



E-PROTECT

E-PROTECT – Policy Guidelines for Italy

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I. Introduction

E-PROTECT ('Enhancing PROtection of Children – vicTims of crime') is an EU-funded research project between October 2017 and September 2019 with the aim to strengthen the application of Directive 2012/29/EU (in the following Victims' Directive or VD) in the case of child victims, as well as to contribute to the overall protection of child victims in the European Union.

One of the core aims of the project is to identify how professionals conduct the individual assessment of child victims according to Art. 22 VD, thus, how they determine which protective measures should be taken in a particular case. Several research activities were conducted in close cooperation with experts and practitioners in the field of child victim protection in order to identify challenges as well as good practices.

Five EU Member States participated in the research, namely Bulgaria, Greece, Italy, Austria and Romania. This document contains concrete suggestions for the improvement of current practices of child victim protection in Italy.



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II. Key Findings: Policy Guidelines for EU policy makers

Between October 2017 and September 2019 the E-PROTECT consortium conducted several research activities with the aim to identify how the Victims' Directive was transposed in Austria, Bulgaria, Italy, Greece and Romania. A particular focus was put on the transposition of the *Individual assessment of victims to identify specific protection needs* according to Art. 22 Victims' Directive. The research findings show that the transposition of the Directive turns out to be very diverse across these Member States.

While different standards existed in all Member States assessed, they had already pre-existing victim support measures in place. These distinct legal frameworks and pre-existing terminologies in which the Directive had to be implemented, constituted one of the major challenges of the transposition processes, in particular for the incorporation of the individual needs' assessment of victims in national legislation. As each Member State operates in its own context of victim support infrastructures which already existed before victim rights were regulated on EU level, every country inevitably produces divergent answers for transposing and implementing the Victims' Directive. These distinct national legislative and socio-practical environments in which practitioners and legislators have to act, exposes different understandings of the Member States' responsibilities towards protecting victims of crime at domestic level.

A key aspect for EU policy making is, thus, to include and understand the role of context. It is important that EU policy makers consider the different contextual factors, including different legal systems that determine country specific victim support systems, especially when the goal is to achieve minimum standards. Victims support varies in nature between Member States and therefore, EU policy makers have to take these contexts and different environments into account to develop more flexible means to influence policy and practices in Member States.



Key E-PROTECT Findings

Key Challenges for the protection of child victims of crime in Austria, Bulgaria, Greece, Italy and Romania

- i. There exists a need to **improve cooperation and collaboration** between the different stakeholders involved in procedures involving child victims (police, victim support, judiciary, lawyers).
- ii. **Victim protection legislation, policies and services are often very fragmented.** In particular, there exists a concentration of victim protection services in city centers and a lack of the latter in rural areas.
- iii. **Training for professionals** that are involved in procedures involving child victims – particularly those who conduct interviews - is key to child-friendly justice. Currently, in none of the countries assessed in the scope of E-PROTECT it is ensured that only specially trained professionals conduct interviews with child victims.
- iv. The **transposition of the individual needs’ assessment according to Art. 22 Victims’ Directive** posed several challenges to Member States.
- v. There is a **lack of victimological evidence-based research** in most Member States. This makes it difficult to compare the standards implemented in EU Member States as well as to identify the impact of the Victims’ Directive on EU Member State level.

i. Cooperation and collaboration

In all countries assessed, there exists a dire need to improve cooperation and collaboration between the different stakeholders involved in procedures involving child victims, such as police, victim support organizations, judiciary and lawyers. Further, in most countries there exists no clear allocation of responsibilities between main stakeholders and no clear definition of a case manager. Frequently, multidisciplinary and interdisciplinary collaboration is not perceived as a priority, also because the far-reaching benefits of cooperation are not immediately obvious. As a result, financial and human resources for cooperation activities are often insufficient.



In Austria, research results show that some practitioners have a lack of understanding for the roles and procedures of other organisations involved in procedures involving child victims due to limited cooperation activities. Research findings in Bulgaria suggest that the lack of clear allocation of responsibilities between stakeholders leads to a dilution of responsibility and passing the buck between the competent institutions and organisation. This process is further enhanced by the lack of communication channels not only from multi-agency perspective, but also in terms of the different regions of the country. Further, also the Italian research findings pinpoint the poor multidisciplinary and inter-agency cooperation among the different actors involved as one of the main challenges that needs to be addressed in the field of child victim protection. In Greece, participants of national seminars recognised the need to increase the cooperation of child protection stakeholders through the creation of a coherent network for information exchange and the enhancement of provided services as one the key challenges to be addressed. Lastly, also in Romania there exists a need to improve cooperation and collaboration between the different stakeholders involved in procedures involving child victims.

ii. Fragmentation of legislation and special protection services for child victims

In all countries assessed in the scope of E-PROTECT, there exist specific victim protection services for child victims of crime. However, these systems are often very fragmented and regionally specific. One of the major challenges in this regard is, that there exists a concentration of victim protection services in city centres and a lack of the latter in rural areas. While, for example, in Bulgaria one-stop-shop systems comparable to the Barnahus model are in place, these efforts only exist as an individual NGOs' effort and not as part of a state child protection policy, exacerbating uneven coverage.

Moreover, there exists also a fragmentation in legislation in some Member States assessed within the scope of E-PROTECT. Due to this fragmentation, ensuring an adequate protection of child victims of crime sometimes poses the challenge to guaranteeing equal standards in all regions. In Italy, for example, the fragmented policies and interventions concerning child victims hinder that child rights are upheld in some regions. Also, in Greece, the research findings show that there exists a lack of a national child protection system, which will serve as an umbrella and coordinate the efforts of all relevant agencies and organisations in the country.



iii. Training of practitioners

It is generally acknowledged that it requires special skills and competences to conduct an interview with a child victim, as for example knowledge on the evolving capacities of children or about different communication techniques. Our research results show that currently in none of the countries assessed it is ensured that only professionals that have been particularly trained in conducting interviews with child victims conduct these interviews.

In Austria, it is not ensured that all professionals, who conduct interviews with child victims, received a training in doing so, particularly on the countryside. In Greece and Romania, research activities reveal that there exists a lack of systematic training of professionals, including police, judges and prosecutors. Lastly, in Bulgaria, professionals pointed out that mechanisms for supervision and support to the child protection professionals are missing. The latter hinders the practical implementation of child rights in the light of E-PROTECT as the assigned social workers are unable to examine every case in detail, and often, as a result can only provide basic information of the case to the competent Court.

iv. Individual needs assessment

Overall, the research conducted in the scope of E-PROTECT shows that there exist difficulties to transpose and implement article 22 VD. While some Member States assessed in the scope of E-PROTECT undertook specific measures in order to transpose Art. 22, not all Member States fully implemented Art. 22 VD.

In Bulgaria, the individual needs assessment is only carried out in cases of violent crimes against children and in the case of human trafficking. Thus, children that were not a direct victim of crime will not be subject to an individual assessment. Likewise, in Romania an individual assessment of child victims must only be conducted in the case of sexual abuse and domestic violence. Further, in Italy, research conducted in the scope of E-PROTECT points out a lack of a clear legal definition of violence against children and a lack of a legal transposition of the individual assessment procedure. While in Italy there doesn't exist an explicit provision transposing art. 22 VD in black-letter law, there exists an individual assessment in practice. Only in Austria and Greece new provisions regulating the individual assessment procedure were introduced in the course of the transposition process. In both states, however, the E-PROTECT research results find that the provisions are very vague, leaving several questions unresolved. However, in Greece, towards the end





of the E-PROTECT Project, a Ministerial Decision was issued, which introduced a structured protocol entailing guidelines on how the individual needs assessment should be conducted.

v. Lack of victimological evidence-based research

Lastly, the E-PROTECT research findings reveal that there is a lack of victimological evidence-based research in most European countries. Victimological evidence-based research would constitute an ideal basis for comparing the standards implemented in EU Member States. Understanding the extent of Victims' Directive impact on domestic legislations and practices is difficult to ascertain without evidence of the impact of victim assistance measures on victim experience and a lack of research in this regard.



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III. Methodology

In the first year of the project, a total of thirteen research reports were produced on the basis of 28 expert interviews in Austria (3), Bulgaria (0), Italy (3), Greece (12) and Romania (10) as well as secondary literature. The first eleven studies examined the legal implementation of the Victims' Directive, as well as the practical implementation of the individual assessment of child victims according to Articles 22 - 24 VD. Subsequently, a comparative report on the legal implementation and a comparative report on the practical implementation of the individual assessment were prepared. The purpose of these studies was to highlight common challenges and to identify promising practices. Based on these results, a first draft of a *“Methodology for a rights-based individual assessment of the needs of child victims of crime”* was developed.

In the second year of the project, at least six seminars were held in each of the five partner countries. In total, 35 seminars were held in Austria (6), Bulgaria (7), Italy (7), Greece (6) and Romania (9). In the course of the first round of seminars, the aim was to present the preliminary research findings as well as to identify challenges and good practices. For this purpose, the participants of the seminars were divided into small groups and instructed to discuss a concrete case study following a questionnaire. Both, the case studies and the questionnaire, were used in all partner countries, translated into the local languages. The participants of the seminars were professionals involved in the protection of child victims of crime, including lawyers, judges, prosecutors, police officers, as well as professionals working in child victim protection organisations, psychology and medicine. All participants were sent a protocol containing the main points of discussion with a request for validation.

Based on the findings from the seminars and the research results of the first year of the project, a *“Methodology for a rights-based individual assessment of the needs of child victims of crime”* was developed. This method can be understood as a guide for dealing with child victims in the sense of a child-friendly justice. In addition, concrete suggestions for improvements in the protection of child victims in criminal proceedings were formulated in all five partner countries. The method and the policy guidelines were discussed in a second round of seminars held in the course of 2019 with the aim to present and validate the findings.



IV. Policy Guidelines for Italy

Executive Summary

Key Findings and E-PROTECT opinions

Italian policy makers should:

- Design and implement a structural reform on child protection in order to establish a national child-specific and child-sensitive system of integrated support and assistance to child victims of crime.
- Provide for a qualified system of continuous training under a multidisciplinary and inter-agency approach with the involvement of universities and other competent and accredited training providers.
- Create a centralized data collection system on violence against children that allows to analyze and monitor this phenomenon.

The Italian legislator should:

- Harmonize and integrate laws on child protection from violence and crime, introducing a specific legal definition of violence against children;
- Undertake a legislative reform to specify inter-agency cooperation mechanisms, identifying the actor in charge of overseeing such coordination and defining roles, functions and responsibilities;
- Introduce legal elements to ensure that the best interests of the child are a primary consideration within criminal proceedings involving child victims.



Transposition of Art 22. VD in Italy

Italy	
Does there exist an individual assessment of all victims?	There is no explicit legal provision transposing art. 22 in black-letter law. In practice victims are subjected to an individual assessment when considered particularly vulnerable, including minors.
Who conducts the assessment?	There exists no legal provision determining the responsible authority for conducting the assessment. In practice, it is mostly conducted by the competent public authorities (judge, prosecutor, social services and judicial police).
Are there provisions regulating the manner in which the assessment should take place?	No.
Which criteria have to be taken into account when assessing the specific protection needs?	Some indications are provided by art. 90-quarter ICCP but as are quite general, local institutions and organizations have tried to elaborate their own criteria.
Are child victims considered to be particularly vulnerable <i>ex lege</i> ?	Yes, ex art. 90-quater ICCP.

Policy Recommendations: Transposing the Victims Directive

The Victim's Directive has been superficially transposed into Italian legislation through Legislative Decree 15 December 2015 no. 212. The transposition was based on a generic interpretation of national law with regards to the provisions of the Victim's Directive. As a consequence, this bureaucratic process only introduced a few changes in the Italian legislation that, in many aspects, was already in line with the EU Directive. However, the Italian legislator has lost a unique occasion to harmonize laws on child protection against violence and crime and to further regulate some principles and safeguards introduced by the Directive.

Italy has a legislation on child victims of crime which is very fragmented and disperse; child victims are not considered as vulnerable victim as such. Their particular vulnerability is only recognised according to some typologies of crime which are particularly serious rather than according to the situation of vulnerability determined by their minor age. Very often, law reforms occur as a response to particularly serious cases that capture public attention. Moreover, often these reforms do not respond to an organic vision and are often poorly integrated in the legislative corpus. This emergency approach gives place to law reforms that are not



efficient but, on the contrary, risk to add complexity to the already difficult and fragmented normative system.

As a consequence, the Italian legislator should:

- Harmonize and integrate laws on child protection from violence and crime, introducing a specific legal definition of violence against children.
- Introduce legal elements to ensure that the best interests of the child are a primary consideration within criminal proceedings involving child victims. No other interests of any nature (i.e. procedural exigencies) can undermine or go against the best interests of the child. The protection and wellbeing of the child should be prioritised over any other consideration.
- Undertake a legislative reform to specify inter-agency cooperation mechanisms, identifying the actor in charge of overseeing such coordination and defining roles, functions and responsibilities. An option could be to modify article 609-decies of the Penal Code that establishes the communication, for certain crimes committed against children, from the Prosecutor to the Juvenile Court. Instead, such communication could be sent to the Juvenile Prosecutor since it is the actor that has the power to initiate the procedure for the protection of the child.
- Regulate further article 22 of the Victim's Directive in the national normative framework. The individual assessment of child victims is currently not established as such by law. The Italian legislator and/or policymakers should specify by whom, when and how the individual assessment should be carried out. In the meantime, policy-makers at the central level should develop implementation and operational tools to be used by the concerned actors in the local level.

Italian policymakers should:

- Design a structural reform on child protection in order to establish a national child-specific and child-sensitive system of support and assistance to child victims of crime. This system should be public and cover the national territory. It should act also as a referral system to provide child victims with appropriate services and continuity of care.
- Provide for a qualified system of continuous training under a multidisciplinary and inter-agency approach with the involvement of universities and other competent and accredited training providers. This training system should be coordinated by a mandated actor and should be addressed to all those



professionals working with and for child victims of crime.

- Create a centralized data collection system that allows to analyse and monitor the phenomenon of violence against children.

Individual needs assessment: Putting the child in the centre of the proceeding

The notion of individual assessment as established in article 22 of the Victim's Directive does not correspond with the Italian internal legislation and with the variety of practices. The applicability of article 22 remains vague because it is insufficiently regulated. An intervention would be needed to understand the individual assessment as an integrated process shared among all the actors involved in the protection and care of child victims. Specific roles, functions and operational modalities should be defined. This would avoid the existence of parallel individual assessments which are never compared or shared between the different authorities, agencies and services. To this end, the legislator should identify an actor that is responsible for the coordination of all the different stakeholders that may be involved in the individual assessment or that may make use of it.

With regards to the involvement of the child during the individual assessment, there is a need to optimize time. The earlier authorities are aware of the need to protect a child, the more can be done to unify interviews of the different judicial actors, and to allow the participation of different stakeholders in order to avoid repeated interviews.

In some Italian realities, the figure of the “*curatore speciale*” (special curator) as foreseen in many provisions of the Italian civil code, is assuming a key role also in criminal proceedings. It holds the legal representation of the child during the proceedings when there is a conflict of interests with the “natural” legal representatives of the child. However, if enhanced, this role could assume a function of supervisor of the child's situation and facilitate the communication between the child and the authorities, institutions and any other involved actor. The special curator should represent and defend the best interests of the child and try to qualify the procedural safeguards the child is entitled with, including the right to receive adequate information.



The individual assessment requires an understanding of the victim. However, there is different information that needs to be acquired and it is difficult to do so during the first contact. Based on good practices in other EU Member States, it would be important to introduce in advance to the child victim the judge and the environment in which he or she will be listened.

In the ASL Roma 6, under the initiative of the Prosecutor, a child-sensitive listening room has been created which is more child-friendly than the Court rooms. If feasible, this measure could be extended to all the other Italian territories.

To effectively implement the provisions of articles 351 comma 1 ter, 362 and 391 bis, comma 5 of the Code of Criminal Procedure that establish that interviews to children should be carried out with the assistance of an expert on psychology or child psychiatry appointed by the Juvenile Prosecutor, some prosecutor offices have established work shifts to the experts.

A critical aspect regards the time factor. There is the need to ensure prioritized treatment of those proceedings involving children in order to reduce to the minimum the timeframes of the different procedural phases.

Another key aspect is to ensure that there is a follow-up of the child's case, which includes providing always a feedback to the child after a judicial decision. This often does not occur in case of acquittal. Even if it is an extremely delicate moment, it is absolutely necessary above all when the accused person has not been convicted. It is important to clarify to the child that it is not a matter of lack of trust on the child's version but a problem of insufficient evidence.

A last element which emerged from the national consultations regards the fact that victims are also those children who are forced to commit a crime. In order to prevent this phenomenon, there is a need to raise awareness on the importance to report the situations of risk to the Juvenile Prosecutor.

Overall, the E-PROTECT project was an excellent occasion to raise a common reflection on how to reform the protection system for child victims of crime. The significant involvement and collaboration of the Italian Department of Juvenile Justice of the Ministry of Justice, which is in turn responsible for providing support to child victims of sexual abuse, has allowed to start a nation-wide consultative process with key actors aimed at identifying concrete proposals to improve the system.

