



IARS

Independent Academic
Research Studies

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European Commission, DG Justice
B-1049 Brussels, Belgium

Re: Replacement of the EU Framework Decision 2001/220/JHA on the Standing of Victims by proposed Directive on Victims

Independent Academic Research Studies (see Annex A) welcomes the Commission's intention and initiatives to strengthen the position of victims in the criminal justice system. As a pan-European, evidence based think-tank with expertise in youth matters, we also strongly agree and support the Commission's statement that victims, which includes young people, must be protected and enjoy minimum level of rights and human rights without discrimination across the EU irrespective of their nationality or country of residence.

However, we are concerned with the proposed Directive on Victims aiming to replace Framework Decision 2001/220/JHA. We strongly support the statement submitted by the European Forum of Restorative Justice. We are writing to submit our thoughts, concerns and recommendations which are backed up by:

- a consortium of European organisations that have come together with IARS and under the leadership of Aristotle University of Thessaloniki to carry out the project *The 3E Model for a Restorative Justice Strategy in Europe* funded under Directorate General Justice, Freedom and Security - Specific Programme Criminal Justice (Annex B). The consortium partners are: Panteion University of Social and Political Sciences (Greece- Athens), Independent Academic Research Studies (UK- London), Institute of Conflict Resolution (Bulgaria –Sofia), University of Lapland (Finland- Rovaniemi), Jagiellonian University of Cracow (Poland – Cracow), University of Miskolc (Hungary – Miskolc), Ramon Llull University – Faculty of Law of the Business and Management School (Spain –Barcelona).
- Young people we consulted with under the EU funded Youth in Action Programme – Action 4.1
- Various UK and EU based restorative justice practitioners and organisations we work with.

Our key concerns can be summarised as follows:

- The obligation **to promote** restorative justice (originally included in the 2001 Framework decision) is omitted. This is a step back, and a disappointing and

unfounded development. We urge the Commission to read carefully existing evidence on restorative justice.

- **The definition of restorative justice** excludes the possibility of indirect contact between victims and offenders within a restorative justice context. Again, this development lacks of evidence and represents a step back in promoting and supporting the restorative justice ethos. For instance, our definition states that “Restorative Justice is an ethos with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue. Restorative justice adopts a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals” ([Gavrielides 2007](#)).
- **Access for all victims** to restorative justice is essential in the final version of the Directive; we remain sceptical that certain groups will be excluded again without the available evidence to back up such as an exclusion.
- Finally, we have strong evidence to believe that in going forward the new Directive needs to make clear that **effective and substantial support** for members state to implement and expand restorative justice will be provided.

We urge the Commission to build on the work that has already been done and treat key documents as the basis for future steps. These include but are not limited to:

- the UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters,
- the Council of Europe Recommendation (1999)19 concerning Mediation in Penal Matters,
- the Council of Europe Recommendation (2006)8 on Assistance to Crime Victims,
- the Council of Europe Guidelines for a Better Implementation of the Existing Recommendation Concerning Mediation in Penal Matters
- Council Framework Decision 2001/220/JHA

Our concerns relate to the following articles of the existing Framework Decision 2001/220/JHA:

“Article 1

Definitions

(e) ‘mediation in criminal cases’ shall be understood as the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person.

Article 10

Penal mediation in the course of criminal proceedings

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

We urge the Commission to consider the recommendations made by the European Forum on rewarding Article 1 and 10. In particular:

Article 1:

"(e) 'Mediation and other restorative justice practices in criminal matters' shall be understood as the search, prior to or during or after all stages of criminal proceedings, for a voluntary agreement between the victim, the offender and eventually others involved regarding how the harm arising from the offence can be addressed, facilitated by a competent person with specific training for this task."

"Article 10

Mediation and other Restorative Justice Practices in Criminal Matters

1. Each Member State shall ensure the availability of restorative justice practices such as for example victim-offender mediation, family group conferencing, etc., for the widest possible range of offences.
2. Each Member State shall ensure that all victims have equal access to competent restorative justice practices.
3. Each Member State shall ensure that all victims are well informed about the offer and nature of restorative justice practices so that victims are in a position to make informed choice and to give informed consent throughout the process.
4. Participation in restorative justice processes should be totally voluntary from the side of the victim, which includes the possibility of withdrawing at any time. Appropriate support for the victim should be offered before, during and after the restorative justice process. Therefore, Member States should ensure that there are clear practice standards including appropriate training regarding the needs of victims so that the interests of the victims are fully considered throughout the process. Member States should further ensure that the services have access to sufficient funding.
5. Each Member State shall ensure that any agreement reached in the course of restorative justice practices can be taken into account in the criminal proceedings in ways that coincide with national provisions on prosecution, sentencing and the execution of sentences. During this process, the interests of the victim shall be considered with respect and upheld."

We would be grateful if you could confirm receipt of this letter and considered our recommendations. We are available to provide oral evidence should you need it. I look forward to hearing from you.

Yours sincerely,

Dr. Theo Gavrielides
IARS Founder & Director

CC: Ministry of Justice (UK), European Forum for Restorative Justice, Restorative Justice Council, 3ERJ Project Partners, IARS members

Annex A

IARS is an independent, social policy think-tank with a charitable mission to transform young people's lives by enabling them to have a better future, and participate equally and democratically in civic life. IARS young people learn to inform policies and practices affecting them whether at a local, regional, national or international level.

Through the provision of **high quality volunteering opportunities, internships, work placements, training, skills-development programmes, accreditation, peer mentoring and research**, IARS young people are given the tools to nurture their talents and become active citizens. Through a youth-led structure, young people from all walks of life learn to **influence decision making structures and the law** and as role models participate in society and support their peers in creating a safer and more equal society where young people are respected and valued.

IARS has expertise in criminal justice, human rights, equality, citizenship, civic engagement, restorative justice and education policy.

Annex B

The 3E Model for a Restorative Justice Strategy in Europe is a two year, EU funded research and policy project that will seek to construct an effective, economic European strategy model for the diffusion of restorative justice as a response to crime at national and regional level.

Through evidence based research, consultation and networking the project aims to:

- facilitate the implementation of good practice throughout Europe
- encourage cross-country learning and collaboration in the area of restorative justice
- influence national and international policy
- identify a sound basis for restorative justice that is adjustable to all the nations and justice systems within the European Union
- inform and influence restorative practices and the restorative justice movement
- increase public awareness and promote the use of restorative justice
- publish (academic aims and progression).