into account to identify the victim's communication needs, support needs, protection needs and the need for any other kind of assistance. Also, good practice suggests

that service providers should continually follow up the individual needs assessment to ensure that the services offered are amended and adjusted in line with the victim's recovery.

Effects of social support

As already mentioned, a significant factor in recovery following the traumatic event /incident is the presence of good social support. Social support in general is a dyadic interaction in which one person is experiencing distress and another person attempts to provide support. It is interaction or interpersonal exchange in which a 'provider' attempts to proffer a support and a 'recipient' may be helped or benefit by the attempt. Social support can be viewed as a cognition or perception about the availability of support within one's social network.

Positive social reactions to assault disclosure predicts greater perceived control over recovery, which in turn results in less symptoms and disorders (PTSD or other). Positive social reactions (emotionally supportive, emphatic, offering tangible aid) are also associated with more adaptive social and individual coping mechanisms that can influence their recovery process and better perceived control over recovery. Negative social reactions to assault disclosure – control, blame, treating the victim differently, reacting in a cold/detached manner (blaming, doubting, refusing to help) – are related to a greater number of symptoms through maladaptive coping and individual coping strategies and lower perceived control and recovery. That increases the victim's feeling of self-blame, helplessness, and a decrease of trust in others. They can also result in long-term negative outcomes because survivors do not actively engage in trying to recover but instead avoid dealing with the trauma.

The manner in which help is provided is at least equally as important as the type of assistance. The type of the support must match the needs of victim, which should be assessed as soon as violence occurs, as previously mentioned, using specially designed tools and practical guidance on how to assess the individual needs of all victims of crime.

Types of support:

- **EMOTIONAL** – listening, providing empathy and understanding, and showing affection.
- **INSTRUMENTAL** – provision of material resources or task assistance.
- **INFORMATIONAL** – information, guidance, or advice as a support in problem solving.
- **APPRAISAL SUPPORT** – provision of information that one is worthy and valued.
- **COMPANIONSHIP** – the presence of others and engaging in activities with others who provide support is an important determinant of its effectiveness: the support provider's personality, capability (interpersonal skills and available time) and the nature of the relationship (extent of trust and degree of independence) are important.

The effects of providing support for victims and witnesses

- The reduction of discomfort, fear and stress (presenting concern, fear, discomfort).
- A feeling of security and protection and dignity while testifying.
- A sense of importance, respect, understanding and appreciation.
- Better supply of information for the victims about their rights and possibilities to exercise these rights.
- Timely insurance and other forms of assistance.
- An increased willingness of witnesses to testify, and increase confidence in the justice system.
- Fewer delayed testimonies.
- Improving the quality of testimony.
- A faster and more efficiently conducted criminal procedure.

While communicating with the victim the police should do the following:

- Show the victim that they can have confidence in the official.
- Demonstrate understanding, empathy and respect.
- Avoid statements that could be seen as discriminatory or that sound like they blame the victim for the violence experienced.
- Listen carefully and patiently.
- Allow the victim to express emotional reactions.
- Allow the victim to use a language in which she is most easily expressed.

- Address the victim in a way that respects their sexual identity.
- Avoid questions of an intimate nature.
- Avoid the their own attitudes influencing the victim.
- Bear in mind that the victim is not required to tell police officials their sexual orientation, gender identity nor details of their sex life.

Conclusion

As stated in Article 26 (Cooperation and coordination of services) of the VRD, Member States shall take appropriate action to facilitate cooperation between Member States to improve the access of victims to the rights set out in this Directive and under national law.

Such cooperation shall be aimed at least at:

- (a) The exchange of best practices;
- (b) Consultation in individual cases; and
- (c) Assistance to European networks working on matters directly relevant to victims' rights.

Such cooperation should be considered through:

- Establishing close cooperation among EU Member States and with DG Justice throughout the implementation phase of this Directive.
- Investing resources in European networks, civil society and cooperation in the field of victims of crime, including private sector service providers.
- Supporting and encouraging national law enforcement and judicial authorities to take part in European networks and cooperation, as a way to learn and exchange best practice and expand knowledge regarding the manner in which to protect and fulfil victims' rights. Cooperation between criminal justice professionals would also be required to ensure that victims' rights are fulfilled in cross-border cases.
- Formulating European standards of good practice in selected areas such as victims' support service providers, in cooperation with DG Justice.

Member States shall take appropriate action, such as awareness-raising campaigns and research and education programmes (in cooperation with relevant civil society organisations and other stakeholders) in order to reduce the risk of

victimisation and minimise the negative impact of crime and the risks of secondary and repeat victimisation), especially for groups at risk such as children, victims of gender-based violence and violence in close relationships.

Exchange of best practice is possible through the existing networks:

- The European Judicial Network in criminal matters;
- The E-Justice Portal;
- The European Network on Victims' Rights ('Network'), an informal network created to stimulate and aid the implementation of existing EU legislation on victims' rights and to suggest, where appropriate, any possible areas to for improvement of the EU acquis in this field. The Network should facilitate and enhance discussions about the challenges in implementing the relevant EU legislation in the area of victims' rights; exchange of best practices and other relevant experiences, such as on victims' rights, to individual assessment of their specific protection needs and access to information; cooperation between the competent authorities responsible for victims' rights of the Member States, e.g. in cross-border cases and with respect to the compensation of victims; cooperation, exchange of information and dialogue among different actors that come into contact with victims, including, where appropriate, the law enforcement and judicial authorities, and civil society.
- Victim Support Europe (VSE), a leading European umbrella organisation advocating on behalf of all victims of crime, no matter what the crime, no matter who the victim is, that provides information and exchange of information among members and to all other organisations and victims themselves.

In order to achieve the goals and purpose of the Victim's Rights Directive and promote victim's rights, all officials that are likely to come in contact with victims, such as police officers, court staff, lawyers and officials providing victim support and restorative justice, should receive both general and specialist training to a level appropriate to their contact with victims, to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.

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Chapter 2: Focus on the Directive and what it contains in terms of LGBT persons

SANITA SILE

Development of the legislative framework

At the EU level, the first significant attention was drawn to victims of crime in 2001 when the [COUNCIL FRAMEWORK DECISION ON THE STANDING OF VICTIMS IN CRIMINAL PROCEEDINGS](#) (hereinafter – Framework Decision) was introduced to the Member States. The Framework Decision aimed at establishing the basic rights for victims of crime within the EU, setting an obligation for all Member States to adapt their legislation in accordance with the Framework Decision's requirements by 2006.

Member States were asked to report their progress in 2004 and 2009 – it was concluded that this legislation has not been efficient and sufficient to ensure minimal standards for victims across the EU [1]. Implementation of the report of 2009 showed that no Member State has transposed the Framework Decision in a single piece of national legislation. Member States all relied on existing provisions and many referred to their Code of Criminal Procedure for transposal. A few adopted new legislation covering one or more Articles. Many Member States submitted non-binding codes, instructions and charters in lieu of legislation [2].

In 2011, the Commission therefore put forward a legislative package – the Victims Package [3] – to strengthen the legal framework on victims' rights, including

a proposal for a directly binding and effectively enforceable Directive establishing minimum standards on the rights, support and protection of victims of crime.

The Directive [2012/29/EU ESTABLISHING MINIMUM STANDARDS ON THE RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME](#) [4] (hereinafter – Victims’ Rights Directive) was adopted on 25 October 2012 and entered into force on 15 November 2012 [5]. All Member States had an obligation to implement the provisions into their national laws by 16 November 2015.

It must be noted that the Victims’ Rights Directive is not the only EU legal instrument striving to achieve common minimum level of protection for victims of crime. In order to set a binding obligation for the Member States to improve the situation for persons who have suffered from crime, the Victims Package included several initiatives.

Current EU legislative framework with regards to victims’ protection includes [ALSO DIRECTIVE 2011/99/EU ON THE EUROPEAN PROTECTION ORDER](#) (EPO) [6] (hereinafter – EPO Directive), the [REGULATION \(EU\) NO. 606/2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES IN CIVIL MATTERS](#) [7] and the [DIRECTIVE 2004/80/EC RELATING TO COMPENSATION TO CRIME VICTIMS](#) [8] (hereinafter the Compensation Directive).

[THE EPO DIRECTIVE](#) sets up a mechanism allowing persons who benefit from a protection order in criminal matters issued in one Member State to request a European Protection Order. Such an order allows for protection also in other Member States where the protected person travels or moves. Protection orders covered by the Directive concern situations where victims, or potential victims, of crime benefit from a prohibition or regulation of entering certain places, being contacted or approached by a person causing risk [9].

[REGULATION \(EU\) NO. 606/2013 ON MUTUAL RECOGNITION OF PROTECTION MEASURES](#) in civil matters sets up a mechanism allowing for a direct recognition of protection orders issued as a civil law measure between Member States. Thus, persons who benefit from a civil law protection order issued in the Member State of its residence may invoke it directly in other Member States by presenting a certificate to competent authorities certifying their rights. At the present time, both the EPO Directive and the Regulation should be implemented in national laws of the Member States as all the provisions in these documents apply as of 11 January 2015 [10].

[THE COMPENSATION DIRECTIVE](#) provides that persons can apply for state compensation when they have fallen victims to crime abroad, and receive assistance

to do so. The Directive requires that all Member States have a state compensation scheme which provides fair and appropriate compensation to victims of intentional violent crime. The Directive also creates a system of cooperation between national authorities for the transmission of applications for compensation in cross-border situations; notably, victims of a crime committed outside their Member State of habitual residence can turn to an authority in their own Member State to submit the application and get help with practical and administrative formalities [11].

Combined, all documents that form the Victims' Package should be sufficiently and efficiently forming a system, common in all Member States, where the rights of all victims of crime are strengthened, where victims should be able to continue benefiting from protection measures when moving to another Member State, as well as a system that ensures victims' rights to compensation.

2001 Framework Decision vs. the Victims' Rights Directive

Even though it can be assumed that the law enforcement agencies in EU Member States were aware of the previous legal framework for protection and support of victims of crime, it is worth highlighting that, as of 16 November 2015 when the Victims' Rights Directive came into effect, the requirements are set to a considerably higher standard. The comparison will also help to better understand the intended scope and intention of the new regulations.

Table 2.1. 2001 Framework Decision vs. Victims' Rights Directive [12].

Victims' Rights Directive		2001 Framework Decision
Explanation	Article	Notes
New provision on the Directive's objectives.	Article 1	–
Wider definition of 'victim' and 'family members': <ul style="list-style-type: none"> • FAMILY MEMBERS of deceased victims are defined as victims and benefit from all rights in the Directive; family members of surviving victims have the right to support and protection. Family members are widely defined and include also non-married intimate partners. 	Article 2(1)(a) and 2(1)(b)	–

Table 2.1. 2001 Framework Decision vs. Victims' Rights Directive (continuation).

<p>New rules on the victim's rights to understand and to be understood:</p> <ul style="list-style-type: none"> • ACCESSIBLE AND UNDERSTANDABLE INFORMATION – All communication with victims must be made in a way that victims understand (linguistically or otherwise); an emphasis is made on child-sensitive communication. 	Article 3	–
<p>New and expanded rules on the victim's rights to receive information:</p> <ul style="list-style-type: none"> • INFORMATION RIGHTS – Victims will receive a range of information from first contact with authorities. Victims will also receive information about their case, including a decision to end the investigation, not to prosecute and the final judgement (including the reasons for such decisions), and information on the time and place of the trial and the nature of the criminal charges. 	Articles 4–6	If compared to Article 4
<p>Stronger rights to interpretation and translation:</p> <ul style="list-style-type: none"> • INTERPRETATION AND TRANSLATION – During criminal proceedings, victims with an active role have the right to interpretation and translation to enable their participation. Victims can challenge a decision not to receive interpretation and translation. All victims will receive a translation of the acknowledgement of their complaint. 	Article 7	If compared to communication safeguards in Article 5
<p>Much stronger rights to access victim support services:</p> <ul style="list-style-type: none"> • ACCESS TO VICTIM SUPPORT – Member States must ensure access for victims and their family members to general victim support and specialist support, in accordance with their needs. The Directive specifies the basic level of services that need to be provided. Support is not dependent on the victim having reported the crime. Member States must facilitate referrals from police to VSOs. • SPECIALIST SUPPORT SERVICES must as a minimum provide shelters and targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling. 	Articles 8 and 9	If compared to rules on specialist services and VSOs in Article 13
<p>Wholly new rules in the event of a decision not to prosecute:</p> <ul style="list-style-type: none"> • REVIEW DECISION NOT TO PROSECUTE – Victims have the right to be informed about a decision not to proceed with prosecution of the offender and also have the entirely new right to have such decision reviewed. 	Article 11	–
<p>New rules on safeguards in restorative justice services:</p> <ul style="list-style-type: none"> • RESTORATIVE JUSTICE SAFEGUARDS – Victims who choose to participate in restorative justice processes (referred to as mediation in the Framework Decision) must have access to safe and competent restorative justice services, subject to some minimum conditions set out in the Directive. 	Article 12	If compared to rules on penal mediation in Article 10

Table 2.1. 2001 Framework Decision vs. Victims' Rights Directive (continuation).

Expanded rules on protection of victims during criminal investigations (interviews, legal assistance, medical examinations): • PROTECTION OF ALL VICTIMS IS REINFORCED – The privacy of victims and their family members must be respected and contact with the offender avoided (all new court buildings must have separate waiting areas).	Article 20	If compared to Article 3(2)
Further elaboration of the rights to privacy.	Article 21	If compared to Article 8(2)
Considerably expanded provisions on victims with specific protection needs: • INDIVIDUAL ASSESSMENT TO IDENTIFY VULNERABILITY AND SPECIAL PROTECTION MEASURES – All victims must be individually assessed to determine whether they are vulnerable to secondary or repeat victimisation or intimidation during criminal proceedings. If they have specific needs, a whole range of special measures will be put in place to protect them.	Articles 22–24	If compared to Article 2(2)
Expanded provisions on training for practitioners: • TRAINING OF PRACTITIONERS has become an obligation and emphasis is also put on cooperation between Member States and at national level, and awareness-raising about victims' rights.	Article 25	If compared to Article 14
Expanded rules on cooperation between Member States' authorities.	Article 26(1)	If compared to Article 12
New provisions requiring Member States to make victims more aware of their rights.	Article 26(2)	–

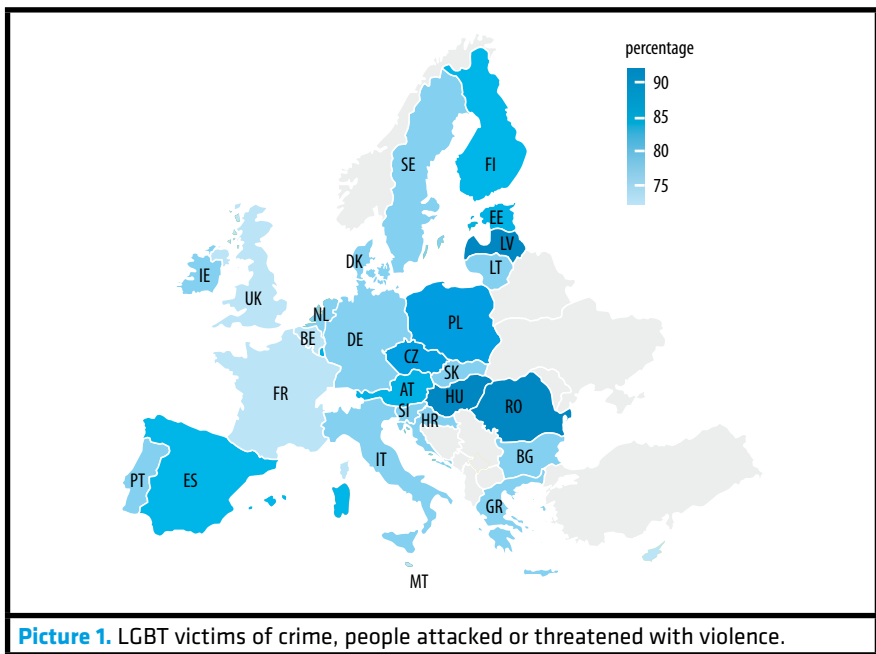
The Victims' Rights Directive itself consists of 72 recitals and six chapters, including chapters on general provisions, provision of information and support, participation in criminal proceedings, protection of victims and recognition of victims with specific protection needs as well as other provisions and final provisions. Table 1 clearly indicates that, if compared to the 2001 Framework Decision, crucial improvements have been included under each section of the Directive.

Victims' Rights Directive

Each Recital and Article of the Directive is aimed at improving the conditions for all crime victims, all over Europe. Both on the level of legislation and implementation, provisions of the Directive must be followed, transposed and implemented to the full extent.

As stated in the DG Justice guidance document related to the transposition and implementation of the Directive, in all individual provisions of the transposition measures of this Directive the general principles of EU law (e.g., equality and non-discrimination) and the Charter of Fundamental Rights must be respected [13].

In the following sub-chapters, therefore, more attention will be drawn to one specific group – LGBT victims of crime – to provide better understanding as to how LGBT victims should be treated in order to comply with the requirements of equal and non-discriminatory treatment. It is important to note that the whole text of the Directive will not be analysed. The selection of Directive’s provisions is made on the basis of their relevance to specific group, which, in this case, are LGBT victims of crime.



In 2012, the European Union Agency for Fundamental Rights (hereinafter – FRA) carried out the ‘European Union lesbian, gay, bisexual and transgender survey’ (hereinafter – EU LGBT survey) [14], which involved 93,079 respondents from 28 countries.

The reason why the Victims’ Rights Directive must be analysed from the perspective of LGBT people is clearly visible from Picture 1 – out of all respondents, 26% had been placed in a position of becoming a victim of crime as people were

attacked or threatened with violence – a considerable number of people who identify themselves as LGBT are subjected to violence and threats. In general, the issue is identified all over the Europe, although less in some countries than in others. It is the intention of the Victims' Rights Directive and an obligation of the legislator in each Member State to ensure protection and support for all these victims. This is entirely in line with Directive's Recital 4 [15], which states that action should be taken at Union level in order to strengthen the rights of, support for, and protection of victims of crime [16].

RELEVANT RECITALS

Particular focus on LGBT people derives from Recital 9, where it is highlighted that victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, *gender*, *gender expression*, *gender identity*, *sexual orientation*, residence status or health.

Another addition in the Directive, if compared to previous legal enactments, is a clear definition of 'gender-based violence'. In Recital 17 this is defined as violence directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately. It may result in physical, sexual, emotional or psychological harm, or economic loss to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim.

An additional aspect worth mentioning is included in Recital 25, which states that without prejudice to rules relating to limitation periods, the delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatisation should not result in refusing acknowledgement of the victim's complaint. This specific Recital is of particular importance considering the most common reasons why LGBT victims who have been physically/sexually attacked or threatened with violence decide not to report to the police: even in cases of serious crime, 43% of LGBT victims would not report the crime due to their belief that the police would not do anything and 32% of victims due to their belief that the police could not do anything. Considering this trend, it is of crucial importance not to reject the victim's report because of a delay as it is very likely that for the victim it was not an easy decision to make.

	Last	Most serious
Did not think they would do anything	50	43
Too minor/not serious enough/never occurred to me	38	30
Did not think they could do anything	37	32
Fear of a homophobic and/or transphobic reaction from the police	34	29
Shame, embarrassment, didn't want anyone to know	26	29

Picture 2. Why did you not report it to the police? [17]

Recital 38 refers to persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm. It cites victims of gender-based violence as one of the examples and states that they should be provided with specialist support and legal protection.

It is underlined that some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. In order to identify the level of such risks, the Directive offers a tool for individual assessment as the only suitable approach for effectively addressing the possibility of a person being particularly vulnerable. Recital 56 suggests the criteria for individual assessment as the victim's *age, gender and gender identity or expression*, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. In addition to that, the type or nature and the circumstances of the crime, such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, should be taken into account. Recital 57 stresses the need to presume that specific groups would particularly benefit from the special protection measures, citing victims of gender-based violence and hate crimes as one of the few examples.

The Directive also suggests that for officers to be able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner, access to appropriate and ongoing training must be in place.

Most of the mentioned recitals will be analysed further under respective chapters of the Directive.

RELEVANT DEFINITIONS

Article 2 of the Directive provides a definition for a victim that consists of two parts. First, within the understanding of the Directive, a victim is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by a criminal offence. Secondly, 'victim' can also be the family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

'Family members' in this context refers to spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct family line, the siblings and the dependants of the victim. It is important to analyse the list of family members by keeping in mind all anti-discriminatory principles. For instance, as explained by Professor Steve Peers, the term 'spouse' would obviously apply to anyone who was married under the law of a State (including a Non-Member State, or a Member State other than that in which the crime was committed), whether the couple concerned were of opposite sexes or the same-sex – although this would not entail an obligation to recognise a same-sex marriage celebrated in another State for any other purpose [18].

Definition of 'family members' also includes 'the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable continuous basis'; the relationships concerned could obviously be either between persons of the same sex or of opposite sexes [19].

This explanation is also supported by the DG Justice guidance document, which highlights Member States' obligation to use inclusive definitions of 'family members' when it comes to the victim's partners. Such definitions should include spouses, as well as unmarried partners, regardless of whether the partners are in a registered civil partnership under its national laws. Thus, this definition should apply in all Member States, regardless of the national legislation on the recognition of unmarried couples, same-sex couples and same-sex marriages [20].

Finally, the definition of 'family members' includes 'the relatives in direct line, the siblings and the dependants of the victim'. There is no requirement that a 'dependant' must be a blood relative or a relative by marriage, and so the concept could include (for instance) the children of a deceased partner, even in the absence of a marriage or civil partnership between the persons concerned (whether this absence is because the law does not provide for these possibilities, or due to the choice of the persons concerned not to avail of them), whether the partners are persons of the same sex or of opposite sexes [21].

RELEVANT ASPECTS TO RIGHTS TO INFORMATION

A crucial aspect with regards to provision of information is a victim's right to understand and to be understood. The approach taken in the Directive underlines the individual victim's ability to 'follow the proceedings' [22]. For this principle to be fulfilled, authorities from Member States have an obligation, if necessary, to assist the victim and to ensure that communications are given in simple and accessible language (orally or in writing). Authorities also are obliged to allow the victim to be accompanied by a person of their choice. The purpose of this right is to practically assist the victim and to provide moral support when reporting a crime. This provision may also cover a person whom the victim has not explicitly chosen, but who has volunteered to help because of the victim's mental/physical state in relation to the crime [23] (Article 3).

Additionally, the rights to understand and to be understood cannot be fulfilled if the victims does not have an access to translation in situation where the authorities does not speak the language of the victim. This has lead to rights to interpretation and translation: upon request, victims must be provided with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings; and similar requirements apply to translation as well (Article 7).

As for the process of making a complaint, victims now have a right to receive written acknowledgement of their formal complaint – and authorities have an obligation to provide it. In addition, this acknowledgement must also indicate basic details of the crime – type, the time and place as well as any damage or harm caused by the crime. For LGBT victims it is relevant to receive acknowledgement and recognition of the hate crime they have suffered (Article 5).

The Directive considerably raises the standards for the amount of information that must be given to all victims and which must be provided at the first contact with the competent authority. First contact can be made when the victim reports a crime at the police station, but also when in contact with the police at the scene of crime without the victim having made a formal complaint [24] (Article 4).

Table 2.2. Article 4 of Victims' Rights Directive.

Type of information authorities are obliged to provide [25]	Explanation [26]
(a) The type of support they can obtain and from whom, including, where relevant: 1) Basic information about access to medical support; 2) Any specialist support, including psychological support; 3) Alternative accommodation.	Police officers should ensure that victims are informed about support available and that they ask victims if they want to contact/be contacted by support services.
(b) The procedures for making complaints with regard to a criminal offence and their role in connection with such procedures.	Authorities' explanations must mirror the role of the victim throughout the various stages of criminal proceedings.
I How and under what conditions they can obtain protection, including protection measures.	Based on an individual assessment of the victim, the victim may be entitled to ask for protection measures during their first contact with the competent authorities.
(d) How and under what conditions they can access: 1) Legal advice; 2) Legal aid; 3) Any other sort of advice.	The term 'any other sort of advice' should be interpreted broadly; it is therefore meaningful if the advice can go beyond simple legal advice. It may also cover information on social security schemes or financial advice, if appropriate.
I How and under what conditions they can access compensation.	
(f) How and under what conditions they are entitled to interpretation and translation.	
(g) If they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements that are available to protect their interests in the Member State where the first contact with the competent authority is made.	
(h) The available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings.	
(i) The contact details for communications about their case.	
(j) The available restorative justice services.	
(k) How and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.	

Victims should now be notified about and can request to receive information on any decision not to proceed with or to end an investigation or not to prosecute the offender, as well as the time and place of the trial, and the nature of the charges against the offender. Such information can be communicated to the victim orally or in writing, including through electronic means, to the last known correspondence or e-mail address [27].

In accordance with their role in the relevant criminal justice system, victims can also receive any final judgement in a trial, and information enabling the victim

to know about the state of the criminal proceedings, unless where in exceptional cases the proper handling of the case may be adversely affected by such notification (the documents should include reasons or a brief summary of reasons for the decision concerned).

There is another entirely new addition to victims' rights – their entitlement to be notified when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. The victim also has the right to be informed of applicable protection measures in line with the individual and risk assessment that the authorities carry out [28] (Article 6).

RELEVANT ASPECTS TO RIGHTS TO SUPPORT

One of the Directive's core contributions to improving the circumstances for victims all over the EU is a more detailed and extended right to support. Member States are under obligation to ensure victims' access to confidential, free-of-charge victim support services available to victims before, during and for an appropriate time after criminal proceedings. There are two more important aspects to mention – firstly, victim support services should also be available to family members of the victim (in accordance with their specific needs and the degree of harm suffered as a result of the crime) and, secondly, victim support services cannot be dependent on a victim making a formal complaint to a competent authority.

The last aspect is of particular importance to LGBT victims of crime. That can be concluded from the FRA report, which indicates that LGBT victims did not report 78% of the most serious acts of hate-motivated violence [29]. The new approach in the Directive – an obligation to provide support services without a requirement for the crime to be reported, should enhance the scope of help that would be immediately available for LGBT victims.

Even though due attention should be paid to awareness-raising and to diminishing the numbers of unreported hate crime, obligation to ensure support services to all victims is crucial. Moreover, providing support at an early stage after a person has suffered a crime can considerably reduce the medium and long-term consequences for the individual and for society as a whole (in terms of human suffering, burden for health care and social services, loss of earnings and absence from work) [30]. In this regard, an obligation for authorities to facilitate timely referrals to VSOs can also be viewed as a considerable improvement. (Article 8)

The Directive takes a step further and indicates a self-explanatory list of minimum services to be provided by the VSOs:

- Information, advice and support relevant to the rights of victims, including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
- Information about or direct referral to any relevant specialist support services in place;
- Emotional and, where available, psychological support;
- Advice relating to financial and practical issues arising from the crime;
- Unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation;
- In addition specialist support services must, as a minimum, develop and provide (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation and (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling. (Article 9). Recital 38 adds to the list immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short- and long-term psychological counselling, trauma care, legal advice and advocacy.

RELEVANT ASPECTS TO PARTICIPATION IN CRIMINAL PROCEEDINGS

Chapter 3 of the Directive deals with victims' participation in criminal proceedings. As majority of the Chapter 3's Articles are rather procedural: they often include references to national law, allowing each MS to choose the most appropriate form for implementation of the requirements.

Table 2.3. Chapter 3 of Victim's Rights Directive

Relevant Article and Victims' rights	Explanation
Article 10 Right to be heard	MSs have an obligation to ensure (by determining it in national law) that victims may be heard and provide evidence during criminal proceedings.
Article 11 Rights in the event of a decision not to prosecute	Victims with formal roles in criminal proceedings must have the rights to review a decision not to prosecute. It should be ensured that at least victims of serious crime have the right to a review of a decision not to prosecute [31]. For a victim to be able to decide, a precondition for this right to a review is to receive sufficient information beforehand.
Article 12 Right to safeguards in the context of restorative justice services	The Directive sets an obligation to take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Participation of the victim should be voluntary, which also implies that the victim has sufficient knowledge of the risks and benefits to make an informed choice. It also means that factors such as power imbalances, and the age, maturity or intellectual capacity of the victim that could limit or reduce their ability to make an informed choice or could prejudice a positive outcome for the victim should be taken into consideration in referring a case and in conducting a restorative process. Any agreement between the parties should be reached voluntarily and the offender has to have acknowledged the basic facts of the case [32].
Article 13 Right to legal aid	MSs have an obligation to ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. If a victim has the right to access legal aid under national law, it should at least cover legal advice and legal representation free of charge [33].
Article 14 Right to reimbursement of expenses	Victims have a right to reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system. The purpose of this Article is to ensure that victims are not prevented from actively participating in criminal proceedings – and thus seeing justice done – due to their own financial limitations. In practice, the core of this Article focuses on travel expenses and loss of earnings [34].
Article 15 Right to the return of property	Following a decision by a competent authority, recoverable property seized in the course of criminal proceedings must be returned to victims without delay, unless required for the purposes of criminal proceedings.

Table 2.3. Chapter 3 of Victim's Rights Directive (continuation).

Article 16 Right to decision on compensation from the offender in the course of criminal proceedings	In the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings (the exclusion would apply in cases when the victim is claiming compensation from the offender outside the criminal proceedings). It must be noted that the scope of this Article includes only compensation from the offender, not the State (information on State compensation must be provided within the scope of Article 4).
Article 17 Rights of victims resident in another Member State	<p>The Directive sets an obligation to the Member States to take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. Residents from other Member States are also entitled to receive victim support services, foreseen in Article 9 (it derives from Recital 51).</p> <p>In such cases (1) a statement from the victim must be taken immediately after the complaint and (2) video conferencing and telephone conferences must be used where possible for hearing victims who are resident abroad.</p> <p>In addition to that, victims must be entitled to submit a complaint in the Member State of their residence and Member State are obliged to transmit the complaints from victim's residing country to the country where the crime was committed.</p>

RELEVANT ASPECTS TO PROTECTION OF VICTIMS

Article 18 requires Member States to ensure that a wide range of protection measures are available to protect victims and their family members from secondary and repeat victimisation, intimidation and retaliation. It also requires Member States to protect victims and their family members from physical, emotional and psychological harm [35].

Additionally, victims' dignity must be protected both during questioning and when testifying: within criminal proceedings, authorities must protect victims from secondary victimisation by, for instance, limiting intrusive questions, ensuring that only questions that are of interest and importance to the case in hand are asked during questioning and cross-examination. Other possible measures to protect the dignity of victims during questioning include limits on the number of times a victim can be questioned, the manner in which criminal justice professionals ask questions and ensuring that victims are respected and recognised as victims throughout the criminal justice process [36]. All these consideration are of particular importance for

LGBT victims. The Directive also establishes the possibility to use physical protection of victims and their family members [37].

Protection of the victim is also ensured by establishing conditions to avoid contact between the victims (and their family members) and the offender. Even though the Directive requires for new court premises to have separate waiting areas for victims, it is clearly time consuming and expensive to fulfil this requirement. Before this approach is achieved at the level of infrastructure, it is partly possible to address the issue in an organisational way, for instance, to schedule the meeting with the victim and offender at varying times or to use video conferencing methods when appropriate (Article 19).

The Directive sets four core principles for protection of victims during criminal investigation. This right and its content are new to the legal framework for victims of crime and its main intention is to prevent secondary victimisation. The four principles laid down in Article 20 are as follows:

1. Interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;
2. The number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;
3. Victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;
4. Medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

It is not only victims who must be protected during criminal investigations – special measures must also be taken in order to protect their privacy (the personal characteristics and images of victims and their family members). Article 21 lists the media as one of the stakeholders in protecting victims' privacy, as the media are encouraged to take self-regulatory measures to protect the privacy, personal integrity and personal data of the victim. The media is requested to avoid secondary victimisation of victims.

RELEVANT ASPECTS TO RECOGNITION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS

The individual assessment of victims to identify their specific protection needs is, without a doubt, one of the most important additions that the Directive will bring to victim support systems in all Member States. The purpose of individual assessment is to determine whether a victim is particularly vulnerable to secondary and repeat victimisation, to intimidation and to retaliation during criminal proceedings. It is important to understand this in order to establish the appropriate extent and scope of questions the victim is asked in this assessment [38].

There are three main criteria for specialists to take into consideration, when assessing the victim:

1. The personal characteristics of the victim;
2. The type or nature of the crime; and
3. The circumstances of the crime.

Furthermore, the Directive draws specific attention to victims who have suffered a crime committed with a bias or discriminatory motive, which could, in particular, be related to their personal characteristics – in accordance with the Directive, such victims require particular attention. Particular attention should be paid also to victims who have suffered considerable harm due to the severity of the crime as well as victims whose relationship to and dependence on the offender make them particularly vulnerable. If LGBT victims fall in one or more of these categories, there are grounds for assuming that such victims have specific protection needs.

The victims must be closely involved in the assessment and their wishes must be taken into account: victims can also refuse to benefit from special measures. It is important to note that the individual assessment must be updated throughout the criminal proceedings, and this approach allows for adjusting, increasing or decreasing the services in line with victims' actual needs.

Article 23 of the Directive describes the special measures within the level of investigation, identified as a result of individual assessment:

1. Interviews with the victim being carried out in premises designed or adapted for that purpose;
2. Interviews with the victim being carried out by or through professionals trained for that purpose;

3. All interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;
4. All interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

If and when a victim with specific protection needs participates at courts proceedings, the following measures must be in place:

1. Measures to avoid visual contact between victims and offenders, including during the giving of evidence, by appropriate means including the use of communication technology;
2. Measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;
3. Measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence;
4. Measures allowing a hearing to take place without the presence of the public.

Quite logically, the Directive does not specify the number of protection measures that should be applied – this is left for national specialists to decide, after evaluating victims' needs, on a case-by-case basis.

RELEVANT ASPECTS IN OTHER PROVISIONS

Two aspects that are highlighted in Chapter 5 of the Directive include training of practitioners and cooperation and coordination of services.

Article 25 recommends that all specialists who are in contact with victims to receive training – the list of professionals consists of but is not limited to police, court staff, prosecutors, lawyers, judges, victim support and restorative justice services.

As explained by the DG Justice guidance document, Member States' obligations in the area of training include developing awareness of victims' needs, in a professional and non-discriminatory manner. The notion 'victims' needs' is covered notably by provisions of Article 8 and 9 on general and specialist victim support services and Chapter 4 on the protection of victims and the recognition of victims with specific protection needs [39].

Article 26, in turn, emphasises the importance of cooperation between Member States, indicating the minimum scope for such cooperation as:

1. The exchange of best practice;
2. Consultation in individual cases; and
3. Assistance to European networks working on matters directly relevant to victims' rights.

In addition to the above, awareness-raising is also highlighted within the article, as Member States are imposed with an obligation to take appropriate actions, including through the internet, which would be aimed at:

1. Raising awareness of the rights set out in this Directive;
2. Reducing the risk of victimisation;
3. Minimising the negative impact of crime and the risks of secondary and repeat victimisation, of intimidation and of retaliation.

These activities, in particular, should be targeting groups at risk, such as children, victims of gender-based violence and violence in close relationships. The Directive suggests but does not limit such action to information and awareness-raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders.

This also means that Member States should ensure that there are general awareness-raising campaigns and that information is available to the general public (leaflets, poster campaigns, websites, etc.) and in places where victims are likely to go as a result of crime (hospitals, school nurse, housing and employment centres, women's organisations, embassies, consulates etc.) [40].

Why is it important to follow and fulfil the requirements set out in the Directive?

There are several ways to answer this question. Firstly, this Directive provides Member States with a rather clear and explicit list of approaches, tools and measures for improving the Victim Support System in accordance with the possibilities and needs of each national jurisdiction. The objectives of this comprehensive, far-reaching Directive can be achieved by various means – combining legislative, administrative and practical measures – and should take into account good practice in the field of assistance and protection for victims [41].

Taking a closer look at the objectives of the Directive, which is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings, it might be more appropriate to ask, 'Why would not and how could not the Member States wish to transpose the Directive?'

That, however, is not an issue subject to further discussions. It might be a very pragmatic way for answering the question, but as of November 16 2015 Member States must have brought into force the laws, regulations and administrative provisions necessary to comply with this Directive – each country had three years to do that as the Directive entered into effect in November 2012. What follows is a two-year period by the end of which the Commission will submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive (Article 29). Each Member State has an obligation to communicate to the Commission available data showing how victims have accessed the rights set out in this Directive – the first deadline for that is 16 November 2017 and every three years thereafter.

An additional reason for Member States to actually transpose the Directive as soon as possible and to the full extent is due to the principle of 'direct effect' of the EU directives [42]. If a Member State (through its institutions and public bodies) has failed to implement a Directive or the implementation is partial or defective, individuals are entitled to request national courts to apply the measures foreseen in the Directive instead of the ones foreseen in national law.

Finally, on 7 December 2015 the European Commission published a list of actions by the Commission to advance LGBTI equality to be implemented during the period 2016–2019. One of the action points in this material, specifically focused on LGBT rights, indicates: 'Following the transposition deadline of 16 November 2015, the Commission may, if necessary, take legal steps against those Member States that fail to transpose the Directive on time' [43]. The same material refers to other directives from the Victims' Package as well, stating that: 'The Commission's monitoring of application of the Directive on the European Protection Order and the Civil Regulation (No 606/2013) applicable from 11 January 2015 will take into consideration whether the national civil and criminal protection orders issued in regard to same-sex couples are effectively recognised (on basis of these instruments) in other Member States' [44]. To conclude, the main reason for implementation of the Directive is due to crucial improvements for both victims in general and for LGBT victims in particular. Another reason for implementation of the Directive is due to it potentially being very costly not to do that.

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Chapter 3: Toolkit

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Introduction

Measures intended to achieve the Directive's objectives may include nationwide codes of conduct/guidelines for professionals in regular contact with victims of crime (police, judicial authorities, victims' support services providers etc.) and probably will require setting clear responsibilities for the entities concerned. These guidelines should be made public, promoted and followed up by appropriate training of professionals.

Directorate-General for Justice and Consumers of the European Commission

The toolkit focuses on the support and protection of victims of crime, and does not address in depth the standards of investigation and prosecution of hate crimes. We advise that this toolkit is read in conjunction with the guidelines for prosecution of homophobic and transphobic hate crimes developed by the national authorities, the Organisation for Security and Cooperation in Europe and another authoritative bodies [1].

In some instances, the toolkit may go beyond the standards laid down in the Directive. In this respect we note that pursuant to Recital 11 of the Directive, the Directive lays down minimum rules for victims' rights, support and protection. Member States are free to extend the rights set out in this Directive in order to provide a higher level of protection.

The toolkit is not intended to replace national legislation in any way, but to be either adapted to the national legal context and incorporated into the national law through the applicable law-making process or to supplement national law by serving as a convenient reference.

When providing support to the victims of homophobic and transphobic hate crimes under 18 years old, we advise that this toolkit is read in conjunction with the guidelines related to the treatment of children in criminal proceedings. Similarly, when providing support to the victims of crime who might be subjected to intersectional disadvantage, stemming from their race, nationality, religion or belief, migrant status, disability, or other traits, we advise that the guidelines related to the treatment of these groups are consulted.

The toolkit draws extensively on the experience of other jurisdictions that serve as good practice examples with respect to the treatment of victims of homophobic and transphobic hate crimes within and beyond criminal proceedings. Relevant legal and policy documents that informed the toolkit are listed in the reference section.

We acknowledge that the toolkit cannot address detailed issues of law and procedure that may arise in different jurisdictions. Hence, we advise that this toolkit is accompanied by quality training for professionals working with the victims of homophobic and transphobic hate crimes. Without adequate training, there is an increased risk that the victim may suffer re-victimisation due to unsuitable questions and behaviours from people they meet.

Terms used in the toolkit are defined in the Glossary (Tool 7).



Tool 1. Protocol for law enforcement

Responding to victims of homophobic and transphobic hate crimes

PART 1. INITIAL CONTACT

The victim's first contact with the police, for example, reporting their experience to a call taker or a member of front-desk staff, will influence their lasting impression of the police service. When taking a report of a suspected incidence of hate crime either by telephone or in person, the complainant should be calmed, reassured and dealt with in a courteous manner that underpins the basic principles of support and sensitivity.

College of Policing (UK), 'Hate Crime Operation Guidance'

1. Greet the victim and introduce yourself by your name and title. Briefly explain your role and duties.
2. Reassure the victim of their safety and of your concern for them by being attentive to your own words, posture, mannerisms, and tone of voice. Say to the victim, *You're safe now* or *I'm here now*. Use body language to show concern, such as nodding your head, using natural eye contact, placing yourself at the victim's level rather than standing over the victim who is seated, keeping an open stance rather than crossing your arms, and speaking in a calm, empathetic tone of voice.
3. Ensure the victims' privacy during your interaction:

- 3.1. If the interaction takes place outside the police station, e.g. at the scene of the crime, ask where the victim would feel comfortable and secure answering a few questions and proceed with the victim to that place.
- 3.2. If the interaction takes place in the police station, take measures to avoid contact between the victim and the offender. Show the victim the way to separate premises, away from the general public and reception area.
4. Ask what the victim prefers to be called (e.g., *How would you like me to address you?*). If the name of the person does not match the sex you believe the person to be, avoid making any judgemental comments. If you are in any doubt about how to refer to the gender of the victim, ask the person concerned how they wish to be addressed. Just because you hear members of the LGBT communities refer to themselves in a certain way, do not assume that it is appropriate for you to use the same terms or expressions. If you do use the wrong term or gender pronoun, apologise sincerely and move on.
5. Ask if the victim has any physical injuries. Take care of their medical needs first.
6. Ask the victim to tell you in just a sentence or two what happened. For victims to feel able to speak openly about the hate crime, you may want to start off by asking simple questions that allow victims to make decisions, assert themselves, and regain control over their lives (e.g. *Would you like anything to drink?*) Explain that you will conduct a more extensive interview at the later stage.
7. If your first interaction with the victim takes place at the crime scene, then also do the following:
- 7.1. In line with internal policies, identify and preserve the crime scene. Complete the necessary reports, and transfer information to the continuing investigator, if another officer will assume those roles.
- 7.2. Provide the victim with a leaflet that contains the following information:
- a) How, when and where to launch a formal complaint (if your national legal system requires the victim's formal complain to launch a pre-trial investigation);
- b) The contact information of the organisation providing assistance to the victims of hate crimes, preferably with a focus on homophobic and transphobic

hate crimes. It is advisable to establish cooperation with such organisations beforehand;

c) The contact information of other local or nationwide victim support services (if any);

d) The contact details for communication about their case.

It is very important to differentiate between different types of information from the outset, reflecting the actual victim's personal situation. More extensive information about the victim's rights can be provided at the later stage of the proceedings, when the victim has recovered after the initial shock and is in the position to better comprehend it.

PART 2. DETERMINING VICTIM'S SPECIAL NEEDS

The individual assessment of victims should be conducted at the earliest opportunity. In certain cases, victims may not be capable of providing the information (e.g., with seriously injured victims or very young children . . .) In such cases, a relative, a parent, a support worker or other suitable person may be able to provide the information. People who are emotionally upset, for instance, may also need more time and professional help. Where it is not possible to complete the individual assessment at all, practitioners may also need to obtain information from other sources to assess any immediate risk.

SETTING THE SCENE

8. Conduct the interviews with the victim in the area specifically set up for that purpose where the victim can feel safe and report what has happened without the risk of being overheard or intimidated by other people or activities taking place in the police station. Any contact between the victim and the offender within premises (including the waiting hall) should be avoided, unless the criminal proceedings specifically require such contact, e.g. for the purpose of direct face-to-face confrontation between the victim and the suspect.
9. In line with the internal policies, assess the communication needs and constraints of the victim, to determine the extent of communication difficulties:
 - 9.1. If the victim has linguistic difficulties, provide competent interpretation/translation services or other linguistic assistance without undue delay. Take

measures to ensure that the interpreters/translators are familiar with the accurate and respectful terminology for the LGBT community (see Tool 5 – Glossary).

9.2. If the victim has difficulties understanding, consider seeking assistance from a psychologist, disability rights advocate or other professional and provide written information in an easy to read format.

10. Inform the victim about a right to be accompanied by their legal representative and a person of their choice for moral support and comfort. Explain that the victim is able to choose this person – it could be a friend, a neighbour, a partner, an LGBT rights organisation volunteer or any other person. Add, that you may exclude the person of choice only in very limited cases, such as conflicts of interest (e.g. if the person of choice may be suspected of committing a hate crime) Ask the victim whether they would like to exercise this right.

CONDUCTING INDIVIDUAL NEEDS ASSESSMENTS

11. Introduce the concept of the ‘individual needs’ to the victim and explain why you are asking these questions. Provide brief information on the confidentiality rules, information-sharing policy and record-keeping policy. Explain how much time it might take to fill in the questionnaire and that the victim’s needs might be re-assessed at a later stage to better tailor the special measures to the needs.

It is advisable not to disclose the content of the individual assessment to the defence in hate crime cases as it may increase the risk of repeated victimisation and retaliation, especially in cases where suspects are the members of extremist groups. Consequently, the individual assessments should be kept separately from the case file during pre-trial investigation and trial. Where national legislation permits the disclosure of the contents of the individual assessment with the defence or the defendant, victims should be made aware of this fact at the time they are asked for their consent to the assessment.

12. Ask whether the victim has any additional questions and explain that if any questions arise in due course then they should feel free to ask you.

13. Ask whether the victim consents to the needs assessment. Making sure the victim agrees that the assessment takes place limits the risk of the victim disputing the content and provides a clear basis on which the evaluator can suggest protection and/or referral needs.
14. Proceed to Part I of the needs assessment template (Tool 4). Note that the template questionnaire is for guidance only and it is important that the information requested therein is elicited by a discussion with the victim, rather than formulaic questioning. At the end of the Part I, ask the victim to review and sign the assessment document.
15. After Part I of the needs assessment template is completed, start filling in Part II. Once again, ask for the consent of the victim before filling in a detailed evaluation.

The detailed assessment in Part II contains a series of questions that are designed to establish if and how the victim could benefit from special measures. It might not be necessary to complete this part with respect to victims of all crimes, however, it is assumed that, due to their particular vulnerability, victims of homophobic and transphobic hate crimes will always have certain special needs during the criminal procedure and hence Part II in such cases should always be completed.

16. It is important to consider the relevance of each question to the individual victim and the circumstances. Spare the victims from repetitive questioning if it becomes clear that only certain questions are relevant to their individual case or if they have been answered previously.
17. Part II questions will not necessarily cover all aspects of the victim's situation. Accordingly, consider any additional information relating to the victim and the suspect.

ASSIGNING MEASURES TO VICTIMS WITH SPECIFIC NEEDS

18. Ask for the victim's opinion on what support they require during criminal proceedings. Whether realistic or not, the victim's views will assist in accurately identifying which special protection measures are needed and/or in fine tuning

ing measures considered to be most relevant and effective for the individual concerned.

19. After completing the two parts of the questionnaire, ask the victim to review and sign the assessment document.
20. Determine and note down (Tool 4) the victim's specific support needs and choose special measures that would best address them (potential suitable measures are listed in the table 3.1.). Note that the number of positive answers to the assessment questions does not necessarily correlate with the level of risk presented by the victim's particular vulnerability to secondary and repeat victimisation, intimidation and retaliation. For example, a victim may still be at high risk even if they only answered 'yes' to one question.
21. After determining the special measures for an individual victims, write down the steps required to facilitate their implementation in the individual needs assessment form (Tool 4) and inform the victim how you will ensure that these measures are made available to them in practice.
22. If, after completing the individual needs assessment, you determined that special measures No. 2) (interviews with the victim being carried out by or through professionals trained for that purpose) or No. 4) (interviews with the victim being carried out by persons of a particular sex) applies in the particular case, before taking the victim's statement ensure that these measures are in place. In particular:
 - a) Invite an officer trained to work with victim of homophobic or transphobic hate crimes to conduct the victim's interview; and/or
 - b) Invite an officer of a particular sex to carry out the victim's interview.

PART 3. TAKING THE VICTIM'S STATEMENT

Victims need to air their emotions and tell their story after the trauma of the crime. They need to have their feelings accepted and their story heard by a non-judgemental listener. The interview with the victim should be conducted without unjustifiable delay after the complaint has been made. Delay might be justifiable if the victim is particularly distressed, e.g. at the scene of the crime. Then postpone the interview. Ideally, any examination required for evidence purposes should be carried out during this initial meeting.

Table 3.1. Special and other measures listed in Article 23 and 24 of the Directive

Special measures	
Special measures relating to the location	1. Interviews with the victim being carried out in premises designed or adapted for that purpose.
Special measures relating to the people dealing with specific victims	2. Interviews with the victim being carried out by or through professionals trained for that purpose.
	3. All interviews with the victim being conducted by the same person/s unless this is contrary to the good administration of justice.
	4. All interviews with victims being conducted by a person of the victim's preferred sex, provided that the course of the criminal proceedings will not be prejudiced [2].
Special measures relating to communication technology and privacy	5. If the victim is heard in a courtroom, measures to avoid direct visual contact between victims and offenders including during the giving of evidence.
	6. If the victim may be heard in the courtroom without being present, measures to allow the use of appropriate communication technology.
	7. Measures to avoid unnecessary questioning concerning the victim's private life not related to criminal offence.
	8. Measures allowing the hearing to take place without the presence of the public.
Other measures	
Measures related to physical protection	9. Suspect's restraining measures, including pre-trial detention, electronic monitoring, weapon confiscation, restraining orders, interim injunction, etc.
	10. Victim's protection orders and/or safety plans.
	11. Victim's relocation, interim accommodation, police escort.
	12. Establishing or strengthening home-based care, web-based technology, or installing a specific camera or phone system, panic alarms.
	13. Measures providing for victim's anonymity during the criminal investigation and/or trial.
Measures related to psychological protection	14. Victim's referral to psychological counselling services provided by LGBT organisations and/or organisations dealing with homophobic and transphobic hate crimes.
	15. Victim's referral to general victim support services.

23. Allow the victim to describe the incident in their own words. Avoid influencing the victim's account of the alleged offence. Even if the victim appears to be somewhat confused, do not discount the information. Make every effort to obtain the fullest possible response before relying on information from others.

24. Phrase questions in a clear, concise fashion, keep them short and ask open-ended questions that encourage further discussion, such as 'Can you tell me what happened?' or 'Is there anything else you can tell me?' (see Tool 4 – Do's and Don'ts)
25. If you are asking a particularly sensitive question, explain the purpose of the question, for example, 'I need to ask these questions because I have to write a report on this, which is very important for your case and I want to get every detail correct.' Let the victim know that it may be necessary to ask some questions in several different ways but that this does not mean that you do not believe them.
26. Avoid applying the Reid Technique during the victim's interview (see Tool 7 – Glossary). Also, avoid asking questions or making statements the victim may interpret as blaming them, e.g. 'Why didn't you run?', 'Why didn't you scream?', 'Why didn't you fight back?' and, 'That does not make sense.'
27. Ask whether the victim believes that homophobia, biphobia or transphobia was a motive (component) of the crime and whether they felt a victim of analogous crimes in the past (even if the victim has not reported the incident). Ask more open-ended questions to encourage disclosure. Counter any self-blame by victims and tell them, 'You did not do anything wrong. This was not your fault.'

If it is relevant to any alleged offence that the person has a trans history, for instance, where the alleged victim believes that transphobia was a component of the crime under investigation, that information must be disclosed. Any more detailed information regarding whether a person has or has not had gender reassignment surgery is unlikely to be relevant unless there are allegations of a specifically sexual nature.

28. Accept and use victim's terminology and language for acts, body parts, places and people. If you are unfamiliar with certain terms used by the victim, ask the victim what they mean. You may want to consult the Glossary in advance.

29. If the victim is anxious, suggest taking breaks and offer them a glass of water.

PART 4. PROVIDING THE INFORMATION

INFORMATION ABOUT THE RIGHTS AND REFERRAL TO SUPPORT SERVICES

Victims often have concerns about their role in the investigation of the crime and in the legal proceedings. Some of their anxiety may be alleviated if victims know what to expect in the aftermath of the crime. This information will also help victims prepare themselves for upcoming stressful events and disruptions in their lives related to the crime. It is a good practice to establish a dedicated website with the information on victims' rights.

30. Acknowledge the victim's experience by thanking for sharing it with you.
31. Provide the victim with an extensive information about their rights in the form of a guide, pamphlet or a brochure (see Tool 5 – Information brochure). The document should be prepared in easy and accessible language and include the practical steps on how to exercise the following rights:
 - How to exercise the right to be accompanied by a person of victim's choice throughout the proceedings;
 - How and when to obtain information about the case;
 - How and when to obtain protection from a perpetrator and other protection measures;
 - How and when to access legal aid and access advice on legal issues;
 - How and when to obtain compensation from the perpetrator;
 - How and when to obtain interpretation or translation;
 - Any special measures, procedures or arrangements available to protect the interests of the victims from other Member States (e.g., contact details of embassies and consulates);
 - The procedures for making a complaint when victim rights were not respected by the competent authority (police) in criminal proceedings;
 - How to access restorative justice services, including victim-offender meditation, family group conferencing and sentencing circles;
 - How the expenses, such as travel and loss of wages incurred as a result of their role in criminal proceedings, can be reimbursed;

- The contact information of organisation providing assistance to the victims of hate crimes, preferably with a focus on homophobic and transphobic hate crimes;
- The contact information of other local or nationwide victim support services (if any), community services and mental health care services;
- The contact details for communication about their case;
- The victim's role in the criminal proceedings, including whether the investigation will continue if the victim decides to withdraw the complaint, as well as the right to have victim's personal details removed from the case file (if applicable) and any other procedural rights under the national legislation not listed above.

32. Tell the victim information about the support services and explain what kind of support the services offer. Explain to the victim that certain services are specialised in providing assistance to the victims of homophobic and transphobic hate crimes and how the victim may benefit from their assistance.

33. Ask the victim whether they would like to be referred to such services immediately. Explain what 'the referral' means in practice. Explain that the victim can change their wishes at a later stage in the proceedings, e.g. if the victim currently does not wish to be referred to the support services, they may later contact the services proactively.

34. Note the victim's preference in the case file and initiate the referral if victim so wishes.

An acknowledgement of whether a victim would like to opt out of the referral practice should be a mandatory part for the police to complete when they report a crime, to show that they have discussed access to victim support services and how the victim responded. The police should accordingly have effective mechanisms in place to ensure that such wishes are respected. Victim support services should also ensure that their arrangements for processing any data passed on to them are fully compliant with data protection principles; appropriate information security facilities and procedures may, for instance, be a prerequisite for receiving police referrals. Regarding what information is disclosed from the police to victim support, the disclosure may be limited to only include vital information, such as name, contact details, age and crime type. This

information is needed to ensure that the offer of support is given in the most suitable manner to the victim.

INFORMATION ABOUT THE INVESTIGATION

35. Ask if there is anyone else the victim would like you to contact. Document the identity of anyone whom the victim may have told about the crime, or who may have seen or heard anything before, during or after the crime.
36. Explain to the victim how the police will respond to the hate crime and what will happen next. Use simple and accessible language and avoid legal jargon when explaining further investigative steps. Tell the victim about the following:
 - a) Forthcoming law enforcement interviews or other kinds of interviews they can expect;
 - b) The general nature of any medical forensic examinations that the victim may be asked to undergo and the importance of these examinations for law enforcement;
 - c) What specific information from the crime report will be available to news organisations and the likelihood of the media releasing any of this information;
 - d) Advise victims as to what, if anything, they need to do next.
37. Ask the victim to keep the police department informed of any developments related to the investigation, including if they remember anything else about the assault or if the offender tries to contact them.
38. Provide the victim with a written acknowledgement of the crime they have reported (their complaint) which should include:
 - a) A case file number;
 - b) The type of crime, including a specific biased motive of the crime, i.e. sexual orientation, gender identity, and/or gender expression;
 - c) The time and place of the crime;
 - d) The time and place for reporting of the crime;
 - e) Any damage or harm caused by the crime;
 - f) The name of the officer who took the complaint.

Depending on how the crime was reported, the written acknowledgement could be in the form of a printed letter, an electronic notification, or it could be written by

hand. The victim may request not to receive such an acknowledgement. Where the police consider that there may be a risk of harm to the victim from sending the written acknowledgement (for example in domestic violence cases), they may agree with the victim not to send one.

39. Ask whether the victim would like to receive a copy of the victim's statement and the copy of the individual needs assessment. If the victim expresses the wish to receive the copies, provide them without undue delay.
40. Ask whether and what kind of the information the victim would like to receive about their case in the course of the investigation and explain that the victim has a right to modify the wish at any moment. Explain to the victim that certain information will have to be provided to them irrespective of their wishes. This particularly concerns information with respect to the procedural entitlement of the victim to active participation in criminal proceedings.
41. If the victim prefers to receive information about their case, ask which form of communication (electronic, phone, post) the victim prefers. If the victim opts for the post/regular mail, ask which address you should send the correspondence to. It is important to clarify this, as receiving the information about a homophobic or transphobic hate crime case to a home address, university or a workplace can accidentally 'out' the victim to their close circle.
42. Ask whether the victim has any questions and address them immediately. Encourage the victim to contact the support services or yourself if they will have any questions in the future.
43. Where applicable, share victims' requests for notifications with all competent authorities (e.g., prosecutor, probation, prison services) to ensure that the victim actually received this information in a coordinated and efficient manner.

PART 5. FOLLOWING-THROUGH THE INVESTIGATION

COLLECTING THE EVIDENCE

Do not disclose information regarding the victim's sexual orientation or gender identity to their family or friends without their express permission. The victim or witness may not have told friends or family about their sexual orientation or gender identity and such a disclosure, even made inadvertently, could seriously undermine victim and community confidence in the police.

44. When contacting the victim's friends or family to notify them of a crime or incident, simply state that the individual was a victim of a crime, rather than a hate crime. Avoid providing details which may indirectly 'out' someone, e.g. the information that the incident took place in a gay club or bar.
45. Keep the number of police interviews with a victim to an absolute minimum. Conduct the interviews only when it is strictly necessary for the purpose of the criminal proceedings and record the story properly to ensure that the victim does not have to repeat their story more times than necessary.
46. If, after completing the individual needs assessment, you determined that the special measure No. 3 (all interviews with the victim should be conducted by the same person) applies in the particular case, take steps to ensure that the victim is interviewed by the officer who took the victim statement, unless this is contrary to the good administration of justice.
47. From the outset of the investigation, make sure to collect enough evidence to prove that the crime was motivated by homophobic or transphobic hostility.

'Prosecuting Hate Crimes: a Practical Guide' prepared by the Organisation for Security and Cooperation in Europe provides extensive guidelines on investigation and prosecution of hate crimes. In particular, Chapter 3 advises on bias indicators and different types and sources of evidence that can be used to prove biased motivation.

UPDATING VICTIMS ABOUT THE PROGRESS OF THEIR CASE

Some victims may prefer not to receive information, for instance in relation to the release of the offender. The victim's preference in relation to information provision should be communicated to other applicable criminal justice agencies or ideally noted on a shared data base/case file of the individual victim. In practice, it is likely to be a very small number of victims who do not want to receive information, but the desire of each individual victim should be respected and acted upon. Information may be provided to victims regardless of their wishes only in exceptional cases and only 'with respect to the procedural entitlement of the victim to active participation in criminal proceedings', e.g. when a victim has decided to act as a civil party in criminal proceedings and is informed.

48. If the victim agreed to receive information about their case, provide the information without an unnecessary delay, i.e. as soon as there is a decision:
 - a) To assign an offender a status of the suspect in the case (including the identity of the suspect);
 - b) To apply any restrictive measures to the suspect in the case, e.g. arrest, pre-trial detention, home arrest;
 - c) To discontinue any restrictive measures previously applied to the suspect in the case, e.g. to release them from the pre-trial detention (including the victim's right to appeal against such decision, if applicable);
 - d) To change the police officer/investigator assigned to the case (including the contacts of a new police officer/investigator);
 - e) To close or terminate the police investigation;
 - f) or refer the case to the prosecutor's office/judge.
49. If the offender is released or escapes from arrest/pre-trial detention, inform the victim about this immediately, i.e. on the same day the information becomes known to the police. This information can be withheld from the victim only in very limited cases when there is an identified risk of harm to the offender that would result from the notification.
50. If the case was referred to the prosecutor/judge, inform the victim about the following:
 - a) Contact details of the prosecutor in charge of the investigation;

- b) Next steps in the investigation and the likely timeline;
- c) Any steps the victim needs to take at the stage of the investigation;
- d) Additional victim's rights at this stage of the investigation, including a right to have a non-public court hearing (if applicable).

51. If the police investigation was closed or terminated, inform the victim about the following:

- a) The reasons behind the decision;
- b) How and when the victim can appeal against the decision.

52. Notwithstanding whether or not any decision listed in paragraph 47 was taken, every two months inform the victim about the progress of the investigation, including the investigative steps taken to date. If no investigative steps were taken, the victim should nevertheless be informed about it.

53. If, during your communication that the victim seems more distressed than before, or if the offender was recently released or escaped from arrest/pre-trial detention, consider conducting repeated individual needs assessment (Tool 4) to determine if the victim has any (additional) specific needs, and assign the special measures accordingly.

54. When communicating with the victim in further stages of the criminal proceedings, ensure that any telephone call or correspondence is carried out with the person concerned.



Tool 2. Guidelines for prosecutors

RESPONDING TO VICTIMS OF HOMOPHOBIC AND TRANSPHOBIC HATE CRIMES

Victims and witnesses who are affected by homophobic or transphobic incidents often need special consideration. Prosecutors need to appreciate the consequences of their decisions on the lives of those who have come forward to report a homophobic or transphobic incident. They may have partners and families who are not aware of their sexual orientation or gender identity; being 'outed' through the criminal justice process may also cause them to lose their jobs; their homes; their economic stability; and their social standing, notwithstanding legislation that attempts to protect them.

Crown Prosecution Service (UK), 'Guidance on Prosecuting Cases of Homophobic and Transphobic Crime'

RECOGNISING A HATE CRIME

1. Identifying a case as a homophobic or transphobic incident means that someone at some stage has perceived the incident that has given rise to the charge as being aggravated by hostility based on a victim's sexual orientation, gender identity or gender expression. Prosecutors shall make extra efforts to determine that police enquiries in such cases have been thorough and that all possible evidence to build a strong case were collected.

TREATING VICTIMS IN RESPECTFUL MANNER

2. In all dealings with cases involving a homophobic or transphobic element, it is essential that prosecutors adopt a style of address or reference that demonstrates respect for the victim's, sexual orientation, gender identity and gender expression. When dealing with members of the LGBT communities, prosecutors shall avoid making stereotypical assumptions, either about the way in which they lead their lives or about how they wish to be addressed.
3. All prosecutors and the staff of the prosecutors' offices shall avoid any derogatory words, gestures or actions that could be taken as offensive and shall take steps to advise any colleagues who adopt such behaviour that they shall stop.
4. If prosecutors need to come into a direct contact with the victim, they shall first of all familiarise themselves with the individual needs assessment form filled in by the investigating officer.
5. On all occasions, prosecutors shall treat victims in a respectful, sensitive and professional manner following the communication guidelines provided for in the toolkit (Tool 1 – Part 1 and Part 3, Tool 4 – Do's and Don'ts).
6. Any post/phone communication with victims shall be carried out to the victims' preferred address, which is not necessarily the same as their official home address. The preferred address for correspondence is provided in the individual needs assessment form and a case file. Receiving the information about a homophobic or transphobic hate crime case to a home address, university or a workplace can accidentally 'out' the victim before their close circle.

SUPPORTING VICTIMS WHEN CASES ARE TERMINATED

7. Before a decision is made to stop the investigation or to decline to take court proceedings, the prosecutors shall give victims an opportunity to comment. If the decision is made to stop or not proceed with the investigation any further, then victims shall also be notified (preferably in person).
8. Prosecutors shall also notify victims (preferably in person) when they decide to alter substantially or to drop any charge, e.g. to substitute a hate crimes charge with hooliganism.

9. Prosecutors shall explain the decision in terms that victims can understand and outline the options available to victims, such as a right of appeal or a right to a review.

PROVIDING PRE-TRIAL SUPPORT FOR VICTIMS

10. Effective support for victims and witnesses at the pre-trial stage is critical to tackling homophobic and transphobic crime. The issue of anonymity and/or non-public trials may be of particular concern to many victims and witnesses of homophobic and transphobic crimes and prosecutors shall provide appropriate support wherever possible.
11. When communicating with victims, prosecutors shall take steps to assess whether there is a need to conduct repeated individual needs assessment (Tool 4) to determine if victims have any (additional) specific needs, and assign the special measures accordingly (Tool 1, Part 2). Prosecutors shall liaise with the police to ensure that the needs assessment is conducted by the same police officer who was in charge of the victim's case.
12. Prosecutors shall ensure that when the hate crime case is being transferred to them for the prosecution, they make all the efforts to keep the victims informed about the status of the case and any decisions that may affect the victims, including the date for a trial if this information is not provided by courts (see also Tool 1, Part 5).
13. Prosecutors shall liaise with victim support services, LGBT organisations providing support to victims of crime, and other organisations providing support to victims of homophobic and transphobic hate crimes, as well as the victim support units within the courts to ensure that victims are psychologically prepared for the trial.

PROVIDING TRIAL AND POST-TRIAL SUPPORT FOR VICTIMS

14. During the trial, prosecutors shall provide victims with an opportunity to express their position on the case, unless this is contrary to the interests of the victim and/or may result in secondary victimisation and/or retaliation.
15. Where criminal justice system allows discussions between the prosecution and the defence, if prosecutors decide to amend the charge or accept a guilty

plea of a lesser charge following discussions with the defence, victims shall be informed and ideally given a chance to comment before the plea is accepted.

16. If the accused is acquitted, then prosecutors or victim support or both shall explain to the victim the reasons for the decision and what options of appeal or review (if any) are open to the victim. Prosecutors shall ensure that victims receive a copy of the court's judgement on their case.
17. If the accused is convicted, then prosecutors or victim support or both shall advise the victim on the next steps in the criminal proceedings, e.g. the right of the accused to appeal against such a decision, the timeframe for appeal, and the victims' options when the appeal is lodged.

WORKING WITH COMMUNITY

18. The Prosecutor's communications department (press office) shall take steps to secure media coverage of successful prosecutions of homophobic and transphobic hate crime cases. This will encourage other victims to report in the future.
19. The Prosecutor's communications department (press office) shall also take steps to explain to the community and the public the reasons behind the cases where pre-trial investigation was terminated, or hate crime charges dropped. This will facilitate the dialogue with the community and build a trust in law enforcement.
20. When preparing a communication strategy for a successful case, the communications department (press office) shall firstly consult with victims and take their interests into account. It shall liaise with the LGBT organisations, providing support to victims of crime, and other organisations providing support to victims of homophobic and transphobic hate crimes to ensure a broader coverage if the victim agrees to it.
21. The Prosecutor's department in charge of the training shall organise both general and specialist training on the prosecution of homophobic and transphobic hate crimes, the needs of victims of such crimes and strategies enabling prosecutors to deal with victims in an impartial, respectful and professional manner.



Tool 3. Guidelines for courts

RESPONDING TO VICTIMS OF HOMOPHOBIC AND TRANSPHOBIC HATE CRIMES

To be stereotyped on the basis of sexual orientation is just as offensive as to be stereotyped on the basis of colour. Consequently, judicial decision-makers need to be aware of the harm done to people, and to the reputation of the judicial system, by stereotypical assumptions and homespun theories around the issue of being lesbian, gay or bisexual.

UK Judicial College, 'Equal Treatment Bench Book'

PROTECTING VICTIMS FROM RELATION AND INTIMIDATION

1. One of the most important ways to protect victims from retaliation, intimidation, repeat or further victimisation is to limit the contact between the victim and the accused. The right to avoid contact between the victim and the accused is particularly important in venues where criminal proceedings are being held, i.e. court buildings, as that may give rise to an increased risk of confrontation and intimidation.
2. The layout of the court building shall take into account the need to separate the victim from the accused. For instance, the layout of the court building shall ensure that victims can move freely to and from the waiting room into the court room and back without any risk of intimidation or risk of meeting the accused.

The court premises shall give victims separate entrances, waiting rooms, toilets, eating facilities etc., to avoid any contact with the accused or associated family and friends. The layout of the court room shall be designed to ensure that the victims do not have to walk past the accused on the way to the witness box, as this could be seen as a particularly intimidating experience.

3. When making preparations for the trial, the judges shall familiarise themselves with the victim's individual needs assessment (Tool 4) and take steps to ensure that all the measures assigned to protect the victim are put in place before the beginning of the trial. In the court proceedings such measures shall as a minimum include:
 - a) If the victim is heard in a courtroom, measures to avoid direct visual contact between the victim and offender including during the giving of evidence;
 - b) If the victim may be heard in the courtroom without being present, measures to allow the use of appropriate communication technology;
 - c) Measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence;
 - d) Measures allowing the hearing to take place without the presence of the public.
4. If a measure providing for a non-public hearing is assigned, victims shall still be allowed to be accompanied by the staff/volunteers of victim support services, LGBT organisations providing support to victims of crime, and other organisations providing support to victims of homophobic and transphobic hate crimes.

PROVIDING VICTIMS WITH EMOTIONAL AND PSYCHOLOGICAL SUPPORT

5. Court staff shall liaise with prosecutors, victim support services, LGBT organisations providing support to victims of crime, and other organisations providing support to victims of homophobic and transphobic hate crimes, as well as the victim support units within the courts to ensure that victims are psychologically prepared for the trial.
6. Where the court provides for the assistance of court volunteers during the trial, they shall be trained on recognising and responding to specific needs of

homophobic and transphobic hate crimes victims (see Chapter 1 of the toolkit), are familiar with LGBT-related terminology (Tool 7 – Glossary), do not hold any prejudice or bias and follow the interviewing guidance (Tool 1, Part 1 and Part 3; Tool 4 – Do's and Don'ts).

PROVIDING VICTIMS WITH INFORMATION ABOUT THE TRIAL AND THEIR RIGHTS

7. Any mail/post communication with victims shall be carried out to the victims' preferred address, which is not necessarily the same as their official home address. The preferred address for correspondence is provided for in the individual needs assessment form and a case file. Equally, care shall be taken to ensure that any telephone call is made to with the person(s) concerned. Court staff shall note that there may be additional sensitivities when contacting members of the LGBT communities: for example, the individual(s) concerned may not be 'out' to their family, relatives or friends. In addition, the person affected may be in a heterosexual relationship.
8. Victims shall be informed without undue delay about the date of the trial and all the hearings that take place during the trial, including any appeal hearings, as well as any arrangements that are available for attendance.
9. The copies of the final indictment, defence' submissions and submission made by the third parties, legal documents related to the appeal proceedings as well as the final decisions (judgements) by the court, shall be provided to the victim without undue delay regardless of whether or not the victim attends the trial hearings.
10. Explanations given to the victim, whether outside court or in court, shall always be given in language that is easy to understand. It is always essential, when giving an explanation, to have in mind the impact it can have on the person to whom it is addressed.
11. When a judge makes a decision in the course of the hearing which affects the victim (such as an adjournment) and when the decision on the case and penalty is made, the judge shall set out in their explanation of how the interests of both the victim and the accused have been taken into account. This shall be

done in everyday language, taking into account the respective nationality and background.

COMMUNICATION AND INTERVIEWS DURING THE TRIAL

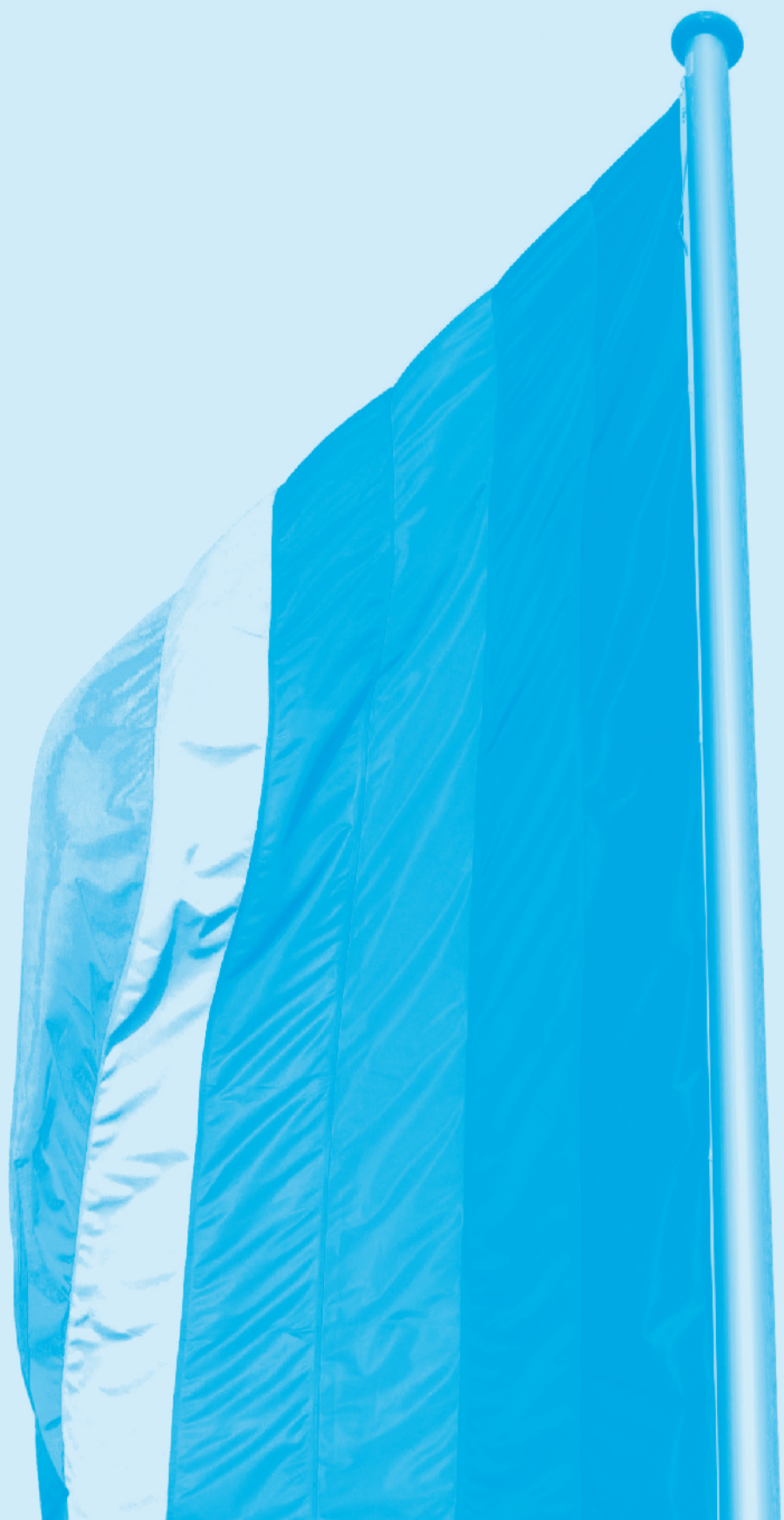
12. Judges shall avoid unnecessary questioning concerning victims' private lives not related to the criminal offence. Only information that is relevant to the case at hand shall be disclosed to the court, to the defence and raised during cross-examination. Personal details such as victims' medical records and previous private activities and circumstances, unrelated to the crime, shall never be disclosed.
13. In particular, judges shall be alert to restrain any intrusive questioning of the sexuality of victims unless it is strictly relevant to real issues in the case. In fact, it is rarely necessary to ask what a victim's sexual orientation is, and if it becomes necessary they shall be asked to self-define. Also, a more detailed information regarding whether a person has or has not had gender reassignment surgery is unlikely to be relevant unless there are allegations of a specifically sexual nature.
14. Where there is a question relating to a person's gender, the person shall be asked what gender they consider themselves to be, and what gender they would prefer to be treated as. In this respect, wherever possible, a person shall be treated, identified and addressed in accordance with their wishes.
15. It is a good practice to give victims the right to submit a 'victim statement', providing information to the court on how the crime has impacted on their life emotionally, practically and financially. If applicable, victims shall have the right to submit their statements at any time before sentencing and the information provided shall be taken into account by the agency choosing a sentence and disposal.
16. Judges shall react and condemn any homophobic, transphobic or any other mocking statement from the defence, witnesses, audience or court staff. They shall avoid any derogatory words, gestures or actions that could be taken as offensive and shall take steps to advise any colleagues who adopt such behaviour that they should stop. Members of the LGBT communities who become victims of homophobic or transphobic incidents shall not have to be victimised a

second time by the way in which those who work in the criminal justice system treat them – either to their face or behind their back.

17. If there is an occasion during the trial when the feelings of the victim or the accused are high (as for example after the reading of a victim impact statement), the judge shall recognise this by, for example, allowing a break of a few minutes.

PREPARING A MEDIA COMMUNICATION STRATEGY

18. Early engagement with LGBT communities is essential to allaying fears and misunderstandings when crimes are perceived to be homophobic or transphobic.
19. The court press office shall, at an early stage, develop a media communication strategy for cases perceived to be homophobic or transphobic. Both cases that end up with a conviction for hate crime as well as an acquittal shall be properly communicated and the reasons behind the decisions explained to the public and the community. When preparing a communication strategy for a successful case, the press office shall firstly consult with victims and take their interests into account. In addition, it shall liaise with the LGBT organisations providing support to victims of crime, and other organisations providing support to victims of homophobic and transphobic hate crimes to ensure a broader coverage if the victim agrees to it.
20. Judicial department in charge of the training shall organise both general and specialist training on homophobic and transphobic hate crimes, the needs of victims of such crimes and strategies enabling judges and court staff to deal with victims in impartial, respectful and professional manner.



Tool 4. What to do or to avoid when working with victims of SOGI motivated hate crimes – examples

GENERAL SKILLS

1. **INTRODUCTION.** A clear, articulate introduction of name and full title is needed in accordance with a steady, calm, reassuring posture and tone. The introduction may have to be repeated several times as the victim's understanding of the situation can be severely distorted.
2. **MIND LGBTQI IDENTITIES.** Be aware that the victim may have identify themselves other than it is culturally familiar to you. Do not presume but always ask the victim about their sexual orientation or gender identity and choose your language accordingly, for example use the pronouns referring to the indicated gender. If someone does not prefer to indicate a gender, use gender neutral language if possible. If you make a mistake regarding this, as soon as it becomes obvious or when the victim points it out, simply and consistently apologise.
3. **MIND THE LANGUAGE.** Be informed on LGBTQI-sensitive language (see Glossary) and avoid using words associated with offensive humour, swearing or unnecessary labelling (e.g., faggot, queer, etc.) even when you're talking with colleagues or any third persons at the scene and/or at the office.
4. **ALLOW THE VICTIM TO REGAIN CONTROL.** Offer the victim possible choices whenever applicable throughout the process. For example: *Do you want to go to*

the hospital or do you need a ride home? Do you understand or need me to explain more/again?

5. **RESPECT THE VICTIM'S BOUNDARIES ESPECIALLY REGARDING TOUCHING.** Check the wishes of the victim and try to act accordingly if the situation allows. For example: *I can see you're shaking. You can try squeezing my hand, it could give you a sense of groundedness, or Is it ok if I try to help you stop shaking with a pat on the shoulder?*
6. **EXPLAIN THE SITUATION AND PRESENT A PLAN.** For example: *We're going to move to a safe area, have the medics take care of your wounds, then I'm going to ask you a couple of questions, if that's all right. After I'm done, I'm going to explain what happens next in the police process and legal area, then I'll give you an information brochure with some phone numbers of victim's assistance agencies you can contact. I'm also going to write down my contacts, so you will be able to reach me. Do you understand? Do you have any questions?*
7. **VALIDATION AND STRENGTHENING.** Affirm the victim's coping and resilience in a realistic way and validate the inner reality of their feelings and experiences. For example: *I can see this must have been a terrible experience for you. Most people would be feeling pretty much like you are under these circumstances. But I appreciate the effort you make to explain what happened the best you can.*
8. **USE PERSONAL STATEMENTS** to strengthen the connection. This can provide the victim with a sense of safety and relatedness. For example: *I'm glad to see you're handling it as well as you are.*
9. **AVOID ACCUSATORY/JUDGEMENTAL STATEMENTS OR QUESTIONS.** These not only upset and retraumatise the victim but also erode trust, making further interview attempts extremely difficult. As noted earlier with language, you should neither address your colleagues in this manner as the victim may be hearing that. For example: *You should have avoided this gay bar anyway,* or *What did you expect using that dating application?* Instead of these use non-judgemental, open-ended questions, ask: *Can you describe me what happened exactly? I really want to understand it thoroughly.*

10. **AVOID PLATITUDES OR HOLLOW FORMS OF REASSURANCE.** Instead of saying, *Everything will be ok*, or *Do not worry*, use simple, supportive, concrete statements. For example: *It's okay now. We're going to go to a safe place so you can tell us what happened.*
11. **MIND REGRESSIVE STATES.** After being traumatised regression to a childlike, incoherent, needy or helpless state is a normal reaction. You should accept and reassure the victim's regressive behaviour or language. For example: *I can understand why you're upset, or It's ok, you can take your time to gather your thoughts, or I will be here, let me know if you need my help in anything.*
12. **BE AS PATIENT AS POSSIBLE** in your manners, tone, posture and words. Allow the victim to vent and also allow pauses, silence. It can be challenging under the pressure of time and through the requirements of the official process but a sympathetic, supportive, and non-judgemental approach can do much to restore the victim's trust and confidence and thereby facilitate all aspects of criminal investigation and legal routine.
13. **USE A COMBINATION OF OPEN-ENDED AND CLOSED-ENDED QUESTIONING** to facilitate the recall. For example: *Can you remember what your attacker looked like? Tell me about what age was he? Was he taller than me? Was he thin or stocky? What else can you remember?*
14. **USE DIVERSIONARY REALITY QUESTIONS** when the victim gets disoriented, agitated or panicking to help them regain reality control. For example:
Victim: *I just came to this bar to have fun and this guy hit me when I entered. It could happen anytime. It could just happen anytime, because I'm gay and anyone can see it and I'm going to be killed for that sooner or later . . .*
Responder: *How many time do you come to this bar?*
Victim: *Once a week or twice a month.*
Responder: *Ok, have you seen your attacker here before?*

ACTIVE LISTENING SKILLS

1. **ATTENDING.** While the victim speaks, use your voice, humming sounds or brief 'Um-hmm' types of interjections, which lets the victim know they have your

undivided attention and that you're there to follow their recall of the hate crime. You can also just be encouraging (but not urging) for them to go on.

2. **EMOTIONAL LABELLING.** Indeed, with a disturbed or incoherent victim, it may not be immediately apparent what they want – in fact, they may hardly be clear about this themselves. In such cases, the initial step may be to clarify what they are thinking and feeling. In general, respond first to emotion, not content. That is, address yourself to the victim's emotional state, while sidestepping any fearful words or imagery. But be careful not to convey the impression that you're ignoring or discounting his issues if that's what he really wants to discuss. The important thing is to demonstrate to the victim that you are tuned in. Utilise emotion-labelling phrases, such as: '*You sound...*'; '*You seem...*'; '*I hear...*'; and so on. For example:

Victim: *What if the guy is still here? I have to get out of here or he's going to kill me'*

Responder: *You sound like you're feeling really frightened.*

3. **PARAPHRASING.** Summarise in your own words what the subject has just told you. For example:

Victim: *What if the guy's still here? Did they catch him yet? He's gonna find me. We have to get out of here or I'm gonna die.*

Responder: *Sounds like you think you're still in danger.*

4. **CHECKING** what the victim meant to tell you. If you are not sure what the victim just said or meant, ask him to repeat it. For example: *I do not know if I got all that. Could you say it again, please? I want to make sure I understand exactly what you're telling me.*

5. **USE 'I' STATEMENTS** to avoid offending the victim who may be in a defensive and suspicious state. The basic model is '*I feel ... when you ... because...*' This technique may help diffuse intense emotions and may help refocus the victim during an emotional crisis. For example:

Victim: *You do not care about me – all you want is to get your damn information so you can solve your case. You're just like that first cop who was here – you guys are all alike.*

Responder: *When you're yelling like that, it's hard for me to focus on what we're talking about.*

6. **REFLECTING/MIRRORING.** Repeat the last word or phrase, or the main word or phrase, of the subject's statement in the form of a question, thereby soliciting more input without actually asking for it. It also allows you to buy time if you cannot immediately think of an appropriate emotional label or paraphrase, while still encouraging the victim to focus on what they have just said. For example:

Victim: *They came to me through the park and started to shout 'you little faggot' at me. And I just got scared and hurried up.*

Responder: *So you hurried up when hearing them.*

BODY TECHNIQUES ON THE SCENE*

1. **MOBILISING.** To help the victim regain control and overcome the frozen state of trauma, you can ask them to walk around with you a bit or just move the body parts. Even when victims are injured there are parts of the body that can be moved if there is no threat of further injury.
2. **INTENSE STIMULI.** With extremely distraught, disoriented, regressed, or psychologically immobilised victims, you may have to provide a breakthrough stimulus to capture the person's attention. This may involve shouting, making a loud noise, or gently shaking the severely traumatised victim to break the numbing spell of dissociation. This technique should be reserved for situations where it is an emergency matter to get the subject's attention and cooperation, such as getting out of a dangerous area quickly, otherwise you may risk further re-traumatisation.
3. **AUGMENTED BEHAVIOURAL MIRRORING.** Use it when you see victims in embodied regression states for example, you may encounter a victim sitting on a kerb or on a hospital cot, rocking rhythmically back and forth, humming to themselves. Gradually imitate and replicate their movements, until both of you are in a comfortable rhythm, and then augment with the repeated phrase, *It's all right, you're safe. It's all right, you're safe.*

* Note that in addition to the technique in 1) above, all body techniques require special attention and should be used only in extreme traumatic response, which means that the victim is overwhelmed by emotions, panicking or numbed.



Tool 5. Recommended template for victim information brochure

CRIME VICTIMS: RIGHTS AND SERVICES

This brochure is designed to provide an overview of crime victims' rights and services. For information specific to your case, please refer to a contact person indicated below. For information on services that may be available to help you as you recover from the crime, please refer to resources listed later on this brochure. Please keep this brochure as a reference.

1. INTRODUCTION

This brochure provides general information about rights and services available to assist you through the aftermath of the crime and through the often complex criminal justice process. In addition to personal losses suffered as a result of a criminal act committed against you, the experience may have created stress, fear and confusion. Victim assistance programmes and other local victim assistance programmes may provide information, support and assistance to victims outside the formal criminal justice process. Throughout the criminal justice process, and even after its completion, you may experience physical, emotional or psychological distress as a result of your victimisation. This is a normal reaction, general victim support and LGBTQI-sensitive help is available and suggestions are listed in this brochure.

2. CONTACT INFORMATION

Name, Family name of the officer on site

Badge

Place and address of contact

Name, Family name of the contact person for
the case (if different from the officer on site)
Contact Person

Phone number of the contact person for the
case

Address of the police station handling the
case (if known)

Case number (if known)

3. GENERAL RIGHTS OF VICTIMS OF HATE CRIME

List of general rights

4. NATIONAL LAW ON VICTIMS OF HATE CRIME

Brief and necessary legal information

5. ADDITIONAL RIGHTS FOR CHILDREN

6. USEFUL INFORMATION THROUGHOUT THE CRIMINAL JUSTICE PROCESS

- How to exercise the right to be accompanied by a person of the victim's choice throughout the proceedings;
- How and when to obtain information about the case;
- How and when to obtain protection from a perpetrator and other protection measures;
- How and when to access legal aid and access advice on legal issues;
- How and when to obtain compensation from the perpetrator;
- How and when to obtain interpretation or translation;
- How the expenses, such as travel and loss of wages incurred as a result of their role in criminal proceedings, can be reimbursed;
- The victim's role in the criminal proceedings, including the information whether the investigation will continue if the victim decides to withdraw the complaint, as well as the right to have victim's personal details removed from the case file (if applicable) and any other procedural rights under the national legislation not listed above;

- Any special measures, procedures or arrangements which are available to protect the interests of the victims from other Member States (e.g., contact details of embassies and consulates).

7. COMPLAINT PROCEDURES

The procedures for making a complaint when victim rights were not respected by the competent authority (police) in criminal proceedings.

8. INFORMATION, LEGAL ASSISTANCE, COUNSELLING, SUPPORT GROUPS, RESTORATIVE JUSTICE OPTIONS, LGBTQI* COMMUNITY SERVICES AND SUPPORT (reference to paid/toll free possibilities)

9. NATIONAL CRIME VICTIM RESOURCES

10. LEGAL AID AND HATE CRIME ASSISTANCE

11. PSYCHOLOGICAL AID AND COUNSELLING RESOURCES

Counselling, psychiatric help, trauma-focused therapists, support groups

12. RESTORATIVE JUSTICE OPTIONS

Victim-offender meditation, family group conferencing, sentencing circles etc.

13. LGBTQI* COMMUNITY SERVICES AND SUPPORT (according to local possibilities)

13.1. LIST OF SPECIFIC LEGAL AID AND HATE CRIME ASSISTANCE

13.2. LIST OF SPECIFIC COUNSELLING POSSIBILITIES

13.3. LIST OF SPECIFIC MEDIATION, RESTORATIVE JUSTICE OPTIONS



Signature

Tool 6. Recommended Individual Needs Assessment Form

File number:

Nature of the offence:

Date of the offence/last offence:

Assessment date:

(CONFIDENTIAL WHEN COMPLETE)

PART I VICTIM'S ASSESSMENT FOR SPECIAL MEASURES [1]

Initial questionnaire of victim

NOTE:

THE QUESTIONS CONTAINED WITHIN THIS NEEDS ASSESSMENT ARE FOR GUIDANCE ONLY AND SHOULD NOT BE READ OUT IN QUESTIONNAIRE STYLE TO THE VICTIM.

THIS QUESTIONNAIRE AIMS TO DETECT POSSIBLE RISKS OF SECONDARY AND REPEAT VICTIMISATION, INTIMIDATION AND RETALIATION AS WELL AS TO DETECT VICTIMS' SUPPORT AND COMMUNICATION NEEDS.

THE RECOMMENDATIONS SECTION AT THE END OF THE DOCUMENT SHOULD BE COMPLETED FOR ALL CASES.

The victim agrees for an evaluation to take place:

☐ Yes

☐ No

PERSONAL CHARACTERISTICS OF THE VICTIM

General information

Last [legal] name:

First [legal] name:

Name a person prefers to be called:

Name to be used when calling home or office:

Gender:

Preferred pronoun:

☐ She

☐ He

☐ Other:

Date of birth/reported age:

Contact details:

Address:

E-mail address:

Phone number:

Lawyer/contact person:

Socio-professional status (may select more than one response):

☐ Employed

☐ Unemployed

☐ Retired

☐ Student

Specific observations (clarify if necessary):

Nationality:

Personal vulnerability

☐ Child

☐ Pregnant

Disability (please clarify):

☐ Mental

☐ Physical

Victim of a crime in the past twelve months?

☐ Yes (please clarify and assess if the victim still has problems with that victimisation)

☐ Yes ☐ No

Mother Tongue:

Difficulty speaking:

☐ Yes (clarify if necessary)

☐ No

Difficulty reading:

☐ Yes (clarify if necessary)

☐ No

Other communication difficulties (please clarify):

Dependent children:

☐ Yes (number: _____ age/s: _____)

☐ No

Are you (or your children) supported by a social worker or other agency?

☐ Yes

☐ No

If yes, which?

Other vulnerabilities (please clarify, i.e. health problems, alcohol, drug dependence):

RISKS AND FEAR OF HARM

Type or nature of crime (may select more than one response)

☐ Human trafficking

☐ Gender-based violence

☐ Hate crime

☐ Sexual violence

Biased motive:

☐ Organised crime

☐ Child abuse or exploitation

☐ Violence in a close relationship

☐ Terrorism

Circumstances of the crime:

Does the victim have a personal connection with the suspect?

☐ Yes

☐ No

Nature of the connection/relationship:

Does the victim fear further harm from the suspect?

☐ Yes

☐ No

Does the suspect have previous offending history against the victim?

☐ Yes

☐ No

I hereby certify that the information given above is accurate.

Date:

Signature of victim:

Identity of the evaluator:

Identified needs (to be completed if a different person is completing the rest of the document):

File number:

Nature of the offence:

Date of the offence/last offence:

Assessment Date:

PART II. VICTIMS' ASSESSMENT FOR SPECIAL MEASURES [2]

Detailed evaluation for homophobic and transphobic hate crime cases

NOTE:

THE QUESTIONS CONTAINED WITHIN THIS NEEDS ASSESSMENT ARE FOR GUIDANCE ONLY AND SHOULD NOT BE READ OUT IN QUESTIONNAIRE STYLE TO THE VICTIM.

The victim agrees for a detailed evaluation to take place:

☐ Yes

☐ No

CURRENT SITUATION	Yes	No
1. Has the current incident resulted in injury? If so, please clarify.	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the victim frightened?	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the victim have relatives/friends/community resources (cultural, religious, other) to support them?	<input type="checkbox"/>	<input type="checkbox"/>
4. Does the victim feel isolated?	<input type="checkbox"/>	<input type="checkbox"/>
5. Is the victim feeling depressed or having suicidal thoughts?	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the victim in contact with the suspect? If so, please clarify.	<input type="checkbox"/>	<input type="checkbox"/>
7. Has the suspect, or anyone on the suspect's behalf, tried to intimidate the victim?	<input type="checkbox"/>	<input type="checkbox"/>

8. Does the victim live with the suspect?	<input type="checkbox"/>	<input type="checkbox"/>
9. Does the victim work with the suspect?	<input type="checkbox"/>	<input type="checkbox"/>
10. Does the victim study together or have any other regular interactions with the suspect?	<input type="checkbox"/>	<input type="checkbox"/>
11. Has the suspect ever committed acts of violence against others within the family (partner, children, relatives, etc.) or against pets?	<input type="checkbox"/>	<input type="checkbox"/>
12. Is the victim still able to access their personal documents/ money?	<input type="checkbox"/>	<input type="checkbox"/>
13. Is the victim free to move around in and/or leave her/his house?	<input type="checkbox"/>	<input type="checkbox"/>
OFFENCE HISTORY	Yes	No
14. Has the suspect ever threatened or committed acts of violence against the victim? If so, please clarify.	<input type="checkbox"/>	<input type="checkbox"/>
15. Has the suspect ever used a weapon against the victim? If so, please clarify.	<input type="checkbox"/>	<input type="checkbox"/>
16. Has the victim ever filed a complaint against the suspect?	<input type="checkbox"/>	<input type="checkbox"/>
17. Has there been an escalating series of incidents?	<input type="checkbox"/>	<input type="checkbox"/>
18. Are other persons potentially at risk?	<input type="checkbox"/>	<input type="checkbox"/>
19. Has the victim been threatened by any other person? If so, please clarify.	<input type="checkbox"/>	<input type="checkbox"/>
SUSPECT	Yes	No
20. Is the suspect identifiable?	<input type="checkbox"/>	<input type="checkbox"/>
21. Is the suspect a child (under 18 years old)?	<input type="checkbox"/>	<input type="checkbox"/>
22. Does the suspect have access to weapons? If so, please clarify.	<input type="checkbox"/>	<input type="checkbox"/>
23. Has the suspect ever been prosecuted or convicted of any offence against the victim? If so, please clarify.	<input type="checkbox"/>	<input type="checkbox"/>
24. Are there any outstanding court orders against the suspect? If so, please clarify.	<input type="checkbox"/>	<input type="checkbox"/>
25. Has the suspect ever been convicted of any serious offence? If so, please clarify.	<input type="checkbox"/>	<input type="checkbox"/>
26. Does the suspect have/have they had problems with drugs and/or alcohol? If so, please clarify.	<input type="checkbox"/>	<input type="checkbox"/>
27. Does the suspect have/have they had mental health problems?	<input type="checkbox"/>	<input type="checkbox"/>
28. Does the suspect belong to any organised crime group or any other hate/extremist group?	<input type="checkbox"/>	<input type="checkbox"/>
29. Has the suspect ever threatened or tried to commit suicide?	<input type="checkbox"/>	<input type="checkbox"/>

Additional information regarding victim/suspect:

Views of the victim on what support they require during criminal proceedings:

I hereby certify that the information given above is accurate.

Date:

Signature of victim:

Recommendations of the evaluator regarding victim's needs assessment
(TO BE COMPLETED IN ALL CASES)

a) Victim's protection needs (needs related to victim's protection and/or related to improving the quality of the evidence):

b) Support referral needs (counselling legal services, victim support services, community services):

Identity of the evaluator:

Date:

REFERENCES:

1. Based entirely on the draft questionnaire developed under the EVVI Project (JUST/2013/JPEN/AG/4602). Full research with additional guidance to the questionnaire is available at: http://www.justice.gouv.fr/publication/evvi_guide_en.pdf. Changes were made to better reflect the specific needs of the homophobic and transphobic hate crime victims.
2. Based entirely on the draft questionnaire developed under the EVVI Project (JUST/2013/JPEN/AG/4602). Full research with additional guidance to the questionnaire is available at: http://www.justice.gouv.fr/publication/evvi_guide_en.pdf. Changes (highlighted in yellow) were made to better reflect the specific needs of the homophobic and transphobic hate crime victims.



Tool 7. Glossary

BISEXUAL A man or woman who is physically, sexually and/or emotionally attracted to people of either/both sex.

CHILD Any person below 18 years of age.

FAMILY MEMBER The spouse, the person who is living with the victim in a committed intimate relationship (i.e. same-sex or different-sex), in a joint household and on a stable and continuous basis, the relatives in direct line (i.e. parents and children), the siblings and dependants of the victim (i.e. other than dependent children). The criterion 'committed intimate relationship, in a joint household and on a stable and continuous basis' presupposes close emotional ties and financial interdependence between two persons (as if they were formally married).

GAY A man who is physically, sexually and/or emotionally attracted to other men. This term is sometimes used to refer to a woman who is physically, sexually and/or emotionally attracted to other women.

GENDER IDENTITY A person's sense of him, or herself, as being male or female.

HETEROSEXUAL A man or a woman who is physically, sexually and/or emotionally attracted to people of the opposite sex.

HOMOPHOBIC A fear of or a dislike directed towards lesbian, gay or bisexual people, or a fear of or dislike directed towards their perceived lifestyle, culture or characteristics, whether or not any specific LG or B person has that lifestyle or characteristic. The dislike does not have to be as severe as hatred. It is enough that people do something or abstain from doing something because they do not like lesbian, gay or bisexual people.

HOMOPHOBIC HATE CRIME Any criminal offence that is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a person's sexual orientation or perceived sexual orientation.

HOMOSEXUAL A man or woman who is physically, sexually and/or emotionally attracted to people of the same sex.

LESBIAN A woman who is physically, sexually and/or emotionally attracted to women.

OUT The term used by lesbian women, gay men, bisexuals and trans people to describe their experience of self-discovery, self-acceptance, openness and honesty about their sexual orientation or gender identity and their decision to share this with others when and how they choose.

OUTED The outcome of someone giving information about a person being LGB or T without that person's permission.

REID TECHNIQUE A method of questioning suspects to try to assess their credibility. Supporters argue that the Reid Technique is useful in extracting information from otherwise unwilling suspects, while critics have argued that the technique can elicit false confessions from innocent persons, especially children. The term 'Reid Technique' is a registered trademark of the firm John E. Reid and Associates, which offers training courses in the method they have devised.

SEXUAL ORIENTATION A term used to describe a person's emotional and/or physical attraction to another.

SOGI An abbreviation for 'sexual orientation and gender identity'.

TRANS PEOPLE A person who was assigned one gender at birth but who identifies elsewhere on the gender spectrum for some, part or all of the time. Some people have medication and/or surgery(ies) to alter their bodies so they will fit with their personal identity and sense of self. However, surgery should not be used as a marker for trans identification. Trans is an umbrella term that includes transsexual, transvestite (cross dressers) and transgender people, among others. In practice, the range of people who fall under this umbrella term is extremely diverse.

TRANSPHOBIC A fear of or a dislike directed towards trans people, or a fear of or dislike directed towards their perceived lifestyle, culture or characteristics, whether or not any specific trans person has that lifestyle or characteristic. The dislike does not have to be as severe as hatred. It is enough that people do something or abstain from doing something because they do not like trans people.

TRANSPHOBIC HATE CRIME Any criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice against a person who is trans or perceived to be trans.

VICTIM A natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; and/or a family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

REFERENCES

CODES, GUIDELINES AND PROTOCOLS

UK

- Code of Practice for Victims of Crime, Presented to Parliament pursuant to section 33 of the Domestic Violence, Crime and Victims Act 2004 [October 2015]: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF
- Crown Prosecution Service, 'Homophobic and Transphobic Hate Crime Guidance' [date not indicated]: http://www.cps.gov.uk/legal/h_to_k/homophobic_and_transphobic_hate_crime/#a14
- Crown Prosecution Service, 'Policy for Prosecuting Cases of Homophobic and Transphobic Hate Crime' [November 2007]: http://www.cps.gov.uk/publications/docs/htc_policy.pdf
- Crown Prosecution Service, 'Homophobic and Transphobic Crime Toolkit: Good Practice and Lessons Learnt' [October 2008]: http://www.cps.gov.uk/publications/docs/htc_toolkit.pdf
- College of Policing, 'Hate Crime Operation Guidance' [May 2014]: http://report-it.org.uk/files/hate_crime_operational_guidance.pdf
- Judicial College, 'Equal Treatment Bench Book' [September 2015]: <https://www.judiciary.gov.uk/wp-content/uploads/2013/11/equal-treatment-bench-book-2013-with-2015-amendment.pdf>
- Stonewall Scotland, 'Protecting lesbian, gay, bisexual and trans people in Scotland: a practical guide for police and community safety planners' [date not indicated]: https://www.stonewallscotland.org.uk/sites/default/files/Scotland_Hate_Crime_Guide.pdf
- CAADA-DASH MARAC, 'Risk Identification Checklist (RIC) for the identification of high-risk cases of domestic abuse, stalking and "honour"-based violence' [2012]: [http://www.islington.gov.uk/publicrecords/library/Community-safety-and-emergencies/Publicity/Public-notice/2012-2013/\(2013-03-20\)-DASH-RIC-for-use-by-IDVAs-with-full-practice-guidance-\(1\).pdf](http://www.islington.gov.uk/publicrecords/library/Community-safety-and-emergencies/Publicity/Public-notice/2012-2013/(2013-03-20)-DASH-RIC-for-use-by-IDVAs-with-full-practice-guidance-(1).pdf)
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- New York State Coalition Against Sexual Assault, 'Pocket Guide for Police Response to Sexual Assault' [date not indicated]: <http://ovc.ncjrs.gov/sartkit/tools/lawenforcement/Pocket%20Guide%20for%20Police%20Response%20to%20Sexual%20Assault.pdf.pdf>
- Illinois Family Violence Coordinating Councils, 'Protocol for Law Enforcement: Responding to Victims of Elder Abuse, Neglect and Exploitation' [November 2011]: https://www.illinois.gov/aging/ProtectionAdvocacy/Documents/ea_lawenforcement.pdf
- National Centre for Victims of Crime, 'Interviewing the Victim' [date not indicated]: <http://victimsofcrime.org/docs/dna-protocol/baltimore-interviewing-the-victim.pdf?sfvrsn=0>
- U.S. Department of Justice, 'First Response to Victims of Crime' [April 2008]: <http://ojp.gov/ovc/publications/infores/pdfxt/FirstResponseGuidebook.pdf>

OTHER

- Organisation for Security and Cooperation in Europe, 'Prosecuting Hate Crimes: a Practical Guide' [2014]: <http://www.osce.org/odihr/prosecutorsguide?download=true>
- European Network of Councils for the Judiciary, 'Guidance on Victims' [date is not indicated]: http://fra.europa.eu/sites/default/files/fra_uploads/1578-budapest2011-JThomas-1.pdf
- Swedish Crime Victim Compensation and Support Authority, 'Information to Crime Victims' [date is not indicated]: <http://www.brottsoffermyndigheten.se/Filer/Broschyrer/Andra%20spr%C3%A5k/Information%20to%20crime%20victims.pdf>

LAWS AND REGULATIONS

- Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [25 October 2012]: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>
- Council Directive 2004/80/EC relating to compensation to crime victims [29 April 2004]: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421931738691&uri=CELEX:32004L0080>

BOOKS, JOURNAL ARTICLES AND RESEARCH PAPERS

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