



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

### Position Paper on the Evaluation of the Restorative Justice provisions of the Victims' Rights Directive

The European Forum for Restorative Justice (EFRJ) welcomes this open consultation on the evaluation of the Victims' Rights Directive (hereinafter VRD) and would like to present its assessment, in particular on the implementation of the restorative justice (RJ) provisions of the VRD, and draw the attention of the European Commission (EC) to the importance of RJ in all matters that involve victims of crime.

#### Summary

Being the first binding EU legislation on RJ, the VRD is one of the most relevant international documents in the field of RJ. Thus, the EFRJ has taken many steps in the last years to assess the RJ provisions in the VRD: the drafting of a [Briefing Paper about the regulation of RJ in the VRD \(2016\)](#) as well as a [Practice Guide for RJ practitioners \(2016\)](#) and the launching of a [survey for RJ services and practitioners \(2017\)](#). The aim of the current position paper is to outline a European perspective concerning the implementation of the RJ provisions in the VRD. The position paper is mainly based on information collected via a **survey that the EFRJ conducted in 2021**, as well as on research conducted by the EFRJ in the last years. The survey was sent to different target groups (RJ service providers, practitioners and policy makers). We received 45 responses covering 16 EU Member States and two non-EU European countries.

In order to ensure the benefits of RJ for victims, an equal access to RJ services needs to be guaranteed for all victims of crime. Removing the obstacles for an effective implementation of the VRD is a first step towards a greater accessibility for victims to RJ services. From our survey several obstacles emerge on this regard, namely:

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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.





- 1 – **Lack of awareness of RJ** of referring bodies and organisations coming into contact with victims (e.g. police, judicial authorities, victim support services).
- 2 – **Lack of cooperation** between RJ services, victim support services and other CJ organisations.
- 3 - **Lack of information** provided to victims on available RJ services; low quality of information provided to victims on RJ.
- 4 – **Lack of clear standards** or minimum rules concerning safeguards for victims in RJ processes.
- 5 – **Lack of access to and lack of availability** of high quality RJ services in all EU Member States.
- 6 – **Lack of complaint mechanisms for victims** regarding access to or experience with RJ processes.
- 7 – **National legal framework (if existing) limiting access to RJ** for victims (excluding self-referrals, setting conditions of access based on the crime or the offender’s characteristics, leaving room for a wide discretion of referring bodies based on “appropriateness”).

**We suggest the revision of the RJ** related provisions of the VRD concerning the issues above.

Without underestimating the relevance of the VRD for the development of RJ in the EU, further initiatives promoted by the EU institutions are demanded for supporting a greater accessibility and availability of RJ services. Therefore, **we further suggest:**

- (1) An **EU binding act** that could, firstly, guarantee the accessibility for victims (and offenders) to RJ services at any time and in any case and secondly could address many of the obstacles mentioned above and set minimum standards for providing safeguards.
- (2) The **inclusion of RJ in other relevant binding acts** in the field of criminal justice as well as social policy area.
- (3) Include **RJ as a topic in EU awareness campaigns** on victims’ rights.
- (4) Provide **(financial) support to RJ services** as foreseen by the EU Strategy on Victims’ Rights.

The position paper is structured in four parts. The first part summarises recent research findings related to victims and RJ. The second part presents the results of the survey on the effective implementation of the main RJ provisions of the VRD. The third part focuses on the overall relevance of the VRD for the development of RJ in Europe. The last part presents the conclusions and recommendations for further actions. Appendix I offers an overview of the main EU and international documents concerning RJ and victims’ rights as well as of recent (research) projects on the topic. Appendix II provides the survey questions.



## I - Research findings on Restorative Justice and Victims' Rights

Before presenting our evaluation on the implementation of the RJ provisions of the VRD, we would like to draw the attention on the importance of RJ and its potential in addressing victims' rights and needs as shown by relevant research about the effectiveness of RJ for victims, offenders and communities<sup>2</sup>.

*Victims want to participate in RJ.* Victims want to meet those who have offended against them for many reasons such as to ask questions, to seek reparation and to advance their healing process. In some cases victims hope that they can prevent reoffending and act to reach a safer society.

*Victims and offenders have a much more satisfactory experience of justice.* By giving victims the choice to decide about participating in RJ processes, RJ advances procedural justice and empowers victims. Restorative processes engage the participation of victims and perpetrators more effectively than the traditional justice system. Victims' needs and interests are taken into consideration throughout the whole process. RJ is more successful in increasing offender compliance with restitution when compared to more traditional criminal justice processes and besides material compensation.

*Restorative processes improve closure and healing for victims.* Studies consistently state that restorative processes achieve at least 85% satisfaction among victims 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.

*RJ saves money.* RJ reduces the costs of the criminal justice process and of reconviction. Victim-offender mediation takes a third of the time needed for non-mediated cases. RJ can have long-term health benefits and can reduce (public) health costs since they have been found to reduce post-traumatic stress or other psycho-somatic symptoms.

*RJ increases public safety.* Research has found that RJ is more successful in improving victim and offender satisfaction, decreasing recidivism of offenders and increasing offender compliance with restitution when compared to other traditional criminal justice processes. Studies confirm that RJ stimulates desistance from offending. This is due to feelings of remorse, to the non-stigmatising nature of the process, to feelings of being involved in decision making, to agreeing with the outcome and to meeting and apologising to the victim.

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<sup>2</sup> A summary of recent research findings can be found in the report *Effectiveness of restorative justice practices: An overview of empirical research on restorative justice practices in Europe*. 2017. European Forum for Restorative Justice. Leuven. Belgium.



Among the five broad categories of victims' needs recognised by the EC ("*Protecting victims' rights*" [here](#)) RJ is acknowledged as a form of compensation/restoration. Indeed, agreements concluded in the RJ process comprise often monetary, material or other form of compensation of victims by the perpetrators. These agreements are fulfilled by offenders in a higher percentage than court ordered compensation. Nevertheless, as explained above, research shows that **RJ goes much beyond the 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.

In order to ensure the above mentioned benefits of RJ for victims, an equal access to RJ services (the right for victims to decide voluntarily on engaging in a restorative process based on detailed information and without time limit) needs to be guaranteed for all victims of crime.

## II - EFRJ survey on the implementation of the VRD

In order to enable us to identify strengths and weaknesses related to the implementation of the relevant VRD provisions at the national and regional level, the EFRJ sent in **September 2021 a survey to different target groups:**

- 1) to selected members of the EFRJ, mainly RJ service providers working in EU Member States;
- 2) to the members of the project Restorative Justice Strategies for Change (RJS4C) that is based on European cooperation of 10 countries/jurisdictions<sup>3</sup>.
- 3) to the EU members of the European Restorative Justice Policy Network (ERJPN), a policy network set up by the EFRJ in 2018 that brings together representatives of Ministries of Justice in Europe that deal directly or indirectly with implementing RJ.

The EFRJ survey has been sent to around 130 persons (36 persons RJS4C, 25 ERJPN, 73 EFRJ members). We received 45 responses covering 16 EU Member States and two non-EU European countries. The survey is composed mainly of open questions (see Appendix II), could be answered anonymously and only the question on the "country" was mandatory.

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<sup>3</sup> The project aims at encouraging the development of restorative justice in Europe inspired by the CoE Recommendation on RJ (CM/Rec(2018)). The countries/jurisdictions involved in this project are: Albania, Belgium, the Czech Republic, Estonia, Italy, the Netherlands, Poland, Portugal, the Republic of Ireland and Scotland.



The aim of the first section of the survey was to evaluate the effective implementation of the main RJ provisions in the VRD. In what follows we present the results on the main RJ provisions one by one.

- **Definition of RJ**

The VRD (Article 2.1(d)) defines RJ as: *“any process 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”*.

The definition overall focuses on some of the core principles of RJ: the active participation of the people involved in the crime, the voluntariness of the parties to participate and the impartiality of the third party facilitating the process. The definition speaks about ‘any process’, leaving room for different types of practices to take place, including indirect (not ‘face-to-face’) encounters and including processes, which are not exclusively based on verbal communication. The definition of RJ in the VRD is an open definition, allowing for different kinds of RJ processes and outcomes. In fact, in recital 46 of the VRD acknowledges the variety of the RJ practices, as “including for example victim-offender mediation, family group conferencing and sentencing circles”. Furthermore, the definition by not specifying or qualifying timing restrictions, leaves room for a restorative process that can take place at any stage of the criminal proceedings from investigation to sentence and even post-sentence.

Most of the respondents to the EFRJ survey state that **the EU definition is commonly used or is in line with the general understanding of RJ in their countries** (29 of 45 respondents). This is not the case in some Member States, in which RJ is not defined nor regulated by the law, or where RJ is identified only as victim-offender mediation. The respondents of these countries suggest to introduce RJ and its definition in the national legislation to overcome misunderstanding of RJ. Interesting to note is that several respondents point out that there is a difference concerning the understanding of RJ between RJ experts - practitioners and researchers – and criminal justice agencies and professionals.

Indeed, to the question about the main challenges in the implementation of the EU definition of RJ, most of the respondents (19 of 43) stress the **lack of awareness**, knowledge and information on RJ in the judiciary and legal professionals, in the general public, among policy makers as well as of victims and offenders. Related to this, there is confusion in the understanding of the RJ definition as sometimes it is **confused with other alternative measures**, such as community service or with Alternative Dispute Resolution. Moreover, respondents point out that there is a widespread (mis)belief that RJ is mainly for the offenders (to "serve lower sentence"), and therefore it does not respond to the needs of the victim. This is especially the case in countries where RJ is offered only as a tool for diversion. As a consequence, victim support services or prosecution services don't even offer RJ, because they presume that victims don't want it or such services are not suitable for them. Some respondents also mention the **limited availability of RJ services** as an obstacle, in general or



for specific crimes in particular (such as domestic violence, sexual harm), and that is not consistently available across the country, or it is limited to juvenile justice only.

Concerning specifically the **wording** of the EU definition of RJ, even if some respondents (10 out of 39) do not see a need of revision, several others (4 of 39) **refer to the RJ definition given by the CoE Recommendation on RJ (CM/Rec(2018))<sup>4</sup>**, 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). Another important comment is that the EU definition **does not include the community** (relatives, friends, neighbors - anyone else who has been affected by the harm) in the process.

Although some of the wording of the EU definition of RJ could be improved as shown above, in general it reflects the current development of RJ in Europe, both in terms of legislation and practices. On the other hand, as also confirmed by the Report of the Commission on the implementation of the VRD (COM(2020) 188 final)<sup>5</sup>: *“the correct transposition of the definitions [...] and “restorative justice” is also important as they determine individuals’ concrete rights. Compliance with the transposition of these definitions was found lacking in a few Member States”*. Indeed, while the broad and inclusive definition of RJ in the VRD intends to cover the variety of existing practices, the sheer existence of this variety at the same time can lead to ambivalence. As shown by our survey, only some countries mention explicitly the term “restorative justice” in their legislation, while most of the Member States use either the term “victim-offender mediation” or other terms. Even if nominally, the terminology indicates the differences of what is intended in the VRD and what exists in the Member States. This difference becomes relevant for example when collecting data, when offering information, and especially when assessing the level and forms of safeguards and standards. More challenges have been found in the implementation of these definition, as mentioned above, mainly due to a lack of knowledge and awareness of professionals, as well as of victims.

- **Right to receive information on RJ services**

The VRD [Article 4.1(j)] obliges Member States *“to ensure that victims are offered information on the available restorative justice services, without unnecessary delay, from their first contact with a competent authority”*.

This article is highly important in terms of accessibility of RJ services, as research and practice has constantly shown that lack of information about RJ is one of the main obstacles and reasons for its

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<sup>4</sup> *“Restorative justice refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party”*.

<sup>5</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA





underuse. Giving information about existing RJ services depends on several factors: whether, when, how often, by whom, and how this information will be provided.

According to our survey, the police is the most common “competent authority” responsible for informing victims about the possibility of RJ. In several countries such information is given also by other authorities, such as the prosecutor office or the probation 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.

What is very clearly shown from our research is that, even if this provision and the responsible competent authorities are identified and regulated by the law (this is not the case in several Members States), **information is not provided in a systematic way** and the **quality of such information is quite low**. The main challenge for the implementation of this right to information is the **lack of awareness** and comprehensive knowledge of RJ and its principles and practices on behalf of those professionals and authorities that are in charge to provide information. Respondents also point out a lack of willingness of such authorities to provide adequate information due to a general reticence towards RJ in the criminal justice systems. The **limited availability of RJ services** throughout the countries is a further challenge, thus, even when professionals are aware of RJ, there is not enough RJ service provider to which they can refer the victims interested in RJ.

Another important obstacle identified is the **quality of the information provided**. The information is often incomplete, not adequate for the correct and comprehensive understanding of the kind of service provided, causing a misleading understanding of RJ. In this regard, respondents stress that the timing in which the information is provided to the victims is very important. Victims should be informed at the beginning of the proceeding but also **repeatedly** in every stage of the criminal proceeding and **by different authorities and professionals**. Additionally, cooperation should be developed between legal professionals, victim support services and RJ services.

To the question ‘*what could the European Union do to support the implementation of this right to information on the available RJ services?*’, most of the respondents (26 of 42) suggest encouraging adequate and **continuous training of the police and legal professionals, as well as of victim support services and other social workers** in order to increase the knowledge on RJ of those that have a key role in informing victims about available RJ services. Training programs should include when and how information should be given. Some respondents also invite the EU to support and **promote awareness raising campaigns** targeting the wider population to increase the general awareness of RJ.

Further, respondents (17 of 42) indicate that the EU could support Members States in the implementation of this right to information by **providing specific guidelines** with indications to procedures on how and when to provide adequate information to victims on RJ services, including minimum standards of the information to be given.



Beside these, several respondents wish the **EU to engage more actively in the promotion and development of RJ in the European Union**: on the one hand to ensure that Member States comply with the RJ provisions and obligations of the VRD, on the other hand to promote RJ principles, providing a better understanding of processes and outcomes of RJ services, to provide Member States with guidelines and recommendations on the practical implementation of the VRD, to encourage Member States to develop RJ within a revised VRD or by adopting specific policies and (binding) acts.

The results of our survey are in line with previous research that shows that there are several important elements to consider when informing parties about the option to participate in a RJ programme: the level of influence and authority of the initiator, the information provided, the mode of the offer, the language of the offer, the timing and the frequency of the offer. It is further important to repeat this information at different moments and that the information should come from different sources (e.g. police, prosecutor, victim support, judge, social workers).

While the VRD doesn't go too far with regards to many of these factors, recognising the right to information and obliging Member States to ensure this right is certainly one important step.

Concerning the low level of professional's awareness on RJ, we would like to recall the Report of the Commission on the implementation of the VRD (COM(2020) 188 final) that states that *"the effective implementation of the obligation under Article 4 requires that the competent authorities are well trained on how and when to inform victims about their rights"*.

While the right to information about available RJ services in the VRD is clearly very important, it does not create any obligation for Member States either to create RJ services where these are lacking, or to promote actively accessibility to existing RJ services. *Availability, accessibility and awareness* of RJ programmes had been identified as key to the effective implementation of RJ in Europe.

- **Right to safeguards in the context of RJ services**

Article 12 of the Directive is the only article entirely dedicated to RJ. It obliges Member States to take measures to safeguard victims against secondary and repeat victimisation, and against intimidation and retaliation, by ensuring that RJ services are safe and competent.

In particular, **article 12.1** sets minimum conditions to ensure that RJ is safe for victims: that the RJ services are used only if they are in the interest of the victim and that victims give informed consent to participate in RJ (art. 12.1 (a)); that the victim is provided with full and unbiased information about the process and the potential outcomes (art. 12.1 (b)); the offender has acknowledged the basic facts of the case (art. art.12.1 (c)); voluntariness of the agreement (art. 12.1 (d)); and confidentiality of the RJ process (art. 12.1 (e)).





The safeguards that Member States are required to respect in relation to RJ refer to core principles of RJ, among which the most important ones are the voluntariness of participation (based on informed consent) and the confidentiality of the process. The requirement that safety issues are considered before the start of a restorative process and that services should only be used if they are in the interest of the victim (Article 12.1a) reflect minimum considerations on behalf of RJ practitioners that guide their preparatory casework. Finally, expressing that voluntary agreements may be taken into account in any further criminal proceedings (Article 12.1d) is an important provision that supports the link between the restorative process and the criminal procedure, but does not make it mandatory.

Indeed, the majority of the respondents (33 of 44) to our survey **do not express major concerns** with regard to the practical implementation of this provision. It is stated that these safeguards are respected in practice, are in many cases regulated by the law and their compliance is supervised by the authorities. According to respondents the needs and interests of the victim are generally highly respected in delivering RJ services. Some respondents refer to research conducted in their country with findings showing high satisfaction rate of victims experiencing RJ and that among the parties, especially victims value RJ very much.

In almost all cases, criteria for the practical implementation of these safeguards are included in the training curricula for RJ practitioners. Moreover, in many countries (or regions) **guidelines are available** setting out standards for the delivering of RJ services or are in the process of developing such guidelines. Such guidelines are issued by the competent (local or national) public authorities or by the RJ services themselves. One aspect that emerges is that such guidelines may be provided only at a regional level and are thus not standardised at the national one.

Concerning the question on possible challenges in the implementation of the safeguards, even if some respondents (9 of 36) argue that they have not identified any challenge, obstacles are still mentioned. **No significant data is available** in those countries where RJ is not regulated by law and where there is a very limited availability of RJ services. Moreover, some respondents seek for a **balance** between complying with protection measures and allowing victims to take responsibility for making their own decisions. In this regard it is stressed again that **information is not reaching victims** in a sufficient, comprehensive and understandable way and that those that have to provide information or to refer cases to RJ services or those in charge of supervising the compliance with safeguards are not familiar with or have even a misunderstanding of RJ.

Some concerns were expressed regarding RJ within the juvenile justice procedure in the sense that a balance has to be reached between safeguarding the rights of the victim and those of the young offender.

When asking *'what the EU could do to support the implementation of the safeguards foreseen in the VRD?'*, not surprisingly, the survey indicates the **(financial) support for training** for judges and prosecutors and other legal professionals as a key point. Even if guidelines on standards for RJ



services are available in several countries, a request is present for **EU validated guidelines** that could guarantee a sufficient level of conformity and harmonisation throughout the Member States and that could avoid misinterpretations or misleading understanding of RJ.

Again, several respondents point out that the **EU should promote RJ more**. Concerning specifically the VRD, it is stressed that the EU should put in place measures to ensure action guidelines and compliance obligation as well as infringement procedures and call Member States for a legal anchoring of standards for RJ services. Some respondents go beyond the VRD and advocate for a comprehensive EU binding act on RJ (such as a directive).

**Article 12.2** calls for Member States to facilitate the referral of cases to RJ services as appropriate, including through the establishment of procedures or guidelines on the conditions for such referral.

We highly welcome that this article requires Member States to facilitate referrals to RJ services. The implementation of it depends largely on the national circumstances in the Member States. Indeed, from the survey a big difference is seen between Member States where referral pathways to existing RJ services are regulated by the law with established procedures and guidelines and those Member States in which these are lacking. In this regard, we would like to recall the findings of the Report of the Commission on the implementation of the VRD (COM(2020) 188 final): *“On facilitating the referral of cases to restorative justice services (Article 12(2)), a few Member States were found to have no specific measures in place”*.

Moreover, even if guidelines and protocols are available, these are only partially implemented in practice or **not systematically implemented** depending on the region or the cases (for example, existing referral pathways for minors but not for adults). Finally, it emerges that the referral of cases to RJ services highly depends on the willingness/attitude of the single prosecutor, judge (or other professional in charge of it). Indeed, one of the most common obstacles for the implementation of this provisions (besides the lack of legal regulation) is, again, a **lack of awareness and knowledge on RJ** combined, very often, with reluctance and lack of trust. Using referrals to RJ for the sake of managing the flow of cases or for statistical reasons were also mentioned as an issue.

Some respondents **criticise 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. Very often appropriateness is defined by the characteristics of the case (type, severity of crime) or the offender (first offence, adult/juvenile), and voices and needs of victims are not considered. It may lead to secondary victimisation by the system preventing a victim to choose for and have access to a process that they wish to use. Based on the legal definition of the harmful act and the local criteria, one victim will be eligible, the other victim will not be eligible to access RJ in very similar cases even within one country, but certainly in European comparison. Leaving room for



interpretation or discretion is often limiting the access to RJ in countries with a stronger retributive/punitive approach. The factors suggested in the VRD regarding appropriateness should be more connected to the potential effects of a RJ process on the criminal justice process or on the punishment, and not to the actual access to the RJ service.

Another important obstacle is the **lack of multiple referring actors** that should include judges, but also probation and prison service, as well as victim support services and other social actors – ensuring that referrals can be made at any point of the criminal justice procedure. Moreover, respondents criticise a general **lack of quantitative and qualitative data** to assess at national level and for the various types of RJ programmes, how many cases in theory are suitable for RJ, and how many of these are referred effectively.

To the question ‘*what could the European Union do to support the implementation of this provision?*’, one of the main points is to stimulate multiple referral bodies (within the CJS but also beyond) and, very importantly, to **support the possibility of self-referrals** by the victim as well as by the offender. Indeed, being dependent on an authority’s decision to get access to RJ services considerably limits the rights of victims. Establishing a right of access to RJ for victims would empower victims and would contribute to lower the chance of secondary victimisation in the CJ process. Several respondents (14 of 34) indicate again **RJ training of legal professionals** as a key element to support the practice implementation of this provision. Additionally, many respondents (18 of 34) suggest the dissemination of specific **EU guidelines on the application of RJ** outlining possible referral pathways.

As already mentioned, the requirement of *safety issues* in the interest of the victim (Article 12.1a) reflect minimum considerations on behalf of RJ practitioners. As noticed in the recital 46, however, the VRD goes further stating that RJ services “should ... have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm”. Although, this is obviously a legitimate expectation of a Directive that focuses on victims, it nevertheless goes against one of the core principles of RJ, which is to find a balanced approach between the interests and needs of victim, offender and society.

Overall, Article 12 could have introduced RJ in a more balanced way in line with the recital 46, which states that RJ can be of great benefit to victims of crime, while also taking into account the safeguards. As also pointed out by several respondents of our survey, the benefits as they stand currently in the VRD are completely overridden by the safeguards to avoid secondary victimisation. The EFRJ argues that instead of a right to safeguards in RJ, what we need in Europe is a right to access to RJ services for all stakeholders (victims, offenders, other affected persons and local communities) and the availability of high quality service providers.



### III - Relevance of the VRD in the development of RJ and victims' rights

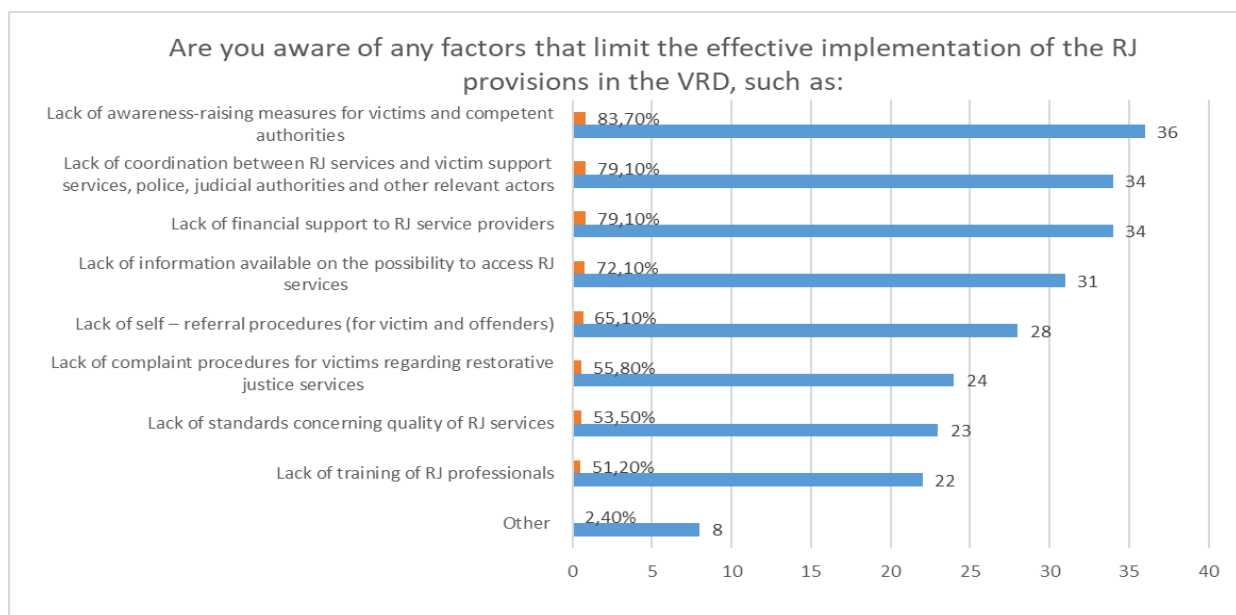
The aim of this section is to present insights on the general impact of the VRD in the development of RJ in the EU and more in particular its relevance and effectiveness.

From the survey results we see that the impact of the VRD on the development of RJ (for example, in legislation, policy development, funding, training, cooperation, implementation or functioning of services, standards, credibility and/or public awareness etc.) varies according to the level of development of RJ before the VRD in a country's legislation and practice.

**The VRD had some important effect in developing legal provisions on RJ in those countries that did not have legal provisions before**, or in developing the legal framework by transposing into the national law the RJ provisions of the VRD. On the one hand, **the VRD did not had major impact on those countries that have a well-developed legislation on RJ** - that even goes much beyond the VRD by recognising a right to access RJ - or that have a consolidated implementation of RJ services. On the other hand, for those countries that are currently debating the introduction of RJ in their penal code, the VRD factored the making of new national legal provisions.

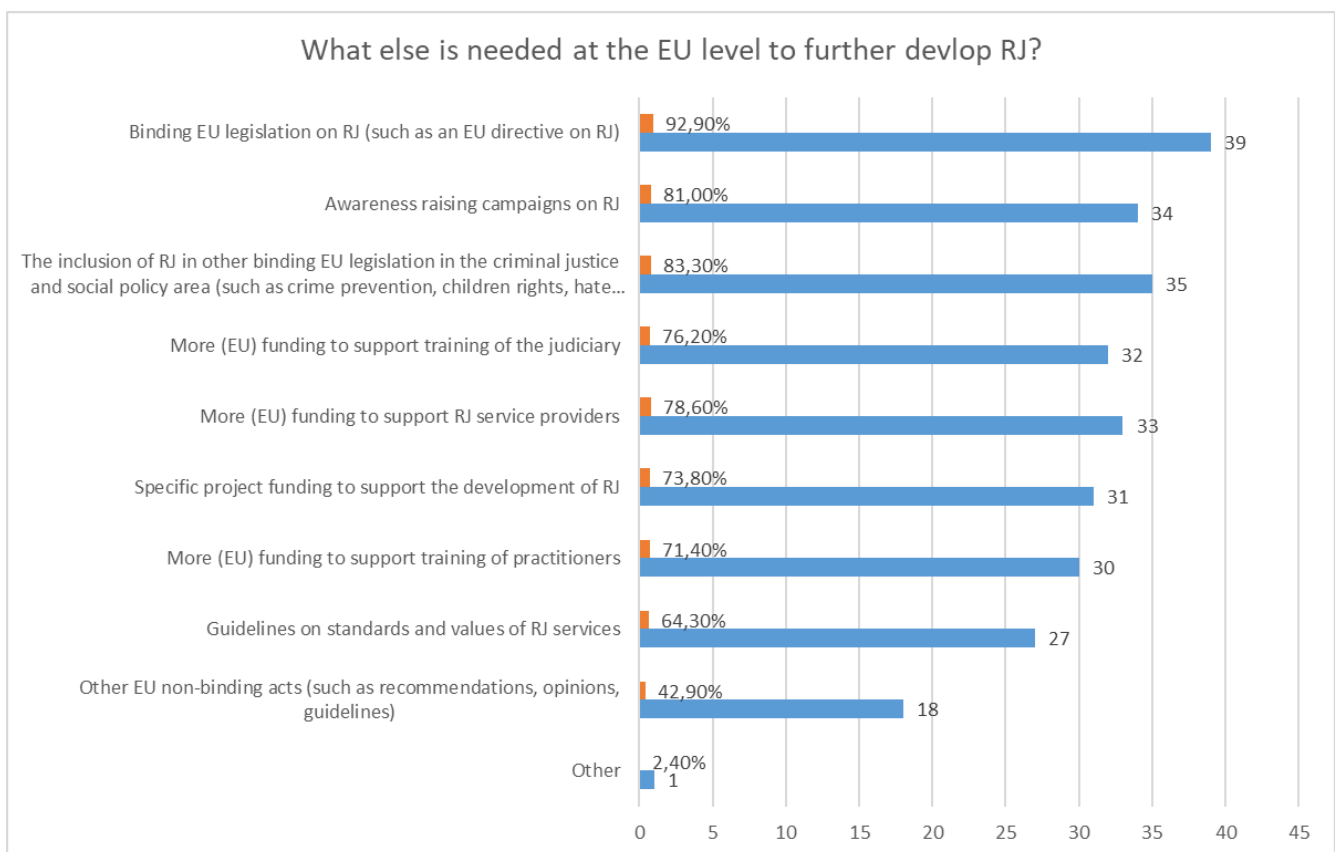
Nevertheless, as many respondents (17 of 38) state, even when the VRD had an impact in developing legislation, it did not have a considerable effect on the development of practice. Interestingly, many other respondents (18 of 38) affirm that the VRD had a positive impact in raising awareness of RJ and its principles within national institutions. This led to recognizing that RJ can address victims' needs and to the inclusion of RJ into the policies regarding victims' rights.

Concerning factors that limit the effective implementation of the RJ provisions in the VRD several ones have been pointed out. The table below gives an overview.



Concerning the question if the VRD should cover/regulate other aspects of RJ regarding victims' rights, it is interesting to note that several respondents refer to other (non-binding) RJ international instruments, mostly to the **CoE recommendation on RJ**<sup>6</sup> but also to the **UN Handbook on RJ** (see below for an overview of these documents), not only as relevant sources for the development of RJ in their country, but suggesting **that the EU links more closely its approach to RJ with the above mentioned instruments**. Especially, respondents refer to the CoE recommendation on RJ to invite the EU to support the application of RJ in serious cases such as hate crime, cybercrime or gender-based violence, as well as for children and young people. Indeed, more than 80% of the respondents advocate for an inclusion of RJ in relevant EU (binding) acts in the field of criminal justice as well as social policy area (see table below).

Reflecting a growing request coming from the field (of practice and policy) several respondents call for support of the EU to recognise the right of an equal access to RJ service for all victims (and offenders). Indeed, as shown by the table below, to the question *'what else is needed at the EU level to further develop RJ?'*, more than 90% of the respondents call for a binding EU legislation on RJ.



<sup>6</sup> CM/Rec(2018)8



## IV – Conclusion and recommendations

The VRD is one of the most relevant international documents in the field of RJ (and the only binding EU instrument) and was, and is, instrumental for the development of legal frames of RJ in EU Member States. It has certainly provided RJ with a more solid position and a clear victim orientation in Europe.

Besides acknowledging the importance of the VRD for the development of RJ in Europe, we also presented above some limitations or limiting effects of the VRD in its current form to enable victims' rights fully regarding RJ.

Therefore, the EFRJ recommends the revision of the VRD. Related to its current provisions on RJ, we especially recommend reviewing:

- **The definition of RJ** – to be more in line with the definition of the Council of Europe Recommendation and to include the participation of relevant third parties/community members.
- **The right to information about available RJ services** – A revised VRD should acknowledge the right to information from several relevant bodies (multiple actors) and more times during the process, ensure that the information is clear and understandable for victims. Cooperation with RJ service providers in providing information on the process should be encouraged.
- **The right to safeguards** – to make it more balanced with the potentials and benefits for victims of RJ, to mention also the interests of offenders and the community, to reflect the principles of RJ and to define minimum standards for safe RJ practices (through specific guidelines). Pathways for victims to complain about a RJ process should be also established.
- **Referrals and accessibility** – we suggest to review the term and conditions of appropriateness, limit the criteria for excluding cases ex officio or connecting these to the effect of RJ to the CJ procedure rather than to the access to RJ, and suggest guidelines for referrals while creating also a right of access to RJ for victims (through self-referrals).
- **Training** – promote the training of the judiciary, the police and victims support on RJ to raise awareness and knowledge of bodies giving information or referring cases to RJ.
- **Cooperation** – promote the cooperation between the police, victim support, judicial authorities and RJ services.





Additionally, as the VRD does not create any obligation for Member States either to create RJ services where these are lacking and does not establish a right of access to RJ for victims, we would support that the revision of the VRD takes into account these steps.

Beyond the revision of the VRD and the actual provisions of the RJ in the VRD, the EFRJ recommends:

- To consider a **comprehensive EU binding act on RJ** that could comprehensively and systematically address many of the issues presented above;
- To **include RJ in other relevant EU policies and legislation** beyond victims' rights (e.g. rights of offenders to receive information, child-friendly justice, combatting hate crime, cybercrime, violent extremism, sexual and gender-based violence, environmental crime etc.);
- To **include RJ in EU awareness campaigns on victims' rights** and provide (financial) support to RJ services as foreseen by the EU Strategy on Victims' Rights.

**The EFRJ is ready to support the EC in the revision of the RJ related provisions of the VRD and to collaborate to foster victims' rights in the EU.**





## APPENDIX I

### References from the International and European framework on RJ and victims' rights

In 2002, the UN adopted the Basic Principles on the use of RJ programmes in criminal matters and in 2006 the Handbook on Restorative Justice Programmes was published. Since then, the field of RJ has gone through a significant development to enhance the rule of law and access of justice. In the last few years, in fact, significant progress has been made in the provision of RJ by international and European instruments, of particular relevance, also related to children and young people:

- The [EU Victims' Rights Directive 2012/29/EU](#) has provided RJ in Europe with a more solid position and a clear victim orientation. Recently (June 2020), the European Commission adopted a new [EU Strategy on victims' rights \(2020 - 2025\)](#) that recognises the role of RJ to achieve the first objective of the Strategy itself, namely empowering victims of crime, for them to participate in criminal proceeding and to recover. It further states that "restorative justice services provide victims with a safe environment to make their voice heard and support their healing process" that there is a "lack of knowledge about RJ services among professionals and victims" and that therefore "Member States should ensure high quality standards in delivering RJ services and provide for training of restorative justice practitioners. It moreover considers that "the potential benefits of such services depend on the availability, accessibility and quality of restorative justice services in the Member States". One of the key actions of the European Commission is to "provide EU funding to national victim support organisations and relevant community-based organisations to provide information, support and protection for victims, and to promote restorative justice services".
- The [Council of Europe Recommendation CM/Rec\(2018\)8](#) concerning restorative justice in criminal matters), adopted on 3 October 2018, reflects new developments and a broader concept of RJ approaches. The Council of Europe Recommendation CM/Rec (2018)8 concerning restorative justice in criminal matters that reflects new developments and a broader conception of RJ. It is the most advanced and innovative international legal instrument in the field of RJ. The Recommendation provides evidence-based standards for implementing and delivering RJ in practice. This Recommendation aims to "*encourage Member States to develop and use restorative justice with respect to their criminal justice systems. It promotes standards for the use of restorative justice in the context of the criminal procedure, and seeks to safeguard participants' rights and maximise the effectiveness of the process in meeting participants' needs. It also aims to encourage the development*





*of innovative restorative approaches - which may fall outside of the criminal procedure - by judicial authorities, and by criminal justice and restorative justice agencies” (Rule 1).*

It calls for all victims and offenders to be offered RJ and outlines how the restorative principles can be used to inform a wide range of interventions for both parties.

It notes that RJ usually takes the form of a dialogue between a victim, offender and other persons who may have been affected by a crime (Rule 4) and that RJ *“may be referred to as victim offender mediation, penal mediation, restorative conferencing, family group conferencing, sentencing circles or peacemaking circles, inter alia”* (Rule 5). It goes further by indicating that also non-dialogue interventions, such as circles of support and accountability and offender reintegration ceremonies, may be delivered in close adherence with RJ principles (Rule 59), outlining these principles across a number of Rules earlier in the document.

The Recommendation recognises a balanced approach towards the needs of the victim and the offender: *“restorative justice should not be designed or delivered to promote the interests of either the victim or offender ahead of the other. Rather, it provides a neutral space where all parties are encouraged and supported to express their needs and to have these satisfied as far as possible”* (rule 15). The CoE recommends that referrals to RJ services may be made by criminal justice agencies and judicial authorities, or may be requested by the parties themselves (self-referral) (Rule 6, 19).

It further states that *“restorative justice should be a generally available service. The type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude restorative justice from being offered to victims and offenders”* (Rule 18). As asserted also by the CoE Recommendation, no offence types are considered inherently unsuitable, in the absence of other considerations. The key criteria are the willingness of the perpetrator and the victim to meet or communicate in some other way, and the need for the process to be safe and voluntary for all parties. It states also that that restorative justice should be available at all stages of the criminal justice process (Rules 6 and 19). It further states that *restorative principles and approaches may also be applied within the criminal justice system, outside of the criminal procedure”* (rule 8) and *“that they may be applied where there is a conflict between citizens and police officers, between prisoners and prison officers, between prisoners, or between probation workers and the offenders they supervise. They may also be applied where there is a conflict between staff within judicial authorities or criminal justice agencies”* (Rule 60).

Further provisions of the CM/Rec(2018)8 concern staff training (Rules 42-45 and 57) that should provide them with a high level of competence. In particular it emphasises that *“facilitators should be experienced and receive advanced training before delivering restorative justice in sensitive, complex or serious cases”* (Rule 43). It highlights, in its commentary, that certain types of sensitive and serious cases, such as sexual offences, *“require advanced training and should only be delivered by experienced facilitators, ideally with specific training in both advanced facilitation skills and in the impact of serious offences”*. Significantly, it also notes that criminal justice professionals who are not





responsible for facilitation but may refer cases to restorative justice should be provided with appropriate training in relation to the purpose and nature of restorative justice (Rule 42).

- In May 2020, the United Nations Office on Drugs and Crime (UNODC) released the [Second Edition of the Handbook on Restorative Justice Programmes](#). It integrates the developments in the field and in particular the potentials of RJ in dealing with serious crimes, while also strongly emphasising and encouraging the use of RJ with child victims. The revised handbook is the most up-to-date international guide developed by the expertise of practitioners, academics, and representatives of organizations that advocate for the implementation of RJ values and practices. The document covers a wide range of topics including good practices for program design and implementation; mobilization of community assets to support countries in advising restorative practices; improvement of victim's participation; or programme monitoring mechanisms to oversee the operation of RJ services and training providers. It provides valuable guidance on implementing fundamental procedural safeguards, while covering a range of different types of serious crime, such as: intimate relationship violence, sexual violence, violence against children and hate crimes.

#### **RJ in the recently adopted reports in the area of victims' rights (Milquet report, FRA, VSE)**

- The EFRJ highly welcomes the paradigm shift from compensation to reparation proposed in the [Milquet report "Strengthening victims' rights: from compensation to reparation"](#), which embraces a holistic approach that recognises "in kind" compensation, such as recognition, restitution, support and care, as valuable reparations to support victims to cope with the harm caused by crime. Since repairing the harm caused by a crime lies at the core of RJ, the EFRJ welcomes that in this new frame of reparation, the Special Adviser recommends RJ *"to enhance victim's re-adaptation to society and act as a form of offender compensation"* and that a legislative change or recommendation is proposed in this regard (Recommendation N°33).
- Part of the reparation process endorsed by RJ is the opportunity given to the victim to participate in the process designed to address the harm suffered. Thus, RJ is addressing one of the key recommendations of the [Fundamental Rights Agency \(FRA\) report "Justice for victims of violent crime"](#), namely to give victims a prominent and active role in the proceeding. Moreover, RJ practices, such as victim-offender mediation, provide victims with a safe space to express their experience and feelings and, again, as envisaged by FRA reports, give victims a voice. They can describe what happened to them and the effects it had on their lives. They can ask the perpetrator questions that are important to them. In many cases the sad reality is that the perpetrator of the harm is the only one who can answer the victim's most important questions. This leads to greater victim satisfaction



and facilitates the healing process. Consequently, the EFRJ fully supports FRA's argument that brings at the fore the importance of the recognition of the victim as an active actor of the justice process and would like to highlight the contribution that RJ can provide to achieve this scope.

- In order to ensure the above-mentioned benefits of RJ it is of utmost importance to underline that high quality standards in delivering RJ services are needed. Moreover, delivery standards which regulate the RJ procedures and their quality are the premises to ensure the right of safeguards foreseen in the EU Victims' Directive. As pointed out in the [Victim Support Europe report "Vociare"](#), RJ definitions and regulations vary considerably among EU Member States and there is a general lack of knowledge about RJ both among professionals and victims. A lack of a legal framework on RJ in some Member States has, as a consequence, a lack of regulation that makes it unclear which safeguards are in practice in the delivery of RJ services.

### Recent and current EFRJ projects on RJ and victims' rights

In Europe there is a growing attention and interest to explore and put into practice the potential of RJ in addressing victim's rights and needs by considering also the special needs of vulnerable groups of victims. This interest is coming from the RJ community but even more from those organisations that are working in the field of victim's rights. We are currently involved as partners in the following EU funded projects:

- Protect - Exchanging good practices on restorative justice and promoting the victims' rights protection (2020 – 2022):  
<https://www.euforumrj.org/en/protect-2020-2022>
- Mediarej - Supporting crime victims – evaluation of the Victims' Rights Directive (2020 – 2023):  
<https://www.euforumrj.org/en/mediarej-2020-2023>
- LetsGoByTalking - Protecting and defending the rights of victims of anti-LGBT hate crimes: innovative paths through restorative justice (2020 – 2022):  
<https://www.lets gobytalking.eu/>
- i-Restore – Protecting child victims through restorative justice (2019 – 2021):  
<https://www.euforumrj.org/en/irestore-2019-2021>





- Re-Justice – Restorative justice judicial trainings (2019–2021):  
<https://www.euforumrj.org/en/re-justice-2019-2021>

Our past projects on RJ and victims' rights:

- Victims of the Road Traffic Offences (2017-2019):  
<https://www.euforumrj.org/en/victims-road-traffic-offences-2017-2019>
- Implementing Restorative Justice with Child Victims (2016-2018):  
<https://www.euforumrj.org/en/implementing-restorative-justice-child-victims-2016-2018>
- Victims and Restorative Justice (2011-2012):  
<https://www.euforumrj.org/en/victims-and-restorative-justice-2011-2012>
- Developing standards for assistance to victims of terrorism (2007-2008):  
<https://www.euforumrj.org/en/developing-standards-assistance-victims-terrorism-2007-2008>





# EFRJ survey on the evaluation of restorative justice provisions in the Directive 2012/29/EU (Victims' Rights Directive)

We are contacting you on behalf of the European Forum for Restorative Justice (EFRJ), whose aim is to contribute to the establishment and development of restorative justice (RJ) in Europe.

The European Commission (EC) launched an open consultation concerning the evaluation of the Victims' Rights Directive (VRD - Directive 2012/29/EU) "to assess to what extent it has achieved its objectives in terms of its implementation and practical application in EU countries".

The EFRJ will participate in this EC evaluation process by submitting a position paper to the EC that outlines a European perspective concerning the implementation in practice of the restorative justice provisions in the VRD. In order to enable us to identify strengths and weaknesses relating to the implementation of these provisions at the national (regional) level, this survey is being sent to our members and network in the EU. Your answers to this survey will feed into the position paper on behalf of the EFRJ to the EC.

We would be grateful if you could fill in the relevant information by 01 October 2021. The time needed to respond to all questions is approximately 5-10 minutes. You do not have to answer all the questions to submit the survey.

Your answers will be lost if you close the window before submitting the survey. For this reason, we sent you a PDF/word document to see the questions in advance, but we kindly ask that you use the web form to submit your responses.

The survey is divided into two sections. The first part aims to collect information on the implementation in practice of the main RJ provisions of the VRD. The second part focuses on the overall effectiveness of the VRD for the development of RJ.

We thank you very much for your cooperation!  
EFRJ

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\*Required

*Skip to question 1* *Skip to question 1*

Background Information

1. Your name (or anonymous):

Leave this question in blank if you wish to fill in the questionnaire anonymously

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2. Your country (and/or region): \*

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3. Name of your organisation:

Leave this question in blank if you wish to fill in the questionnaire anonymously

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4. Your position:

Leave this question in blank if you wish to fill in the questionnaire anonymously

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5. Please write your email address here if you are willing to be contacted for further information:

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1.  
Restorative  
justice

The aim of this first section of the survey is to collect information about the implementation in your country (region) of the main RJ provisions in the VRD. In this link you can access the VRD (in all EU languages):

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>

provisions in  
the VRD

**Definition of restorative justice**

The VRD (Article 2.1(d)) defines restorative justice as: “any process 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”.

6. 1.a Is this definition commonly used in your country (region)? Please explain your answer.

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7. 1.b What are the main challenges in the implementation of the EU definition in your country (region)?

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8. 1.c What do you think about the wording of the EU definition of RJ? What changes, if any, would you like to see to the definition in a revised version of the VRD?

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9. Do you have any other comments related to the EU definition of RJ?

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Right to receive information on restorative justice services

The VRD (Article 4.1(j)) obliges member states to ensure that victims are offered information on the available RJ services, without unnecessary delay, from their first contact with a competent authority.

10. 2.a To what extent has this right to information on the available RJ services been implemented in your country (region)? As for your knowledge, which ‘competent authorities’ are providing this information to victims (in the framework of a criminal justice procedure)?

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11. 2.b What are the main challenges in the implementation of the right to information on the available RJ services in your country (region)?

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12. 2.c What, if anything, could the European Union do to support the implementation of this right to information on the available RJ services (for example, revision of the VRD, provide guidelines, provide defined procedures, encourage training of police and legal professionals, etc.)?

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13. Do you have any other comments related to this provision on the right to information on the available RJ services?

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Right to safeguards in the context of restorative justice services

The VRD (art. 12) aims to ensure that if a member state provides RJ services, the necessary safeguards are in place for victims to avoid further victimisation.

Article 12.1 sets minimum conditions to ensure that RJ is safe for victims: that the RJ services are used only if they are in the interest of the victim and that victims give informed consent to participate in RJ (art. 12.1 (a)); that the victim is provided with full and unbiased information about the process and the potential outcomes (art. 12.1 (b)); the offender has acknowledged the basic facts of the case (art. art. 12.1 (c)); voluntariness of the agreement (art. 12.1 (d)); and confidentiality of the RJ process (art. 12.1 (e)).

14. 3.a To what extent have these safeguards been implemented in your country (region)? Please explain your answer.

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15. 3.b What are the main challenges in the implementation of these safeguards in your country (region)?

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16. 3.c Does your country (region) have guidelines setting out standards for RJ services? If yes, who provides these standards (please include a link if they are published online)?

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17. 3.d What, if anything, could the European Union do to support the implementation of the safeguards foreseen in the VRD (for example, revision of the VRD, guidelines on standards and values, financial support for trainings, etc.)?

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**Article 12.2 calls for member states to 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.**

18. 3.e To what extent has this provision been implemented in your country (region)? Please explain your answer.

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19. 3.f What are the main challenges in the implementation of this provision in your country (region)?

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20. 3.g What, if anything, could the European Union do to support the implementation of this provision in your country (for example, support self-referral of cases, guidelines, support training of legal professionals, etc.)?

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21. Do you have any other comments related to art. 12 of the VRD?

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Effectiveness of the VRD in the development of RJ

The aim of this section of the survey is to gain insights on the impact of the VRD in the development of RJ in your country (region).

22. 4. In your opinion, has the VRD had a significant impact in the development of RJ (for example, in legislation, policy development, funding, training, cooperation, implementation or functioning of services, standards, credibility and/or public awareness etc.) in your country (region). If so, what impact has it had?

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23. 5. Are you aware of any factors that limit the effective implementation of the RJ provisions in the VRD, such as (choose all that apply):

*Tick all that apply.*

- Lack of awareness-raising measures for victims and competent authorities
- Lack of information available on the possibility to access RJ services
- Lack of financial support to RJ service providers
- Lack of coordination between RJ services and victim support services, police, judicial authorities and other relevant actors
- Lack of training of RJ professionals
- Lack of standards concerning quality of RJ services
- Lack of complaint procedures for victims regarding restorative justice services
- Lack of self – referral procedures (for victim and offenders)

Other:  \_\_\_\_\_

24. 6. In your opinion, should the VRD cover/regulate other aspects of RJ regarding victims' rights?

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25. 7. What else is needed at the EU level to further develop RJ? Choose all that apply:

*Tick all that apply.*

- Binding EU legislation on RJ (such as an EU directive on RJ)
- Other EU non-binding acts (such as recommendations, opinions, guidelines)
- The inclusion of RJ in other binding EU legislation in the criminal justice and social policy area (such as crime prevention, children rights, hate crime, environmental justice, etc.)
- More (EU) funding to support RJ service providers
- More (EU) funding to support training of practitioners
- More (EU) funding to support training of the judiciary
- Guidelines on standards and values of RJ services
- Awareness raising campaigns on RJ
- Specific project funding to support the development of RJ

Other:  \_\_\_\_\_

26. Do you have any other views, which have not been covered in this survey and you would like to add?

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**Thank you for answering this survey!**

EFRJ

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