

PROPOSED AMENDMENTS TO THE EUROPEAN COMMISSION PROPOSAL TO REVISE THE VICTIM RIGHTS DIRECTIVE

The EU's legal and policy framework on victim rights has long recognised the need to protect all victims regardless of their status. The EU Victim Rights Directive (VRD)¹ establishes that the rights of victims of crime cannot be denied to a person because of their residence status, or lack thereof (article 1). In doing so, the VRD is significant for clearly placing the priority on a person's safety, security and protection ahead of enforcement measures based on their residence status.² The Strategy on Victims' Rights (2020-2025) further recognises undocumented people among the categories of "vulnerable victims".³

Yet undocumented persons who are victims of a crime continue to face severe barriers in accessing justice, support and protection. The criminalisation of irregular migration leads to the de-prioritisation of a person's rights in favour of immigration control, and migrants being treated as criminals and even viewed as a threat to national security.⁴ It also makes people in an irregular situation susceptible to mistreatment and exploitation, and profoundly limits their options for support and redress.

The Commission's proposal for a revision of the VRD⁵ constitutes an opportunity to strengthen the rights and protection for victims regardless of their residence status. However, there are still significant obstacles and ambiguities in the proposal for its revision, which may prevent undocumented victims from fully benefiting.⁶

Below, PICUM⁷ and La Strada International⁸ provide recommendations, where necessary in the form of amendments (marked in **orange, bold and italics**) for the negotiations. **The recommendations address: improved crime reporting; individual assessment of victims to identify specific support and protection needs; national coordination and cooperation; residence permits and compensation.**

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¹ [Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA ("Victims' Directive").

² PICUM, 2015, [Guide to the EU Victims' Directive: advancing access to protection, services and justice for undocumented migrants](#)

³ [Communication](#) from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Strategy on victims' rights (2020-2025).

⁴ Kanics, J. and Gianco, M., 2022, [Resilience and Resistance: In defiance of the criminalisation of solidarity across Europe](#). Study commissioned by the Greens/EFA.

⁵ European Commission, 2023, [Proposal](#) for a Directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

⁶ PICUM, 2023, [First assessment of the proposed revisions to the Victim Rights Directive](#)

⁷ The [Platform for International Cooperation on Undocumented Migrants](#) (PICUM) is a network of organisations working to ensure social justice and human rights for undocumented migrants. Founded in 2001 as an initiative of grassroots organisations, PICUM now represents nearly 160 organisations working with undocumented migrants in 31 countries.

⁸ [La Strada International](#) is a European NGO Platform against human trafficking, that works from a human rights perspective in support of trafficked persons. La Strada International has 25 member organisations and 5 associate members in 24 European countries.

Improved crime reporting

As highlighted also by the European Commission's evaluation of the VRD,⁹ **undocumented victims are fearful of engaging with public authorities, and especially with the police, because of the risk that they will be detained and ordered to leave the territory as a result.** This distrust is compounded by the increased policing and surveillance of migrant and minority communities, worsening the feeling of insecurity and concerns about discriminatory profiling.¹⁰ The need to issue return decisions to any third-country national staying irregularly in the territory of a Member State¹¹ generates a clear contradiction between the victims' protection and the immigration regulations both at EU and at national level.

In order to support reporting for victims, it is important to offer a **wide variety of complaints/reporting mechanisms to cater to the multiple needs and circumstances of victims, including third-party reporting.** However, the proposed revisions to the Directive do not make provisions to enable and set out third party reporting mechanisms. Third party reporting mechanisms are promoted in the current VRD only in the form of a recital (recital 63). The Fundamental Rights Agency has highlighted the untapped potential of third-party reporting, as an alternative reporting option for victims that do not trust law enforcement.¹²

Moreover, it is essential to **create safe environments** for victims and people who suspect that criminal offences have been committed, or are expected, to be able to report a crime without any reprisals, including in relation to their migration status. The concept of non-punishment is embedded in the EU's Anti-Trafficking Strategy,¹³ and EU Anti-Trafficking Directive and should be streamlined across the EU VRD.

In light of this, we welcome the Commission's effort to create safer conditions for crime reporting for undocumented victims by introducing **a provision limiting the transfer of personal information to migration authorities** (article 5(5)). Unfortunately, this would apply only until the "the completion of the first individual needs assessment". In doing so, the Commission is effectively rendering the intended effects of the article, namely to improve crime reporting, void. If there is a risk that the data would be shared, it is unlikely that undocumented victims will go report crimes to the police due to the risk of detention and deportation. Moreover, allowing for data sharing violates undocumented migrants' fundamental human rights to privacy and data protection, in line with Article 7 and Article 8 of the EU Charter of Fundamental Rights and General Data Protection Regulation (GDPR)¹⁴. The provision should be amended to ensure that a victim's residence status is never be shared without consent with any stakeholder – including migration authorities.

⁹ Commission Staff Working Document on the evaluation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012

¹⁰ PICUM, 2021, [Presenting Harm, Promoting rights: achieving safety, protection and justice for people with insecure residence status in the EU](#); PICUM, 2022, [Unconditional access to services for undocumented victims of crime](#)

¹¹ [Directive 2008/115/EC](#) of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

¹² Fundamental Rights Agency, 2023, [Underpinning victims' rights: support services, reporting and protection](#)

¹³ Communication from the commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the regions on the EU strategy on combatting trafficking in human beings 2021- 2025, [COM/2021/171 final](#)

¹⁴ PICUM, 2020, [Data protection and the firewall: advancing safe reporting for people in an irregular situation](#)

People in immigration detention suffer violent crime, they are also victims with rights under the VRD. Yet “adequate reporting systems rarely exist, and few reports ever reach the criminal justice system”.¹⁵ We thus support the proposal (article 5(a)(3) to ensure that victims can effectively report crimes committed in detention facilities, including in immigration detention, and would recommend that reporting systems are available for any persons who knows about or suspects criminal offences.

European Commission Proposal	Recommendation
<p>Recital 6</p> <p>Crime reporting in the Union should be improved to fight impunity, avoid repeated victimisation and ensure safer societies. It is necessary to fight public insensitivity towards crime, by encouraging people who witness the crime to report crimes and assist victims and by creating safer environments for victims to report crime. For victims who are irregular migrants in the Union, safe environment to report crime means reducing fear of return procedures being launched as a result of contacts with law enforcement authorities. The personal data of victims who are irregular migrants in the Union should not be transferred to the competent migration authorities at least until the completion of the first individual assessment as referred to in Article 22 of Directive 2012/29/EU. Reporting the crime and participating in criminal proceeding under Directive 2012/29/EU do not create any rights regarding the residence status of the victim, neither have any suspensive effect when determining their residence status. All vulnerable victims, such as child victims or victims in detention, who are in a situation of intimidation, or are otherwise dependent from the offender or whose mobility is limited should be able to report crime in conditions that take into account their particular situation and in line with protocols specifically set up for this purpose.</p>	<p>Crime reporting in the Union should be improved to fight impunity, avoid repeated victimisation and ensure safer societies. It is necessary to fight public insensitivity towards crime, by encouraging people who witness the crime to report crimes and assist victims and by creating safer environments for victims to report crime. For victims who are irregular migrants in the Union, safe environment to report crime means reducing fear of return procedures being launched as a result of contacts with law enforcement authorities. The personal data of victims who are irregular migrants in the Union should not be transferred to the competent migration authorities at least until the completion of the first individual assessment as referred to in Article 22 of Directive 2012/29/EU. Reporting the crime and participating in criminal proceeding under Directive 2012/29/EU do not create any rights regarding the residence status of the victim, neither have any suspensive effect when determining their residence status. All vulnerable victims, such as child victims or victims in detention, who are in a situation of intimidation, or are otherwise dependent from the offender or whose mobility is limited should be able to report crime in conditions that take into account their particular situation and in line with protocols specifically set up for this purpose.</p>
<p>New - Article 5a Reporting of crime</p> <p>1.Member States shall ensure that victims can report criminal offences to the</p>	<p>New - Article 5a Reporting of crime</p> <p>1.Member States shall ensure that victims can safely and confidentially report</p>

¹⁵ Fair Trials, 2019, [Rights behind bars Access to justice for victims of violent crime suffered in pre-trial or immigration detention](#)

competent authorities through easily accessible, user friendly information and communication technologies. Such possibility shall include submission of evidence where feasible.

2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, that criminal offences have been committed, or that further acts of violence are to be expected, to report this to the competent authorities.

3. Member States shall ensure that victims can effectively report crimes committed in detention facilities. Detention facilities shall include in addition to jails, detention centres and holding cells for suspects and accused, specialised detention facilities for applicants of international protection and pre-removal centres, and accommodation centres where applicants and beneficiaries of international protection are located.

4. Where children report criminal offences, Member States shall ensure that the reporting procedures are safe, confidential, designed and accessible in a child-friendly manner and use language in accordance with their age and maturity.

5. Member States shall ensure that the competent authorities coming in contact with a victim reporting crimes are prohibited from transferring personal data pertaining to the residence status of the victim to competent migration authorities, at least until completion of the first individual assessment referred to in Article 22.

criminal offences to the competent authorities through easily accessible, user friendly, **multiple reporting mechanisms, including online and offline reporting, anonymous reporting and third-party reporting information—and communication—technologies.** Such possibility **may shall** include submission of evidence where feasible:

2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, that criminal offences have been committed, or that further acts of violence are to be expected, to report this to the competent authorities **as referred to in para 1. Such complaints should not lead to any reprisals for the victim, particularly in relation to their immigration status**¹⁶

3. Member States shall ensure that **persons victims** can effectively report crimes committed in detention facilities **and accommodation centres where applicants and beneficiaries of international protection are located.** Detention facilities shall include in addition to jails, detention centres and holding cells for suspects and accused, specialised detention facilities for applicants of international protection and pre-removal centres, **and—accommodation—centres where applicants and beneficiaries of international protection are located.**

4. Where children report criminal offences, Member States shall **additionally** ensure that the reporting procedures **are safe, confidential, are** designed and accessible in a child-friendly manner and use language in accordance with their age and maturity.

¹⁶ This amendment is aligned with [European Parliament report on the proposal for a directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims](#) which states that “Member States shall put in place effective, accessible and independent complaint mechanisms. Such mechanisms would contribute to the early detection, identification of, assistance to and support for victims of trafficking. Complaints may be put forward by trusted third parties, such as NGOs, trade unions, or migrant workers’ organisations, on behalf of the victim under the condition that the victim has given consent. Coming forward with a complaint shall not lead to any reprisals for the victim, particularly in relation to their immigration status.”;

	<p>5. Member States shall ensure that the competent authorities coming in contact with a victim reporting crime are prohibited from transferring personal data pertaining to the residence status of the victim to competent migration authorities, at least until completion of the first individual assessment referred to in Article 22.</p> <p>6. Member States shall take the necessary measures to ensure that victims are not held liable for the irregularity of their entry into or stay in a Member State and that this is not made conditional on the victim's cooperation in the criminal investigation, prosecution or trial.</p>
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Facilitating access to specialist support for vulnerable victims, including children

We support the EU Commission's proposed amendments with respect to **support services**, in particular Article 8(2) which requires that victims are contacted by general or specialised support services where the **individual needs assessment** set out in Article 22 of the VRD indicates the need. The amendments also require that psychological services are available for as long as needed (as determined by the individual needs assessment), that articles are aligned with the violence against women and domestic violence directive and that new specific rules on specialist services for child victims are established.

In particular, we strongly welcome the Commission's new and dedicated provisions on **support services for children who are victims of crime** (article 9a). A dedicated, safe and child-friendly location where child victims can be assisted and accompanied by the relevant services has proven its worth in many countries. The Commission's proposal would thus make these one-stop shops available to more child victims, as they would be set up in all member states and be accessible to child victims of all types of crimes – there were the *Barnahus*¹⁷ have now often been used for victims of abuse only.

We also welcome the inclusion of the **list of services accessible on the premises** (art 9a(2)). However, we recommend that administrative support and (free and specialised) legal aid are included in the list of services, as the child will *de facto* and *de jure* have less agency and less ability to navigate these aspects – either because of their age and maturity, their legal competence, or the emotional whirlwind they're experiencing. They are also especially important for children in migration, who are particularly vulnerable to exploitation, violence, and crime because of their social isolation, undocumented and/or precarious residence status. Having specialists on their side to understand and navigate the legal and administrative aspects, including residence procedures if applicable, is both part of the government's duty of care and basic children's safeguards. The provisions in

¹⁷ Promise Barnahus Network, n.d., [About Barnahus](#)

article 13¹⁸ are insufficient, as they do not include administrative support and limit legal aid to victims who are a party in criminal proceedings.

European Commission Proposal	Recommendation
<p>Amended – Article 8(2) Member States shall ensure that victims are contacted by the relevant general or specialised support services if the individual assessment referred to in Article 22 demonstrates the need for support and the victim consents to be contacted by support services or if the victim requests support.</p>	<p>Retain this provision.</p>
<p>Amended - Article 9(1)(c) emotional and, where available, psychological support once they become aware of a status of a person as a victim. If the special need for psychological support has been demonstrated by individual assessment referred to in Article 22, psychological support shall be available to victims in need of such support for as long as necessary.’</p>	<p>Retain this provision.</p>
<p>Amended - Article 9(3)(b) targeted and integrated support, including trauma support and counselling, for victims with specific needs, such as victims of sexual violence, victims of gender-based violence, including violence against women and domestic violence covered by Directive (EU) .../... of the European Parliament and of the Council 64 [on combating violence against women and domestic violence], victims of trafficking in human beings, victims of organised crimes, victims with disabilities, victims of exploitation, victims of hate crime, victims of terrorism, victims of core international crimes.</p>	<p>Retain this provision.</p>
<p>New - Article 9(4) ‘Member States shall provide the protection and specialist support services necessary to comprehensively address the multiple needs of victims with specific needs in line with the protocols referred to in Article 26a(1), point (c).’</p>	<p>Retain this provision.</p>

¹⁸ Not opened for amendments by the Commission.

New - Article 9a Targeted and integrated support services for children	Article 9a Targeted and integrated support services for children
<p>1. Member States shall take the necessary measures to ensure the availability of child-friendly targeted and integrated specialist services for children to provide for age-appropriate support and protection necessary to comprehensively address the multitude of needs of child victims.</p> <p>2. Targeted and integrated support services for child victims shall provide for a coordinated multi-agency mechanism that includes the following services:</p> <p>(a) the provision of information; (b) medical examination; (c) emotional and psychological support; (d) possibility of crime reporting; (e) individual assessment of protection and support needs referred to in Article 22; (f) video recording of testimonies referred to in Article 24(1).</p> <p>3. The services referred to in paragraph 2 shall be provided within the same premises.'</p>	<p>1. Member States shall take the necessary measures to ensure the availability of child-friendly targeted and integrated specialist services for children to provide for age-appropriate support and protection necessary to comprehensively address the multitude of needs of child victims.</p> <p>2. Targeted and integrated support services for child victims shall provide for a coordinated multi-agency mechanism that includes the following services:</p> <p>(a) the provision of information; (b) medical examination; (c) emotional and psychological support; (d) possibility of crime reporting; (e) individual assessment of protection and support needs referred to in Article 22; (f) video recording of testimonies referred to in Article 24(1); (g) new administrative support and free legal aid;</p> <p>3. The services referred to in paragraph 2 shall be provided within the same premises.</p>

Individual assessment of victims to identify specific support and protection needs

The Commission has recognised several problems in the **implementation of the needs assessment** and made a series of proposals to address these (article 22). While we generally welcome efforts to set more standards on the needs assessment, we have the following observations:

- It is proposed that the individual needs assessment shall “last as long as necessary depending on the needs of each victim”. We support this strong focus on the needs of the victims but recommend ensuring that the length of the needs assessment should not impact a person’s right to assistance, support and information.
- We support the emphasis on relevant experiences of discrimination within the personal characteristic of the victim that should be taken into account in the needs assessment (article 22(2)(a)). In line with article 1(1), it is essential for these grounds to include residence status. Moreover, undocumented victims should be considered as a group that would require particular attention (article 22(3)).

- A victims residence status has a significant effect on victims ability to access justice, support services and potential revictimization. It follows that undocumented victims and victims with a dependant residence status or permit should be duly considered among the specific categories of victims.

European Commission Proposal	Recommendation
<p>new Article 22(1a) The individual assessment shall be initiated upon the first contact of the victim with the competent authorities, and shall last as long as necessary depending on the specific needs of each victim. Where the result of the initial stage of the individual assessment by the first contact authorities demonstrates the need to continue the assessment, such assessment shall be undertaken in collaboration with the institutions and bodies depending on the stage of the procedure and victims' individual needs in accordance with the protocols referred to in Article 26a.</p>	<p>new Article 22(1a) The individual assessment shall be initiated upon the first contact of the victim with the competent authorities, and shall last as long as necessary depending on the specific needs of each victim and without prejudice to the victim's right to assistance, support and information. Where the result of the initial stage of the individual assessment by the first contact authorities demonstrates the need to continue the assessment, such assessment shall be undertaken in collaboration with the institutions and bodies including specialised services and civil society actors, depending on the stage of the procedure and victims' individual needs in accordance with the protocols referred to in Article 26a.</p>
<p>Amended article 22(2) The individual assessment shall take into account: (a) the personal characteristics of the victim, including relevant experiences of discrimination, also when based on a combination of several grounds such as sex, gender, age, disability, religion or belief, language, racial, social or ethnic origin, sexual orientation; (b) the type or nature of the crime; (c) the circumstances of the crime; (d) the relationship to and the characteristics of the offender.</p>	<p>Amended article 22(2) The individual assessment shall take into account: (a) the personal characteristics of the victim, including relevant experiences of discrimination, also when based on a combination of several grounds such as sex, gender, age, disability, religion or belief, language, racial, social or ethnic origin, sexual orientation, residence status; (b) the type or nature of the crime; (c) the circumstances of the crime; (d) the relationship to and the characteristics of the offender.</p>
<p>Amended Article 22(3) In the context of the individual assessment, particular attention shall be paid to: (a) victims who have suffered considerable harm due to the severity of the crime; (b) victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics;</p>	<p>Amended Article 22(3) In the context of the individual assessment, particular attention shall be paid to: (a) victims who have suffered considerable harm due to the severity of the crime; (b) victims who have suffered a crime committed with a bias or discriminatory</p>

<p>(c) victims whose relationship to and dependence on the offender make them particularly vulnerable.</p> <p>In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, including violence against women and domestic violence, sexual violence, exploitation or hate crime, victims of core international crime and victims with disabilities shall be duly considered. Particular attention shall be paid to victims who fall under more than one of those categories</p>	<p>motive which could, in particular, be related to their personal characteristics;</p> <p>(c) victims whose relationship to and dependence on the offender make them particularly vulnerable.</p> <p>In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, including violence against women and domestic violence, sexual violence, exploitation or hate crime, undocumented victims and victims with a dependent residence status or permit, victims of core international crime and victims with disabilities shall be duly considered. Particular attention shall be paid to victims who fall under more than one of those categories</p>
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National coordination and cooperation

We welcome the European Commission’s proposal for Member States to establish protocols for the organisation of the provision of services and actions under the directive. Yet the Commission does not adequately address how victims in detention are enabled to report a crime from closed facilities. It merely envisages (article 26a) that the national protocols should at minimum ensure that victims in detention receive information about their rights, can rely on “facilitated crime reporting” and have support and protection aligned with their needs.

Detention places people in a situation of vulnerability and dependency on detention staff and co-detainees: *“Their livelihood and safety depend on how they are treated by staff and fear of reprisals is a predominant barrier to reporting. This makes it especially hard for detained victims to report crimes and to seek to exercise their other rights as victims. This vulnerability is exacerbated for people who are non-nationals, do not speak the national language and/or have no local support networks”*. According to Fair Trials,¹⁹ detained victims face the following barriers:

- limits on communication make it hard to report crimes to law enforcement;
- detained victims are often expected to produce evidence of violence but face difficulties in securing this;
- detainees experience difficulties to establish that the use of force is unjustified and amounts to a criminal offence;
- access to legal advice and representation is difficult to secure.

We recommend that the protocols clearly set out the responsibilities of detention staff and detention administration in securing the rights of victims of violent crimes.²⁰ Moreover, victims in detention should receive access to free legal support.

¹⁹ Fair Trials, 2019, [Rights behind bars Access to justice for victims of violent crime suffered in pre-trial or immigration detention](#)

²⁰ Ibid.

European Commission Proposal	Recommendation
<p>New - Article 26a Protocols through national coordination and cooperation</p> <p>1. Member States shall establish and implement specific protocols on the organisation of services and actions under this Directive by the competent authorities and other persons coming in contact with victims. The protocols shall be drawn up in coordination and cooperation between law enforcement, prosecution authorities, judges, detention authorities, restorative justice services and victim support services. The specific protocols shall aim as a minimum at ensuring that:</p> <p>(a) victims receive information that is adapted to their changing individual needs; whereas such information shall be simple and easy to understand, provided in a timely manner, repeated over time, in multiple formats including orally, in writing and digitally;</p> <p>(b) victims who are in detention including jails, detention centres and holding cells for suspects and accused, as well as specialised detention facilities for applicants of international protection and pre-removal centres or in other institutions, including accommodation centers where applicants and beneficiaries of international protection are located:</p> <p>(i) receive the information about their rights;</p> <p>(ii) can rely on facilitated crime reporting;</p> <p>(iii) have access to support and protection in accordance with their individual needs;</p> <p>(c) individual assessment of victims' needs for support and protection as referred to in Article 22, and provision of support services for victims with specific needs, take into account the victims' individual needs at different stages of the criminal procedure.</p> <p>2. Member States shall ensure that the protocols referred to in paragraph 1 are reviewed at regular intervals to ensure their effectiveness, and at least once every two years.</p> <p>3. Member States shall take the necessary legislative measures to allow for collection and sharing of information, including</p>	<p>New - Article 26a Protocols through national coordination and cooperation</p> <p>1. Member States shall establish and implement specific protocols on the organisation of services and actions under this Directive by the competent authorities and other persons coming in contact with victims. The protocols shall be drawn up in coordination and cooperation between law enforcement, prosecution authorities, judges, labour inspectorates, detention authorities, restorative justice services and victim support services and in consultation with civil society organisations. The specific protocols shall aim as a minimum at ensuring that:</p> <p>(a) victims receive information that is adapted to their changing individual needs; whereas such information shall be simple and easy to understand, provided in a timely manner, repeated over time, in multiple formats including orally, in writing and digitally;</p> <p>(b) for victims who are in detention including jails, detention centres and holding cells for suspects and accused, as well as specialised detention facilities for applicants of international protection and pre-removal centres or in other institutions, including accommodation centers where applicants and beneficiaries of international protection are located, there exist a clear division of responsibilities between detention staff and detention administration and victims:</p> <p>(i) receive the information about their rights;</p> <p>(ii) can rely on facilitated crime reporting;</p> <p>(iii) have access to support and protection in accordance with their individual needs, including free legal support;</p> <p>(c) individual assessment of victims' needs for support and protection as referred to in Article 22, and provision of support services for victims with specific needs, take into account the victims'</p>

<p>information containing personal data of victims between the competent authorities and victim support services to ensure access to information and appropriate support and protection of individual victims.</p>	<p>individual needs at different stages of the criminal procedure.</p> <p>2. Member States shall ensure that the protocols referred to in paragraph 1 are reviewed at regular intervals to ensure their effectiveness, and at least once every two years.</p> <p>3. Member States shall take the necessary legislative measures to allow for collection and sharing of information in line with General data protection regulation (EU) 2016/679, including information containing personal data of victims between the competent authorities and victim support services to ensure access to information and appropriate support and protection of individual victims.</p>
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Residence permits

The Return Directive leaves member states free to grant a residence permit “at any moment” to someone in an irregular situation for compassionate or humanitarian reasons.²¹ Yet in its revision of the VRD, the Commission has failed to propose amendments which could require Member States to **set out conditions of the residence of victims of crime**. This constitutes an important limitation to the revision of the VRD.

One important way to ensure undocumented victims can access justice and support, and prevent further victimisation, is to issue **residence permits to victims**.²² This solution already exists in different EU member states, which have permits for individuals who have been trafficked, who have been victims of racist violence, who have experienced domestic violence and for those who have experienced labour exploitation.²³ For example, Finland offers since 2021 the possibility for non-EEA workers who have experienced labour exploitation or significant negligence in the workplace to apply for a Residence Permit due to Exploitation by the Employer, or, if they have already found a new job, a Certificate due to Exploitation by the Employer.²⁴

Moreover, several EU directives make provision for residence permits for certain victims of crime, namely:²⁵

- For survivors of conjugal violence with dependent status: the Citizens’ Rights Directive²⁶ and Family Reunification Directive;²⁷

²¹ [Directive 2008/115/EC](#) of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

²² PICUM, 2022, [Unconditional access to services for undocumented victims of crime](#)

²³ PICUM, 2020, [Insecure Justice? Residence Permits for victims of crime in Europe](#)

²⁴ PICUM, 2022, [Labour migration policies Case study series Finland](#)

²⁵ PICUM, 2020, [Insecure Justice? Residence Permits for victims of crime in Europe](#)

²⁶ [Directive 2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

²⁷ [Directive 2003/86/EC](#) of 22 September 2003 on the right to family reunification

- For victims of human trafficking and smuggling: the residence permit Directive;²⁸
- For victims of labour exploitation: the Employer Sanctions Directive.²⁹

European Commission Proposal	Recommendation
	<p>Chapter 4, new article ‘Residence permits’</p> <ol style="list-style-type: none"> 1. Member States shall lay down provisions ensuring the granting of an autonomous residence permit or other authorization offering a right to stay on grounds of the victim’s personal situation, such as compassionate, humanitarian or other reasons, and that such a residence permit is not made conditional on the victim’s cooperation in the criminal investigation, prosecution or trial. 2. Member States shall take the necessary measures to ensure that from the moment a formal request for a residence permit or the renewal thereof is made, any expulsion order against the person concerned is not enforced, and the applicant has immediate and unrestricted access to the labour market and to social benefits.

Compensation

Compensation is a significant instrument which serves restorative, punitive and preventive purposes. Victim of crime might have been subjected to a range of physical, mental, economic and or sexual abuse, which may lead to physical suffering and health problems, emotional trauma and loss of livelihood. Enabling and facilitating access to compensation helps victims to recover.

As highlighted by the Commission in the revision proposal ‘victims’ access to compensation in domestic and cross-border cases is difficult due to the lack of state support when enforcing the ordered compensation from the offender, leading to a risk of secondary victimisation’, we therefore strongly support the revision’s aim to facilitated access to compensation from the offender in all cases, including national and cross-border

²⁸ [Directive 2004/81/EC](#) of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

²⁹ [Directive 2009/52/EU](#) of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

cases by strengthening victims' rights to receive a decision on compensation from the offender during the criminal proceeding; and making it binding for the state to pay the offender's compensation to victims in due time following the judgment on offender's compensation, with a possibility for the state to recuperate it later from the offender.

However we see also other remaining bottlenecks that are not yet addressed with the revision. Reasons for denying compensation to victims of crime, may be their irregular immigration status. Also, when compensation is granted, victims rarely have the means to ensure a compensation order is actually enforced, so that they receive some payment. Another barrier to compensation might be that offenders are not found, or are not prosecuted, or have moved their assets abroad and/or have declared themselves bankrupt to avoid confiscation of their assets and having to pay compensation. Finally, lack of residence status, lack of information, lack of means and lack of access to legal aid prevent many victims from claiming their rights, including the right to compensation.

European Commission Proposal	Recommendation
<p>Amended Article 16</p> <p>1. Member States shall ensure that, in the course of the criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time.'</p> <p>2. Member States shall ensure that their competent authorities pay directly to the victim the adjudicated compensation without undue delay. The competent authorities shall be subrogated to the right of the victim in relation to the offender for the amount of the adjudicated compensation.'</p>	<p>1. Member States shall ensure that, in the course of the criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time.'</p> <p>2. Member States shall ensure that their competent authorities pay directly to the victim the adjudicated compensation without undue delay. The competent authorities shall be subrogated to the right of the victim in relation to the offender for the amount of the adjudicated compensation.'</p> <p>3. Member States shall take the necessary measures to ensure that victims, irrespective of their residence status or type of exploitation, have access to schemes of compensation.</p> <p>4. Member States shall take the necessary measures to ensure that recovered assets and administrative fines are used to pay compensation to victims.</p> <p>5. Member States shall take the necessary measures to ensure that compensation includes (a) Damages for physical or mental harm; (b) Damages for lost opportunities, including</p>

employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential, lost income and due wages according to national law and regulations regarding wages; (d) Moral or non-material damages resulting from moral, physical or psychological injury, emotional distress, pain or suffering; (e) Reimbursement of legal fees and other costs or expenses incurred, including fees for immigration-related procedures; (f) Reimbursement for any other costs or losses incurred by the victim as a direct result of being trafficked and as reasonably assessed by the relevant body or bodies.

6. Member States shall take the necessary measures to ensure that victims are provided with qualified legal assistance necessary to have access to remedies and for the execution of compensation orders, regardless of their immigration status, including free legal aid.

7. Member States shall take the necessary measures to ensure that victims, irrespective of their residence status, have the right to introduce a claim, subject to a limitation period defined in national law, Member States shall ensure that third parties may engage on behalf or in support of a worker in relevant proceedings and establish procedures for the transfer and receipt of any payments owed.

8. Member States shall ensure that procedures for obtaining access to and enforcing remedies are effective, child-sensitive, and readily accessible to children and their representatives, including legal guardians

9. Member States shall take the necessary measures to ensure that non-judicial complaint mechanisms are available to victims, irrespective of their

	<p>residence status and that they are protected from any adverse treatment and from any adverse consequences resulting from a complaint.</p>
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