



## European Forum for Restorative Justice<sup>1</sup>

# Feedback to the European Commission proposed revision of the Victims' Rights Directive

The European Forum for Restorative Justice (EFRJ) very much welcomes the European Commission's proposed amendments to the Victims Rights' Directive (hereinafter VRD) that we consider a step forward in strengthening the rights, protection and support of victims in the EU. However, we are concerned about the missed opportunity to include a more ambitious revision of the restorative justice provisions in the VRD.

The EFRJ is sending hereby its feedback to feed the legislative debate within the European Parliament and the Council.

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<sup>1</sup> The European Forum for Restorative Justice (EFRJ) is the leading European network for supporting the development of restorative justice in Europe. Founded in 2000 at the KU Leuven Institute of Criminology, the EFRJ is a membership organisation that currently comprises around 500 members (either individual or organisational), from Europe and beyond. Since 2020 the EFRJ is part of the EU Victims' Rights Platform.





## Summary

The revision of the Victims Rights' Directive (VRD) presents a unique opportunity for the European Union to revise the restorative justice (RJ) provisions in line with the significant developments occurred in the last decade in the field of restorative justice and victims' rights.

There is clear evidence that restorative justice services play a critical role in promoting recovery, reparation, empowerment and justice for a broad spectrum of victims. Restorative justice is inherently victim-centric and child-friendly, and it aligns with the objectives of the VRD and with the European Commission's proposed amendments.

Compelling evidence further indicates that restorative justice effectively addresses all five major categories of victims' needs recognised by the European Commission. These encompass: respectful treatment and recognition as victims, protection from retaliation and further harm, fostering lasting psychological well-being, ensuring access to justice and participation, and providing compensation and restoration.

Noting the support in Victim Support Europe's recent publication on model provisions, the "*Victims of Crime Model Provisions Paper*", we urge the European Union to seize the opportunity to revise the VRD to **ensure effective and equal access to high-quality restorative justice services for all victims of crime who freely want to access such services.**

In many Member States, restorative justice services are inaccessible to many victims. Among the main barriers are exclusion criteria based on offence type or offender characteristics, victims' lack of information about restorative justice, and limited knowledge about restorative justice among professionals that come into contact with victims and who consequently refer few cases to RJ services.

To address these issues, we present two distinct proposals to amend the VRD and increase the accessibility of restorative justice.

### Proposal 1

Establishing a **right of access** to restorative justice services (option A, the strongest option); **or**, (as a less strong yet viable alternative to option A) defining **restorative justice as a generally available service for all victims** as per the CoE Recommendation CM/Rec(2018)8 on restorative justice (option B);

### Proposal 2

Regardless of whether Proposal 1, options A or B, is supported, we recommend **both**:

Enhancing the European Commission's proposed revisions **by incorporating restorative justice into relevant EC amendments** (First Component of Proposal 2), **and by amending certain existing articles on restorative justice** (Second Component of Proposal 2).

Our arguments are evidence-based and supported by relevant international (legal and policy) documents from the European Union, the Council of Europe and the United Nations. Hereinafter, and in Annex 1 we present concrete (drafting) suggestions and in Annex 2 we present detailed references to research findings and to international documents on restorative justice.





### **The EFRJ main objectives concerning restorative justice in the revised VRD**

Our primary objective is to urge the European Union to seize this exceptional opportunity and significantly **ensure an effective and equal access to high-quality restorative justice services for all victims** of crime who freely want to access such services, regardless of the stage of criminal proceedings.

Firstly, promoting accessible and effective restorative justice (RJ) not only aligns with the principles of justice, fairness, and victim-centered approaches, but also underscores the EU's commitment to upholding the rights and well-being of all its citizens. Secondly, expanding the availability of RJ services offers an effective means to address the diverse needs of victims, promoting their active participation in the justice process and fostering emotional healing and recovery. Such an initiative not only enhances the EU's standing on the global as a proponent of forward-looking justice, but also contributes to building safer and more cohesive communities.

There is clear evidence that RJ services play a critical role in promoting recovery, reparation and justice for a wide range of victim (see Annex 2 for research references). Since the adoption of the VRD in 2012, the field of RJ has gone through a significant development to enhance the rule of law and access of justice. In recent years, in fact, significant progress has been made in the provision of RJ by international and European instruments, also related to the rights of victims of crime (see Annex 2 for references to international documents).

The revision of the VRD is a unique opportunity for the European Union to revise the RJ provisions in line with the developments occurred in the last ten years in the field of RJ and victims' rights. EU Member States have themselves committed to RJ in the Council of Europe's (CoE) landmark Recommendation on restorative justice in criminal matters (CM/Rec(2018)8)<sup>2</sup> that was recently (December 2021) further endorsed by the CoE Venice Declaration on the role of restorative justice in criminal matters<sup>3</sup>, unanimously adopted by the Ministers of Justice of the CoE Member States. Moreover, the main provisions of CM/Rec(2018)8 were included into the Recommendation CM/Rec(2023)2 of the Committee of Ministers to Member States on rights, services and support for victims of crime<sup>4</sup> adopted by the Committee of Ministers on 15 March 2023, demonstrating the strong connection between RJ and victims' rights.

We welcome that the proposed revisions include RJ services in the multi-agency discussions and cooperation as well as regarding the victims' right to information. While we strongly affirm that RJ is child-friendly and victim-centered, aligning seamlessly with the goals of the VRD and the EC amendments, we regret that the Commission has not demonstrated a more ambitious commitment to

<sup>2</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016808e35f3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3)

<sup>3</sup> <https://rm.coe.int/0900001680a4df79>

<sup>4</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680aa8263](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa8263)





strengthen the provisions related to RJ. In the last two years, we have advocated in this regard by submitting to the Commission, first, our [evaluation concerning the implementation in the EU Member States of the restorative justice provisions in the Victims' Rights Directive](#) and, secondly, our [recommendations for how restorative justice could be strengthened in the revised VRD](#).

### **Ensure equal access to RJ services in the revised VRD**

As previously mentioned, the EFRJ's primary objective is to ensure effective and equal access to high quality RJ services in the revised VRD. Even when services seem to be available in a Member State, some factors may undermine equal access to these services. Most limitations listed below apply since victims do not enjoy *the right to access* RJ:

- **legislative limitations:** some Member States have legislation about RJ, which includes specific exclusion criteria for certain types of crimes (e.g. homicide, domestic violence, sexual abuse) and/or certain types of victims (e.g. juveniles, disabled people) and/or certain types of offenders (e.g. recidivists);
- **subjective limitations:** often, access to the available RJ services depends on the knowledge, attitudes towards and trust that the referral bodies (e.g. police, prosecutor, judges) have in RJ programmes<sup>5</sup>.
- **territorial limitations:** some Member States may offer RJ only in specific provinces depending on the local movements and funding (geo-political limitations) or depending on the topography of the country (geographical limitations);

It is essential that there are further amendments to the VRD on RJ to increase victims' access to RJ equally and effectively across the EU. We present two distinct proposals to amend the VRD:

#### Proposal 1

Establishing a ***right of access*** to restorative justice services (option A, the strongest option); **or**, (as a less strong yet viable alternative to option A) defining ***restorative justice as a generally available service for all victims*** as per the CoE Recommendation CM/Rec(2018)8 on restorative justice (option B);

#### Proposal 2

Regardless of whether Proposal 1, options A or B, is supported, we recommend **both**:

Enhancing the European Commission's proposed revisions **by**

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<sup>5</sup> EFRJ (2016), Practice Guide for RJ Services. The Victims' Directive: Challenges and opportunities for Restorative Justice





- **incorporating restorative justice into relevant EC amendments** (First Component of Proposal 2), and
- **amending certain existing articles on restorative justice** (Second Component of Proposal 2).

Hereinafter we present more detailed information and recommendations addressing the four options listed above.

### **PROPOSAL 1 OPTION A - Establishing a right of access to restorative justice services**

In December 2021, the Ministers of Justice of the Council of Europe (CoE) Member States unanimously adopted a Declaration on the role of restorative justice in criminal matters (the Venice Declaration). The Venice Declaration fully endorses the CoE Recommendation CM/Rec(2018)8 on restorative justice and calls on the CoE to support its Member States to implement it by underlining the importance and advantages of RJ. In particular, the Ministers of Justice invite the CoE to encourage and assist its Member States to reflect *“on the idea that a right to access to appropriate restorative justice services for all the interested parties, if they freely consent, should be a goal of the national authorities”*.

In June 2020, the European Commission adopted the [EU Strategy on Victims’ Rights \(2020-2025\)](#) that recognises the role of RJ to achieve its first objective: empowering victims of crime, for them to participate in criminal proceeding and to recover. It also states *“restorative justice services provide victims with a safe environment to make their voice heard and support their healing process”*. It considers that *“the potential benefits of such services depend on the availability, accessibility and quality of restorative justice services in the Member States”*.

To ensure that the benefits of RJ and safeguards for victims are realized, as expressed by the EU Strategy on Victims’ Rights, an **effective and equal access to high quality RJ services should be guaranteed for all victims of crime** who freely want to access RJ. This may take the form of establishing the right of access to RJ for all victims of crime in the VRD, as envisaged by the CoE Venice Declaration cited above.

This, at minimum, entails:

- o that access to RJ services should not depend on offender or offence related characteristics, but on the needs of the victim and their voluntary willingness to participate in a restorative process. If the RJ process takes place as diversion or is connected to the criminal justice procedure, criteria on the





offence and the offender can be taken into account by the judiciary during the decision on the effects of a successful RJ process, but not as an accessibility criteria for victims;

- o that RJ services should be accessible in all stages of the criminal procedure (including after sentencing and even after a sentence has been served);
- o the right of the victim to receive full information about the nature, availability and accessibility of RJ services;
- o effective and systematic information and referral procedures taking into consideration the voluntary nature of the process and the importance of victims receiving accurate information directly from RJ services;
- o the right to an individualised, case-by-case assessment with, and ongoing support from competent RJ services. We believe that it is more beneficial for victims if not legal authorities, but RJ services assess the appropriateness of RJ in each case;
- o RJ services need to be available in each EU MS and need to be governed by recognised and harmonised standards;
- o RJ services should be free of charge for service users.

We presented to the European Commission a more detailed proposal in the EFRJ's [Position Paper on the revision of the restorative justice provisions of the Victim' Rights Directive](#). We understand from the European Commission that including an obligation for Members States to implement RJ services into the revised VRD is too ambitious for the time being. **However, for the EFRJ, the establishment of the right to access high quality RJ continues to be the ultimate goal and we will continue to advocate therefore, including for the possibility to have a comprehensive EU binding act on RJ in the future.**





## **PROPOSAL 1 OPTION B – Restorative justice as a generally available service**

The RJ field recently witnessed a growing consensus of the European and international community for a general applicability and accessibility of RJ in criminal matters and beyond. Several countries in Europe already provide RJ programmes as a general service, thus providing RJ as a *de facto* right by it being available in all cases<sup>6</sup>. Several other countries (and regions) are currently approving and introducing new legal frames, policies or service capacities introducing RJ as a generally available service<sup>7</sup>. **We strongly believe that the EU should assist and encourage these developments, as already done by the Council of Europe (CoE) and supported by the Ministers of Justice of the CoE Member States.**

Incorporating key elements from the Council of Europe (CoE) Recommendations regarding both, RJ (2018) and victims' rights (2023) into the revised VRD, would be an important step to guarantee effective and equal access to RJ services to all victims of crime who freely want to access RJ.

While this option does not aim to establish a new right for victims, it would help to minimize the limitations presented above (page 4) regarding access to RJ for victims.

The Council of Europe's landmark Recommendation on restorative justice in criminal matters (CM/Rec(2018)8) rules that RJ should be **a generally available service at all stages of the criminal justice process and for all types of crime** (Rule 18, 19 and 6). The unanimous adoption of the Council of Europe's Declaration on the role of restorative justice in criminal matters in December 2021 demonstrates the willingness of all Ministries of Justice across Europe to develop RJ in line with this CoE Recommendation.

Similarly, the [Recommendation CM/Rec\(2023\)2 of the Committee of Ministers to Member States on rights, services and support for victims of crime](#) adopted by the Committee of Ministers on 15 March 2023 states: *Restorative justice should be a service that is generally available. Restorative justice services should have sufficient capacity to provide safe and effective services to all victims who may benefit. The type and seriousness of the offence, or its geographical location, should not in themselves, and in the absence of other considerations, preclude restorative justice from being offered* (article 18).

**Therefore, we propose amending the VRD to include RJ as a generally available service for victims at all stages of the criminal justice process and for all types of crime.** This requires that

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<sup>6</sup> Belgium, Denmark, Finland, the Netherlands and Sweden

<sup>7</sup> Italy, Estonia, Schleswig Holstein, Ireland, Scotland and Northern Ireland, Basque County





victims be given both the information and the opportunity - through available RJ services and through systematic referral and the option of self-referral - to determine whether RJ is right for them.

In Annex 1 we present concrete drafting recommendations on how RJ could be included in the revised VRD. It includes proposed drafting suggestions concerning Recital 46 of the current VRD and Articles 2, 4, 12 and 25 related to RJ. These same suggestions were presented to the European Commission on May 2022 and again in March 2023. We defined some of our suggested amendments after in-depth discussions with Victim Support Europe (VSE) that allowed us to identify and address the main concerns coming from victim support services and to develop a joint perspective.

The definition and the other provisions concerning RJ listed in Annex 1 are mainly inspired by the 2018 CoE Recommendation and the recent (2021) CoE Venice Declaration on RJ. Our suggestions build on the current VRD and **most of the proposed drafting suggestions are directly taken from the CoE Recommendation on RJ.**







## PROPSAL 2

### **First Component of Proposal 2) - Enhancing the European Commission's proposed revisions by incorporating restorative justice into relevant EC amendments**

While we were aiming at a more profound revision of the VRD articles referring to RJ, still, the EFRJ highly welcomes that the European Commission included RJ in some of the proposed amendments of the VRD.

Here, we present suggestions limited to the EC proposed amendments with the aim of strengthening or clarifying the role of RJ.

In particular, we support the proposal for Member States to establish protocols for coordinating support services to meet the comprehensive needs of victims. It is essential to incorporate RJ services into the national coordination and cooperation framework together with law enforcement, prosecution authorities, judges, detention authorities, and victim support services. Enhancing collaboration between victim support services and restorative justice services would also contribute to create more synergies and to avoid competition between these services. Indeed, they should be implemented in a complementary manner, which can be further clarified in national cooperation frameworks.

We also welcome the proposed requirement to include information about accessing RJ services through helplines. Furthermore, we respectfully suggest that the document envisages the enforcement mechanisms, including the most important one - a requirement for Member States to ensure that personnel receive adequate information and training on RJ to ensure proper implementation of this clause.

Below, we present our considerations concerning the inclusion of RJ in the EC proposed amendments, including drafting suggestions .

- Amended article 3a - **Victims' helpline**

We very much welcome the proposed requirement to include information about available RJ services (article 4.1j) through helplines and websites.

Research and practice have constantly shown that lack of information about RJ is one of the main obstacles concerning the accessibility to RJ. One of the main reasons is that those that should provide information on RJ are not aware of or have a very limited knowledge of RJ and available services. It is therefore **of utmost importance that information providers are adequately trained on RJ.**





Moreover, RJ services are best suited to give comprehensive information on RJ to victims. Therefore we highly suggest that **helplines shall refer cases to restorative justice services** and include in amended article 3(c) these services. Related drafting suggestion to the amended article 3 (c):

*(c) refer victims to specialised support services and/or specialised helplines **and/or restorative justice services if needed.***

- Amended article 8 - **Right to access victim support services**

The very limited referral of cases to RJ services is an additional obstacle concerning the accessibility to RJ. Victims should be granted with multiple entry points for restorative processes and be referred effectively, if they wish so. Therefore, referral of cases to RJ services should be possible not only by judicial authorities, but also by the victims themselves (i.e. self-referrals) and by other services that come into contact with victims (such as victim support services).

Therefore, we would strongly recommend including RJ in the amended article 8 paragraph 2. Our related drafting suggestion is the following:

*‘2. Member States shall ensure that victims are contacted by the relevant general or specialised support services **or restorative justice 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.’*

- Amended article 9 - **Targeted and integrated support services for children**

We very much welcome that the European Commission is including specific amendments addressing rights and needs of child victims rooted in a child-friendly and multi-agency approach based on providing services in an integrated and coordinated manner.

The concept of child-friendly justice as a justice guided by the “*principles of participation, adherence to the best interests of the child, dignity, protection from discrimination, and rule of law*” (CoE Guidelines on Child-friendly Justice) perfectly reflects the principles of RJ. Indeed, child-sensitive and child-friendly RJ services and practices contribute to provide a safe space for children to express themselves and to be treated in full guarantee of the best interests of the child (see related research references in Annex 2).

In 2020, the EFRJ submitted a joint position paper together with Terre des Hommes to the European Commission. The paper presents the benefits for children of a restorative child-friendly approach, an approach that creates a safe space for child victims. It proposes a balanced, tailor-made, creative and





flexible communication process, and giving attention to specific needs for protection and support. Thanks to its core principles, such as voluntary participation, inclusion and empowerment, RJ practices guarantee that each intervention and response focuses on the characteristics, individual needs and strengths of children, that is required for a process to be child-friendly. In all cases involving children in the restorative process, adequate preparation, support, process facilitation and follow-up are needed.

Therefore, we would like to recommend the inclusion of RJ services in the proposed multi-agency mechanisms.

- Amended article 10b - **Right to a review of decisions taken during court proceedings**

In many EU Member States only judicial authorities (judges and prosecutors) can refer cases to RJ services. Due to a lack of knowledge and awareness about RJ, these judicial professionals refer few cases to RJ services. Victims are therefore often excluded from these services, even if they expressed their wish to participate. As a solution, we underline that referral of cases to RJ services should be possible not only by judicial authorities, but also by the parties themselves (i.e. self-referrals) and by services that come into contact with victims (such as victim support services).

Moreover, the recently adopted CoE Recommendation CM/Rec(2023)2 on rights, services and support for victims of crime, states that Member States should ensure that victims are notified of their right to receive information including “*any decision to refrain from referral to restorative justice processes, where the victim has requested such referral*” (article 8 and 10).

We would like to recommend to include in the information that Member States shall provide victims any decision to refrain from referral to restorative justice and, moreover, to give the opportunity to the victims to review such decision.

- Amended article 16 - **Right to decision on compensation from the offender in the course of criminal proceedings**

We welcome that the proposed revision of the VRD gives great importance to the right of victims to receive compensation.

We would like to draw the attention that among the five broad categories of victims’ needs recognized by the EC (“*Protecting victims’ rights*”, [here](#) for more information) RJ is acknowledged as a form of compensation/restoration. Indeed, as research and practice constantly show, RJ increases the effective compensation of victims. Agreements concluded in the RJ process comprise often monetary, material, or other compensation of victims by the offenders. It is demonstrated that these agreements are





fulfilled by offenders in a higher percentage than court ordered compensation and in certain jurisdictions (for example in Spain) there is a requirement that the offender has compensated the victim, to close the case.

Moreover, evidence shows that RJ goes much beyond financial compensation and addresses all five categories of victims' needs, namely: respectful treatment and recognition as victims; protection from retaliation and further harm; support of longer-term psychological benefits; access to justice and participation; and, as already mentioned, compensation and restoration.

We would like to recall the **2019 Milquet Report Strengthening victims' rights: from compensation to reparation**<sup>8</sup>, in which the Special Adviser to the European Commission, Joëlle Milquet, states that "*alternative approaches to seek compensation from the offender include the use of mediation and restorative justice*" and that "*in addition to acting as a form of compensation, these approaches bring extra benefits such as enhancing the victim's re-adaptation into society*" (p.26).

In line with Milquet's recommendation (see for more details Annex 2 on international references), we strongly recommend to clarify the relation between RJ and the compensation to victims. We suggest that the VRD clarifies that engaging in a RJ process does not exclude the right of victims to a decision on compensation in the course of the criminal proceedings, and that any reparation agreement as an outcome of a RJ process is taken into account in the decision on compensation.

- Amended article 26a - **Protocols through national coordination and cooperation**

We highly welcome the inclusion of RJ services in the establishment and implementation of specific protocols on the organisation of services and actions under the Victims' Rights Directive, through national coordination and cooperation with relevant other services.

Our suggestions concern the inclusion of mechanisms to ensure that Member States fully comply with the requirement to incorporate RJ into the multi-agency approach and establish protocols through national coordination and cooperation. This could include the following components: periodic reviews, reporting requirements, capacity building and funding, legal remedies, training and education, and awareness raising. These protocols should also ensure that RJ and different victim support services do not compete with each and mutually enrich each other's work.

- Amended article 22 – **Individual assessment of victims to identify specific support and protection needs**

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<sup>8</sup> [https://commission.europa.eu/system/files/2019-03/strengthening\\_victims\\_rights\\_-\\_from\\_compensation\\_to\\_reparation\\_rev.pdf](https://commission.europa.eu/system/files/2019-03/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf)





We welcome the proposed amendments to article 22 concerning individual assessment of victims. What remains unclear is who (which authority) should carry out the assessment. We strongly oppose that, as the EC seems to suggest, the individual assessment is carried out by the police.

We would like to stress that victims' different needs can be satisfied by RJ. Therefore, we strongly recommend to include that the individual assessment ensures that those needs of the victim that can be satisfied by RJ are properly identified.

In this regard, the recently adopted CoE Recommendation CM/Rec(2023)2 on rights, services and support for victims of crime states in article 4 that *“the individual assessment should at least be conducted in criminal justice proceedings and in relation to the victims' protection needs, but member States are encouraged to investigate and apply a similar strategy to other procedural needs and in other legal proceedings, as well as in support and restorative justice programmes”*.

We suggest that a multi-agency team, composed of victim support services and RJ services should carry out the individual assessment of the victims. As a minimum, we require that those that carry out the individual victim assessment are properly trained on RJ.

- Amended article 28 - **Provision of data and statistics**

We welcome the amended article 28 that requires Member States to take the necessary measures to establish a system for the collection, production and dissemination of statistics on victims of crime.

We would like to highly recommend including the collection of data on RJ. This would provide, first, relevant further data on victims of crime and, secondly, more available statistical data on RJ services. Currently, data on RJ services is not collected in a systematic and comprehensive way and where data is available, very often it is focusing on the offence or offender only.





## PROPOSAL 2

### Second Component of Proposal 2 - Enhancing the European Commission's proposed revisions by amending certain existing articles on restorative justice

#### Revision of Recital 46 and Art 12 of the VRD

Since the adoption of the Victims' Rights Directive in 2012, the field of RJ has gone through a significant development to enhance the rule of law and access of justice.

The revision of the VRD is an opportunity to at least reflect these developments and ameliorate the text related to RJ in the Directive. Since the European Commission did not propose to amend article 12 of the VRD, which is the main article concerning RJ, in addition to our recommendations concerning the European Commission's proposed amendments (see First Component of Proposal 2) we strongly recommend to revise Article 12, as well as the Recital 46 on RJ.

#### 1. **RECITAL 46** (revision of the current recital 46 of the VRD)

The aim of our amendments to the Recital 46 is to include recent developments in the field and (supranational) policy making on RJ, as referred to above. In particular, we included references to the EU Strategy on Victims' Rights, the CoE Recommendation on RJ and the CoE Venice Declaration on RJ.

Original text VRD	Suggested amended text
<p>Restorative justice services, including for example victim- offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, <del>but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation.</del></p> <p>Such services should <del>therefore</del> have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm.</p>	<p>Restorative justice services, including for example <b>those that offer</b> victim-offender mediation, restorative conferencing, family group conferencing and sentencing circles, can be of great benefit to the victim. <b>Restorative justice services provide victims with a safe environment to make their voice heard and support their recovery process.</b></p> <p>Such services should have <b>consideration to</b> the interests and needs of the victim, to repairing the harm done to the victim and avoiding further harm, <b>ensuring that the</b></p>





~~Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process.~~

Restorative justice processes should, **in principle**, be confidential, unless agreed otherwise by the parties, or as required by national law due to an overriding public interest. ~~Factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest.~~

victim's voice is heard, and that the process is delivered in a balanced and safe manner. The decision to participate and the agreement in a restorative justice process should be based on free and informed consent. Victims should be given both the information and the opportunity (through systematic referral and the option of self-referral) to determine whether and when restorative justice is right for them.

Restorative justice services must be governed by recognised, evidence-based standards of practice to ensure the protection of victims, including vulnerable victims and victims of serious offences. Standards aim to ensure that services address and enable the reparation of harm effectively and prevent secondary and repeat victimisation, intimidation or retaliation. In the latter case legal remedies should be available.

Restorative justice should be confidential, unless agreed otherwise by the parties, or required by national law due to an overriding public interest.





## 2. **RESTORATIVE JUSTICE** (*revision of Article 12 of the current VRD*)

Article 12 of the Directive is the only article entirely dedicated to RJ. Thus, we consider relevant that this article enhances the access to RJ services for all victims of crime who freely wish to participate in a RJ process.

We aim for a balance between complying with protection measures and allowing victims to make their own decisions.

To ensure safety of victims, adequate standards should be in place to minimise the risk of any harm caused to victims and maximise potential benefits in the course of the RJ process. Such standards of competence and ethical rules are necessary to prevent secondary and repeat victimisation, intimidation and retaliation of victims. Specific safeguards and enhanced procedures should be in place when working with victims that are considered particularly vulnerable, such as those of domestic violence.

Our suggested amendments relate to the above by strengthening the safeguards already mentioned in the VRD and by proposing further safeguards. Since the development and dissemination of standards for high quality service delivery is at the core of the work of the EFRJ, we ask to consider the reflection of principles outlined in the "[EFRJ Manual on Restorative Justice Values and Standards for Practice](#)" as a basis for EU wide standards in the revised VRD.

Further suggested amendments relate to Article 12.2 concerning referral of cases to RJ services. Research findings (see [EFRJ evaluation report on the implementation of RJ provisions of the VRD](#)) reveal that even where guidelines and protocols concerning the referral of cases are available in MSs, these are only partially implemented in practice, or not systematically implemented.

The very limited referral of cases to RJ services is a further main obstacle concerning the accessibility to RJ and reasons for its underuse. Victims should be granted multiple entry points for restorative processes and be referred effectively, if they wish so. Referral of cases to RJ services should be possible not only by judicial authorities, but also by the parties themselves (i.e. self-referrals) and by services that come into contact with victims (such as victim support services). The role of victim support services in referring cases to RJ services emerges to be very significant and this role should be further promoted and increased by promoting the complementarity of these services and avoiding (financial and other kind of) competition.

We strongly recommend to avoid the qualification "as appropriate" in art. 12.2 since it leaves room for different interpretations and discretionary power for those who are supposed to refer cases effectively. It is important that the VRD itself does not explicitly exclude any victim from participating in RJ, but only mentions a list of factors to be considered to protect victims participating in a RJ process.







Original text VRD	Suggested amended text
<p data-bbox="167 436 791 510">Title: <del>Right to safeguards in the context of restorative justice services</del></p> <p data-bbox="167 1153 791 1523">1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, <del>to be applied when providing any restorative justice services</del>. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:</p> <p data-bbox="167 1657 791 1859">(a) <del>the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations</del>, and are based on the victim's free and informed consent, which may be withdrawn at any time;</p>	<p data-bbox="813 436 1133 465">Title: Restorative justice</p> <p data-bbox="813 515 1436 716">1. Member States should facilitate access to restorative justice to victims of crime who freely wish so. Victims should be provided with sufficient information to determine whether or not they wish to participate.</p> <p data-bbox="813 772 1436 974">(a) restorative justice shall operate according to the following principles: stakeholder participation; voluntariness; neutral facilitation; respectful dialogue; procedural fairness and consensus-based agreement.</p> <p data-bbox="813 1019 1436 1097">(b) restorative justice should be available free of charge for victims..</p> <p data-bbox="813 1153 1436 1265">2. Member States shall take measures to ensure that restorative justice services are governed by standards and safeguards.</p> <p data-bbox="813 1321 1436 1601">Standards and safeguards are necessary to prevent secondary and repeat victimisation, intimidation and retaliation. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:</p> <p data-bbox="813 1657 1436 1769">(a) the restorative justice services are used only if based on the victim's free and informed consent, which may be withdrawn at any time.</p>





(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;

(c) the offender has acknowledged the basic facts of the case;

(d) any agreement is arrived at voluntarily ~~and may be taken into account in any further criminal proceedings;~~

(e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, ~~as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.~~

(b) before agreeing to participate in the restorative justice process, the victims are provided with full and unbiased information about that process and the potential outcomes, as well as information about the procedures for supervising the implementation of any agreement **and, if relevant, the possible implications for ongoing legal proceedings;**

(c) the offender has acknowledged the basic facts of the case;

(d) **specific standards should be in place when working with victims that are considered vulnerable;**

(e) any agreement is arrived at voluntarily **and legislation should clarify how the outcome of restorative justice processes are taken into account in any further legal proceedings.**

(f) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

3. Member States shall facilitate the referral of cases to restorative justice services by clear procedures and guidelines.

(a) **Member States shall ensure that referral of cases to restorative justice services may be made by judicial authorities, but also by the victims themselves (i.e. self-referrals) and by services that come into contact with victims (such as victim support services).**



## ANNEX 1

### Drafting suggestions concerning Proposal 1 option B) – Restorative justice as a general available service

Hereinafter we present our drafting suggestions to the current VRD in order to include RJ as a general available services.

By including some of the most relevant provisions of the CoE Recommendation on RJ – such as integrating a rule in the revised VRD that RJ should be **a generally available service at all stages of the criminal justice process and for all types of crime** (Rule 18, 19 and 6) – could be an important step in this regard. Our suggestions build on the current VRD and **most of the proposed drafting suggestions are directly taken from the CoE Recommendation on RJ.**

Very significant for defining some of our suggested amendments have been the in-depth discussions with Victim Support Europe (VSE) that allowed us to identify and address the main concerns coming from victim support services and to develop a joint perspective. The revised art 12 proposed below has been drafted together and in accordance with Victim Support Europe and submitted to the European Commission in March 2023.

#### 1. RECITAL

*(revision of Recital 46 in the current VRD)*

The aim of our proposed amendments to the Recital 46 is to include recent developments in the field and (supranational) policy making on RJ, as referred to above. In particular we included references to the EU Strategy on Victims' Rights, the CoE Recommendation on RJ and the CoE Venice Declaration on RJ. Moreover, the suggested amendments would make the Recital coherent with the rest of our suggested amendments (see below).

Original text VRD	Suggested amended text
Restorative justice services, including for example victim- offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, <del>but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation.</del> Such services should <del>therefore</del> have as a primary consideration the interests and needs of the	Restorative justice services, including for example <b>those that offer</b> victim-offender mediation, restorative conferencing, family group conferencing and sentencing circles, can be of great benefit to the victim. Restorative justice services provide victims with a safe environment to make their voice heard and support their <b>recovery</b> process.

victim, repairing the harm done to the victim and avoiding further harm. ~~Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process.~~

Restorative justice often takes the form of a dialogue (whether direct or indirect) between the victim and the offender (the parties), and can also involve, where appropriate, other persons directly or indirectly affected by a crime. This may include supporters of victims and offenders, relevant professionals and members or representatives of affected communities.

Such services should have a consideration to the interests and needs of the victim, to repairing the harm done to the victim and avoiding further harm, ensuring that the victim's voice is heard, that the process is delivered in a balanced and safe manner. The decision to participate and the agreement in a restorative justice process should be based on free and informed consent. Victims should be given both the information and the opportunity (through systematic referral and providing the option of self-referral) to determine whether and when restorative justice is right for them.

Referral of cases to restorative justice services should be possible not only by judicial authorities, but also by the parties themselves (i.e. self-referrals) and by services that come into contact with victims (such as victim support services). Referral should be available also in the absence of a judicial procedure and at any time following the offence.

Restorative justice services must be governed by recognised, evidence-based standards of practice to ensure the protection of victims, including vulnerable victims and victims of serious offenses. Standards aim to ensure that services address and enable the reparation of

<p>Restorative justice processes should, <del>in</del> <b>principle</b>, be confidential, unless agreed otherwise by the parties, or as required by national law due to an overriding public interest. <del>Factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest.</del></p>	<p>harm effectively and prevent secondary and repeat victimisation, intimidation or retaliation. In the latter case legal remedies should be available.</p> <p>Restorative justice should be confidential, unless agreed otherwise by the parties, or required by national law due to an overriding public interest.</p>
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## 2. DEFINITION

(revision of *Article 2 in the current VRD*)

The suggested amendments to the definition of RJ are directly taken from the definition of RJ in the CoE recommendation on RJ which is perceived as more complete. In particular, the use of “people harmed by/responsible for” is suggested instead of “victim and offender”, since it reflects more the scope of RJ by putting the focus on the harm caused by a crime. Moreover, the CoE definition includes the community (relatives, friends, neighbours - anyone else who has been affected by the harm) as a relevant party in RJ processes. The suggested amendments also include RJ principles such as listed in the CoE Recommendation on RJ.

Original text VRD	Suggested amended text
<p>1. For the purposes of this Directive the following definitions shall apply:</p> <p>(d) ‘restorative justice’ means any process <del>whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.</del></p>	<p>1. For the purposes of this Directive, the following definitions shall apply:</p> <p>(d) ‘restorative justice’ means any process <b>which enables those harmed by crime and those responsible for that harm (the parties), if they freely consent, to participate actively in a dialogue on the resolution of matters arising</b></p>

	from the criminal offence through the help of a trained and impartial third party (the facilitator).
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**3. RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH A COMPETENT AUTHORITY**

*(revision of Article 4 of the current VRD)*

This article is highly important in terms of accessibility to RJ services, as research and practice have constantly shown that lack of information about RJ is one of the main obstacles concerning the accessibility to RJ and reasons for its underuse (see for example EFRJ evaluation paper on the implementation of RJ provisions of the VRD). Giving information about existing RJ services depends on several factors: whether, when, how often, by whom, and how this information will be provided.

The revised VRD should strengthen the right to information on available RJ services with a view to ensuring consistent and systematic provision of information to all victims of a crime in an adequate way.

The suggested amendments take the above into consideration. Victims should be informed at the beginning of the proceeding but also repeatedly in every stage of the criminal proceedings and by different authorities and (RJ and other) professionals. Additionally, cooperation should be developed between legal professionals, victim support services and RJ services. The role of victim support services in providing information on RJ emerges to be very significant and this role should be further promoted and increased.

Original text VRD	Suggested amended text
<p>1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:</p> <p>(j) the available restorative justice services;</p>	<p>1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:</p> <p>(j) information on the available restorative justice services that can be contacted by the victim at any time following the offence, and on the manners in which they can effectively access those services.</p>

	<p>Member States shall set up a coordinated provision of information through state and non-state bodies (including police, judicial authorities, victim support services and restorative justice services) that come into contact with victims to ensure consistent, systematic provision of information. Information should be provided effectively, in several formats and at several times during a criminal justice procedure, including the post-sentence phase.</p>
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**4. ACCESS RESTORATIVE JUSTICE SERVICES THAT ADHERE TO STANDARDS**

*(revision of Article 12 of the current VRD)*

Article 12 of the Directive is the only article entirely dedicated to RJ. Thus, we consider relevant that this article includes the guarantee of effective and equal access to RJ services for all victims of crime who freely wish to participate in a RJ process (as reflected in the suggested amendment of the title of the article). The suggested amendments relate to the following:

A victim-sensitive and individualised approach should be adopted to enable victims’ participation as they wish, when it is safe for them to do so. Any criteria for restricting access to RJ services should be applied on a case-by-case basis in accordance with the needs of victims. Member States should remove blanket exemptions based on the type of crime or characteristics of the offender.

The inclusion of rule 18 of the CoE recommendation on RJ into the revised VRD should fulfil this purpose: *“restorative justice should be a generally available service at all stages of the criminal justice process. The type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude victims from accessing restorative justice services”*.

To ensure safety of victims, adequate standards should be in place to minimise any harm caused to victims and maximise potential benefits during the RJ process. Such standards of competence and ethical rules are necessary to prevent secondary and repeat victimisation, intimidation and retaliation towards victims. Specific safeguards and enhanced procedures should be put in place when working with victims who are considered vulnerable, such as those of domestic violence. We aim for a balance between complying with protection measures and allowing victims to make their own decisions.

Further suggested amendments relate to the above. They strengthen the safeguards already mentioned in the VRD and further safeguards are included.

The revised VRD should ensure the neutrality (independence) of RJ services. RJ should secure a balanced approach towards victims and offenders. The revised VRD should encourage Member States to offer RJ services through independent service providers, which do not work otherwise with victims or offenders. Alternatively, RJ services should be equally accessible through victim-focused and offender-focused organisations at national level. Where the process is offered or run by an organisation working with either the offender or the victim, Member States should put in place procedural safeguards to ensure the neutrality of the process.

Further suggested amendments relate to article 12.2 concerning referral of cases to RJ services. Research findings (see [EFRJ evaluation report on the implementation of RJ provisions of the VRD](#)) reveal that even where guidelines and protocols concerning the referral of cases are available in member States, these are only partially implemented in practice or not systematically implemented.

The very limited referral of cases to RJ services is a further main obstacle concerning the accessibility to RJ and reasons for its underuse. Victims should be afforded multiple entry points for restorative processes and be referred effectively, if they wish to do so. The referral of cases to RJ services should be possible not only by judicial authorities, but also by the parties themselves (i.e. self-referrals) and by services that come into contact with victims (such as victim support services). The role of victim support services in referring cases to RJ services is very significant and this role should be further promoted and increased by underlining that the two services restorative justice services and victim support services should be implemented in a complementary manner.

We strongly recommend avoiding the qualification “as appropriate” in art. 12.2 since it leaves room for different interpretations and discretionary power for those who are supposed to refer cases effectively. It is important that the VRD itself does not explicitly exclude any victim from participating in RJ, but only mentions a list of factors to be considered to protect victims participating in a RJ process.

Original text VRD	Suggested amended text
<p>Title: <del>Right to safeguards in the context of restorative justice services</del></p>	<p>Title: Restorative justice</p> <p>1. Restorative justice should be a generally available service at all stages of the criminal justice process. The type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude victims from accessing restorative justice services.</p>



1. Member States shall 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~~. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

(a) the restorative justice services are used only if they are in the interest of the ~~victim~~, subject to

(a) restorative justice shall operate according to the following principles: stakeholder participation; voluntariness; respectful dialogue; equal concern for the needs and interests of the parties; procedural fairness and consensus-based agreement.

(b) restorative justice should be available free of charge.

2. Member States shall take measures to ensure that restorative justice services are available nationwide and are governed by standards and safeguards which are acknowledged by the competent authorities.

Standards and safeguards are necessary to prevent secondary and repeat victimisation, intimidation and retaliation. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

(a) restorative justice providers operate in a neutral way. Neutrality of services shall be achieved by ensuring that restorative justice is offered by a balanced distribution of independent, offender or victim led organisations. Where the process is offered or run by an organisation working with either the offender or the victim, procedural standards should be in place to ensure the neutrality of the facilitator, of the service and of the restorative process.

<p>any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;</p> <p>(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;</p> <p>(c) the offender has acknowledged the basic facts of the case;</p> <p>(d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;</p> <p>(e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.</p>	<p>(b) the restorative justice services are used only if they are in the interest of the parties<sup>9</sup>, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time. No person should be induced by unfair means to participate in restorative justice.</p> <p>(c) before agreeing to participate in the restorative justice process, the victims are provided with full and unbiased information about that process and the potential outcomes, as well as information about the procedures for supervising the implementation of any agreement and, if relevant, the possible implications for ongoing legal proceedings;</p> <p>(d) the offender has acknowledged the basic facts of the case;</p> <p>(e) specific standards should be in place when working with victims that are considered vulnerable;</p> <p>(g) any agreement is arrived at voluntarily and may be taken into account in any further legal proceedings;</p> <p>(h) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.</p>
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<sup>9</sup> The current drafting implies that restorative justice may take place where it is not in the interest of the offender. This is in contrast with restorative justice principles. The easy solution is to refer to both parties. As an alternative, you could state that restorative justice services should not be used if they are not in the interests of the victims.

<p>2. Member States shall facilitate the referral of cases, <del>as appropriate</del> to restorative justice services, <del>including through the establishment of procedures or guidelines on the conditions for such referral.</del></p>	<p>3. Member States shall facilitate the referral of cases to restorative justice services by clear procedures and guidelines at each stage of the criminal justice process.</p> <p>(a) Member States shall ensure that referrals may be made by justice authorities and by other services that come into contact with victims. Victims shall not be prevented from seeking restorative justice on their own account (self-referral).</p> <p>4. Member State shall take measures to ensure that where dialogue between victims and offenders is not possible, victims may be referred to other services and practices aimed at reparation or recovery that are delivered in accordance with restorative justice principles.</p>
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## 5. TRAINING OF PRACTITIONERS

*(revision of Article 25 of the current VRD)*

The lack of awareness and knowledge on RJ amongst key actors that should inform victims about RJ and refer cases to RJ services (police, prosecutors, judges, other legal professionals and other actors coming into contact with victims, e.g. victim support services) is another of the main reasons for the limited accessibility to RJ.

Moreover, training of the facilitators (i.e. RJ practitioners) is one of the major guarantees of high-quality and safe RJ processes. Facilitators should receive advanced and continuous training before delivering RJ in sensitive, complex or serious cases.

Original text VRD	Suggested amended text
<p>4. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice</p>	<p>4. Through their public services or by funding victim support organisations and restorative justice services, Member States shall encourage initiatives enabling those providing victim</p>

services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

5. Whereas a victim may benefit from referral to restorative justice services at every stage of the criminal justice process, Member States shall ensure that all competent authorities are trained to inform victims on restorative justice accurately and impartially, and to make referrals to restorative justice services. This training should be provided in relevant training institutes and programmes, such as in police and judicial training, and include regular, ongoing training opportunities for professionals.

6. Training of restorative justice facilitators should be governed by recognised standards as a core safeguard for the parties. Facilitators should be experienced and receive advanced and specialist training before delivering restorative justice in sensitive, complex or serious cases, or cases involving vulnerable victims.

## ANNEX 3

### References to international documents on RJ and relevant research findings

#### *Developments in the European and International Policy Framework on restorative justice: an overview*

With the adoption in 2012 of the European Union (EU) Victims' Rights Directive (Directive 2012/29/EU) (VRD) and in 2018 of the Council of Europe's (CoE) landmark [Recommendation on restorative justice in criminal matters \(CM/Rec\(2018\)8\)](#), the RJ field witnessed new international legal instruments and guidelines that demonstrate a growing consensus of the international community for a general applicability of RJ in criminal matters and beyond.

In 2020, the United Nations Office on Drugs and Crime (UNODC) published the [Second Edition of the Handbook on Restorative Justice Programmes](#), integrating new developments, including the potential of RJ in meeting the needs of victims of serious crimes.

In June 2020, the European Commission adopted the [EU Strategy on Victims' Rights \(2020-2025\)](#) that recognises the role of RJ to achieve its first objective: empowering victims of crime, for them to participate in criminal proceeding and to recover. It also states "*restorative justice services provide victims with a safe environment to make their voice heard and support their healing process*". It considers that "*the potential benefits of such services depend on the availability, accessibility and quality of restorative justice services in the Member States*".

The [2019 Milquet Report "Strengthening victims' rights: from compensation to reparation"](#) embraces a holistic move away from compensation, and towards recognition, restitution, support and care, as valuable reparations to support victims to cope with, and recover from the harm caused by crime. In this regard, the Special Adviser recommended: to include in EU rules (for instance a revised Victims' Rights Directive) or to recommend the use of a pre-trial mediation/restorative justice, noting the benefits to victims of using RJ to divert cases from court, up to and including those which might receive a five year custodial sentence (Recommendation n°33: On pre-trial mediation/restorative justice to enhance victim's re-adaptation to society and act as a form of offender compensation (legislative change or recommendation)).

We would like to draw particular attention to a very recent document that demonstrates the willingness of all the Ministries of Justice in Europe to develop RJ. In December 2021, the Ministries of Justice of the Council of Europe (CoE) Member States unanimously adopted a [Declaration on the Role of Restorative Justice in Criminal Matters](#) (the Venice Declaration). The Venice Declaration fully endorses the CoE Recommendation CM/Rec(2018)8 on restorative justice and calls on the CoE to support its Member States to implement it by underlining the importance and advantages of RJ. The most advanced international document in the field, the CoE Recommendation on RJ states that **RJ should be a generally available service at all stages of the criminal justice process and for all types of crime** (Rules 18, 19 and 6).

In particular, the Ministries of Justice invite the CoE to encourage and assist its Member States to: *“develop national action plans or policies, where necessary, for the implementation of Recommendation CM/Rec (2018)8 on restorative justice in criminal matters, by ensuring inter agency co-operation nationwide, **adequate national legislation and funding, while reflecting on the idea that a right to access to appropriate restorative justice services for all the interested parties, if they freely consent, should be a goal of the national authorities**”*. It also encourages Member States to actively raise awareness of RJ nationwide and to provide adequate judicial and legal training in this respect.

It also situates the development of RJ within United Nations Sustainable Development Goal 16: promoting just, peaceful, and inclusive societies. It does not consider RJ only *“as a simple tool in the framework of the traditional approach to criminal justice, but as a broader culture that should permeate the criminal justice system based on the participation of the victim and the offender on a voluntary basis, as well as other affected parties and the wider community in addressing and repairing the harm caused by crime”*.

It affirms *“the positive impact of RJ on reducing recidivism and noting the ample empirical evidence which proves that restorative justice is effective and produces satisfactory results for the parties of the conflicts concerned and, beyond that, for a community as a whole”*.

Given the developments and progress in the field of victims' rights and victimology, on March 15th 2023, the Committee of Ministers of the Council of Europe adopted [Recommendation CM/Rec\(2023\)2 of the Committee of Ministers to Member States on rights, services and support for victims of crime](#). Restorative justice plays a relevant role in this new CoE Recommendation on victims' rights. Particularly important is also Article 10, in which the right for victims to be heard regarding any decision(s) to refrain from referral to RJ services must be ensured by the Member States. The main elements related to RJ are the ones included in Article 18. In this article, the Recommendation states that the provision of RJ services should be made “generally available” for victims, and these services should have an adequate capacity to ensure the participation of any victim who wishes to access them.

#### References:

- COM/2020/258 final 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 victims' rights (2020-2025)
- Council of Europe: Committee of Ministers, Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States concerning restorative justice in criminal matters, October 3<sup>rd</sup> 2018.
- Council of Europe: Declaration of the Ministers of Justice of the Council of Europe Member States on the role of restorative justice in criminal matters, on the occasion of the Conference of the Ministers of Justice of the Council of Europe “Crime and Criminal Justice - the role of restorative justice in Europe”, 13<sup>th</sup> and 14<sup>th</sup>, December 2021.
- Directive 2012/29 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
- Milquet, J. (2019) European Commission: Report 'Strengthening victims' rights: from compensation to reparation': for a new EU Victims' rights strategy 2020-2025. European Union: Luxembourg.

- United Nations Office on Drugs and Crime (2020) Handbook on Restorative Justice Programmes Second Edition. CRIMINAL JUSTICE HANDBOOK SERIES: Vienna.
- Recommendation CM/Rec(2023)2 of the Committee of Ministers to Member States on rights, services and support for victims of crime

### Research findings

RJ complements the criminal justice system through a process that enables the participation of victims and offenders more effectively than traditional approaches. Rigorous research shows that victims and offenders participating in RJ processes have a more satisfactory experience of justice. By giving victims the choice to decide whether to participate in RJ processes, RJ advances procedural justice and empowers victims. Studies consistently state that restorative processes achieve satisfaction among at least 85% of the participating victims, improve closure and healing and reduce the fear of further harm to the victim. Meeting with the offender has been shown to reduce post-traumatic stress symptoms in victims and in general helps victims to move forward. These positive outcomes can be understood – according to research – as contributing to meeting the elementary ‘justice needs’ of victims: acknowledgment, having voice, receiving validation, expressing vindication and experiencing accountability. To learn more about the essential research outcomes based on RJ studies we refer to the EFRJ paper *Effectiveness of restorative justice practices. An overview of empirical research on restorative justice practices in Europe* (2017):

<https://www.euforumrj.org/sites/default/files/2019-11/a.2.7.-effectiveness-of-restorative-justice-practices-2017-efrj.pdf>

The five broad categories of victims’ needs recognized by the EC (“*Protecting victims’ rights*”, [here](#) for more information) restorative justice is acknowledged as a form of compensation/restoration. Indeed, agreements concluded in the restorative justice process comprise often monetary, material or other compensation of victims by the offenders. These agreements are fulfilled by offenders in a higher percentage than court ordered compensation.

Nevertheless, as explained above, research-based evidence shows that restorative justice goes much beyond of financial compensation and addresses all five categories of victims’ needs, namely: respectful treatment and recognition as victims; protection from retaliation and further harm; support of longer-term psychological benefits; access to justice and participation; and, as already mentioned, compensation and restoration.

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- [European Forum for Restorative Justice. \(2017\). \*Effectiveness of restorative justice practices: An overview of empirical research on restorative justice practices in Europe\*. European Forum for Restorative Justice. Leuven. Belgium. Retrieval on \[www.euforumrj.org\]\(http://www.euforumrj.org\)](#)
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### **Restorative Justice and child victims**

On 23 February 2022, the Committee of Ministers of the Council of Europe adopted the new Strategy for the Rights of the Child (2022-2027), “Children’s Rights in Action: from continuous implementation to join innovation”. In paragraph 39, under section 2.4 “Child-friendly justice for all children,” the Strategy reads:

*Being in contact with the justice system can be a traumatic experience for children. General Comment No. 24 of the CRC<sup>10</sup> has recognized that exposure to the criminal justice system causes harm to children, limiting their chances of becoming responsible adults. States resort to criminal justice too frequently, while restorative justice should be given priority in line with Council of Europe standards.*

Restorative justice, which in many countries has its roots in child justice, can also include child victims in the process. Restorative justice could be the preferred way to deal with peer violence or conflicts between children. Indeed, without meaningful participation by children in their justice process, healing processes may be delayed or frozen. In all cases involving children in the restorative process, even more than in other cases, adequate preparation, support, process facilitation and follow-up are needed. Restorative justice must be conceived and implemented based on specific needs and rights of children, for example by using creative child-friendly communication tools to encourage children to share their feelings and stories, by including adults in their support and by considering power-imbalances and other dynamics to prevent further victimization.

The most important phase is the preparation, where trained mediators or facilitators must identify the needs of the child, evaluate the motivations and his/her development, and assess his/her suitability to engage in a RJ

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<sup>10</sup> UN Committee on the Rights of the Child General Comment No. 24 (2019) on children’s rights in the child justice system



encounter. The EFRJ has been involved in an EU funded project coordinated by the International Juvenile Justice Observatory that focused on the implementation of RJ with child victims. For more information, please see the [practical guide developed in the frame of the project \(2018\)](#). By proposing concrete recommendations on how to involve children in RJ processes, the aim of the guide is to assist EU countries in promoting and implementing good standards in the application of RJ where children are the main stakeholders.

Recently, the EFRJ has been involved in further EU funded projects on RJ and child victims. The [project i-RESTORE \(2019-2021\)](#) aimed to strengthen the implementation of RJ with child victims. This involved identifying gaps, gathering insights from professionals, empowering children's advocacy, enhancing policymaker capacities, and raising awareness through campaigns and materials co-created with children aged 12-18. The [i-RESTORE 2.0 \(2022-2024\) project](#) aims to enhance access to high-quality RJ for children in the European legal system. It uses innovative solutions, including digital tools, to empower children and engage families, practitioners, policymakers, and the media.

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### Restorative justice and victims of terrorism

In recent years, some unique RJ experiences have been implemented as a response to (domestic) terrorism (in the Basque Country, Italy and Northern Ireland), also as a strategy to prevent further violence to occur and to create a safe space for memory and for diverse truths to be shared. Also in these cases, facilitators must be well prepared in evaluating the suitability of the parties to meet (e.g. ideologies, individual roles, group dynamics), understanding the different levels of harm, victimization and trauma (individual, collective and social levels), assessing a sort of “transformation” in the offender’s justification of the harm (especially the objectification of victims) and creating a different response to restore the collective feelings of injustice and insecurity, which goes beyond the actual act of terrorism.

A key point to address the harm and suffering caused by the terrorist act is to design and facilitate a victim-initiated RJ process. Indeed, victims may experience relief from receiving the answers to the questions that have tormented them for years (e.g. Why did you kill my loved one? How can you justify causing so much suffering? How did he/she die?), appreciate the opportunity to face the offender with courage and explain the impact of the act, and have the occasion to “change the memory” of the event from being a passive victim to an active agent.

The EFRJ is collaborating with two working groups of the RAN – Radicalisation Awareness Network (EXIT and RVT) to explore existing practices and potentials of RJ regarding victims of extremist violence and disengagement from the radicalized group. For some first recommendations, please see the [publication by RAN from 2019](#).

The EFRJ Working Group on RJ and Violent Extremisms published recently two papers: the [Practice Paper Restorative justice in cases of violent extremism and hate crimes](#) and the [Policy Paper Restorative justice in cases of violent extremism](#).

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## Restorative Justice and violence against women

The UN Second Edition of the Handbook on Restorative Justice Programmes (2020) cites a satisfaction survey conducted on behalf of the Ministry of Justice of New Zealand that reports **that 83 percent of victims of sexual violence who had participated in a restorative justice process were satisfied with the overall process**. It also states that, since sexual crimes have low reporting, prosecution and conviction rates, RJ can provide the opportunity for the victim to access justice services when other processes may be less likely to occur. Very significantly the UN Handbook recognises the risk of second victimisation and that the *“vulnerability of victims of sexual violence raises concerns about if, when and how to approach the topic of restorative justice with them”* but that *“failing to discuss the possibility of restorative justice with the victims may deprive them of an opportunity to heal”*.

Despite the broad support for RJ, misunderstandings persist. The stipulations of the UN Handbook on Violence Against Women and the Istanbul Convention (2014) have caused confusion about the use of RJ in cases of violence against women. Some have suggested that the prohibition of mediation (Article 3.9.1 in the UN Handbook) or mandatory mediation (Article 48 in the Istanbul Convention) precludes RJ from use. This position, however, incorrectly conflates RJ with mandated civil mediation and workplace conciliation.

The difference is clear upon a closer reading of the text. The UN Handbook on VAW explains, “[Mediation] removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability.” RJ, however, does not need to operate outside the scope of the criminal justice system. It can remain under prosecutorial or judicial review as a court-ordered diversion (as it does in Austria), function as a parallel process (as it does in Belgium), or take place after sentencing, sometimes even in detention. Additionally, far from diminishing offender accountability, RJ requires it. Unlike criminal justice and civil proceedings, which allow offenders to argue their culpability, RJ processes only move forward when offenders take responsibility for their wrongdoing.

Similarly, the Istanbul Convention states, “Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to [violence against women]” (Article 48). Article 48 of the Istanbul Convention sets a prohibition of mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the Convention. It bans exclusively mandatory mediation, which is something very far from the restorative justice practice of mediation in criminal cases. Mediation as practiced in the framework of restorative justice - which must be distinguished from civil mediation - is always based on informed, free and ongoing consent and will of all participants.

In this regard, the EFRJ submitted a position paper mainly concerning RJ and the Istanbul Convention ([click here](#) to download this document). As analysed in this paper this preemptory exclusionary rule results quite mitigated in Greivio’s Reports, where State parties are invited to make a careful check of victim’s will: due to

the relationship of domination and control over the victim, the informed, voluntary and free consent of the victim involved must be carefully checked. Moreover, the high risk of secondary victimization suggests that a special caution has to be used in assessing victim's ability to consciously and freely choose the restorative process and to face it without undergoing the effects of an unequal relation. In addition, the risk for a gender-based violence victim entering into a mediation is greater when the legal professional concerned (such as judges, prosecutors and mediators) are not trained in the dynamics and risks of violence against women. On the second side, the Explanatory Report means to avoid that violence against women is treated as a private matter, reducing violence to the dimension of a conflict between spouses managed as a family matter. For this reason, mediation should not replace the trial in front of the Court and should not be alternative to punishment, justifying the idea that violence is not worth be punished, while one of the aims of the Istanbul Convention is to raise the complaint rate and the punishment to make clear that gender-based violence cannot be longer tolerated.

In this sense, RJ is not a way to avoid the trial, it is a way to overcome the silence. We argue, that depriving the right of access to RJ for victims that wish to choose this path is a secondary victimization *per se*.

As research and standards of best practice continue to improve, the benefits that a restorative process can have for victims of domestic or sexual abuse are becoming increasingly recognised and appreciated<sup>11</sup>. In October 2021, the organisation Why me? (a member organisation of the EFRJ) published a new paper – *Using restorative approaches for domestic and sexual abuse: A personal choice*. As argued by Why me?, survivors of sexual and domestic abuse are so often silenced, doubted and retraumatised. RJ can make them feel empowered, listened to and able to move forward. Every victim should be able to speak to a restorative provider if they want to. The organisation gives voice to survivors that experienced RJ in [its website](#) as well as in the above mentioned paper.

Despite the benefits, RJ services must be prepared to understand and address the risks involved in cases of VAW. These cases should follow high standards that guarantee safeguards for victims. Trained restorative facilitators are best placed to work with the individuals involved and manage the risks. This is one of the points highlighted in the EFRJ recently (May 2022) submitted position paper to the European Commission concerning the proposed Directive on Violence against Women and Domestic Violence ([click here](#) to download this document). We argue for securing the availability of RJ for victims, their right to be informed about the existence of these services and the opportunity to freely choose to participate or not, within and beyond criminal procedures, taking into account their individual needs.

We present concrete recommendations on how RJ could be included in the proposed directive on VAW. It also presents key aspects concerning the use of RJ in particularly sensitive cases such as violence against women and domestic violence. The position offers an overview of recent research findings related to victims and RJ (in particular victims of VAW), to RJ and desistance from crime, and to the main EU and international documents concerning RJ, victims' rights and VAW. Click [Here](#), to access this document.

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<sup>11</sup> The organisation Why me? have published in October 2021 a paper – [Using restorative approaches for domestic and sexual abuse: A personal choice](#). The paper builds on academic research, the testimony of Why me? ambassadors (i.e. survivors of domestic and sexual abuse), and existing good practice to unpick the benefits, concerns and best practice for using restorative approaches in cases of domestic and sexual abuse.

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