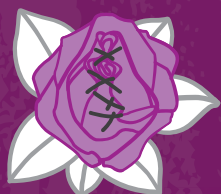




# Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

## QUESTIONS AND ANSWERS

On the rights to support and protect victims of gender-based violence, including women affected by female genital mutilation



**End FGM**  
EUROPEAN NETWORK



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### Disclaimer

Women’s rights advocates generally use the positive term “survivors of violence” instead of “victims”, in order to emphasize the resilience of persons affected by gender-based violence.

However, this wording is not considered as a legal concept by the EU legislators, and therefore is not used in the Directive. For the purpose of this Q&A the term “survivors” has generally been maintained. Nevertheless on some occasions it has been necessary to refer to FGM survivors as “FGM victims” for reasons of accuracy, clarity and conformity with the stipulations of the Directive.

### Acknowledgments

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# Introduction

## A new legal framework

The European Union (hereinafter “EU” or “the Union”) is committed to the protection of victims of crime, and to the establishment of minimum standards in their regard, with the objective to maintain and develop an area of freedom, security and justice.<sup>1</sup>

On 25 October 2012, the EU adopted **Directive 2012/29/EU establishing minimum standards on**

**the rights, support and protection of victims of crime** (hereinafter “Victims’ Rights Directive” or “Directive”), which entered into force on 15 November 2012.<sup>2</sup> It is a new ambitious, comprehensive and far-reaching legal tool, which seeks to reinforce existing relevant national measures by **guaranteeing a minimum level of rights for crime victims across the EU**, irrespective of their nationality or country of residence.

## Main objectives

The main objective of the Victims’ Rights Directive, is **to deal with victims’ needs in a tailored and non-discriminatory manner through a targeted approach aiming to ensure information, support, and protection for crime victims, and to safeguard their procedural rights**. The provisions of the Directive apply to victims of all crimes, however special attention is given to specific categories of victims, such as victims with disabilities and victims of terrorism. The Directive also adopts a child-sensitive approach, thereby recognizing the best interests of a child victim as a primary consideration throughout their involvement in criminal proceedings.

Among other specific categories of victims that

expressly fall within the scope of the Victims’ Rights Directive, **victims of gender-based violence** are placed at the very heart of the protection offered by the latter. In the absence of a specific legislative text which would reflect an EU vision and harmonized approach towards preventing and combating violence against women in Europe, the Victims’ Rights Directive is hailed as **one of the main EU instruments addressing the issue of gender-based violence within its Member States**.

As such, the Directive *inter alia* aspires to serve as **the EU reference framework for the development of better protection and support measures for women and girls affected by female genital mutilation in the EU**.<sup>3</sup>

## Female genital mutilation and the European Union

**Female genital mutilation** (hereinafter “FGM”) comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.<sup>4</sup> FGM can take diverse forms and have different effects on girls and women. In any case it entails the cutting, stitching or removal of part or all of the female external genital organs for non-therapeutic reasons. These practices amount to mutilation of healthy body parts, which has a detrimental impact on the health and well-being of affected women and girls.<sup>5</sup>

International human rights law recognises the practice as a violation of the rights of women and girls to be free from violence and discrimination.<sup>6</sup> As a form of gender-based violence, FGM **attempts to control women’s sexuality and enforce stereotypes that denigrate**

**their position in the society**, whereas painful short- and long-term effects of the practice contribute to women and girls’ unequal participation and advancement in all aspects of social life.<sup>7</sup>

The exact number of women and girls at risk of or living with FGM in Europe is still unknown, although the European Parliament estimates that approximately **500,000 women and girls** living in the EU have suffered FGM, with another **180,000 remaining at risk** of being subjected to the practice every year.<sup>8</sup> While there are numerous cases of girls that are being mutilated abroad while on holiday, anecdotal evidence and a small number of criminal cases pending before or having been adjudicated by EU domestic courts suggest that **FGM is also practiced within the EU**.<sup>9</sup>

## FGM and Prosecution in the EU

Nevertheless, prosecution of FGM cases in the EU remains rare. Criminal court cases pertaining to FGM-related offences have been adjudicated in only a handful of Member States thus far, namely six (Denmark, Spain, France, Italy, the Netherlands, and Sweden).<sup>10</sup>

At regional level, the European Court of Human Rights has thus far not heard any cases pertaining to the prosecution of FGM incidents and potential deficiencies related thereto, but has ruled on a few cases on asylum request on FGM grounds.

According to the European Institute for Gender Equality (hereinafter “EIGE”) this happens because the process of prosecuting FGM incidents “comes with a multitude of obstacles, such as difficulties in detecting cases of FGM and gathering sufficient evidence, the lack of knowledge on FGM and the apparent tensions

between prosecution and prevention as policy goals”.<sup>11</sup> Therefore, the development of preventative and protection measures with a strong cross-border dimension, as well as the enhancement of cooperation between national authorities of various EU Member States, and when relevant with third country partners, is of utmost importance in order for the practice to be addressed and tackled in Europe.<sup>12</sup>

The Victims’ Rights Directive harmonizes EU Member States’ national legislation on the situation, rights and effective protection of victims of crime, including persons affected by FGM, thus eliminating, to a great extent the above-mentioned legal vacuums. Despite some remaining gaps, the Directive remains an **important legal tool**, which is now available to survivors of FGM practices, enabling them to exercise their rights across EU Member States.

## Purpose of the Questions and Answers document

The present Questions and Answers document (“Q&A”) is focused on the **application of the Victims’ Rights Directive to FGM survivors**, and on the related rights.

The first part of the document provides **important general information** on the nature of the Directive and its relevance for persons affected by FGM. The second part examines the **rights conferred upon victims** and their relevance for persons affected by FGM.

This Q&A aspires to assist FGM survivors in **better understanding and pursuing their rights** emanating from the Directive, and to enable organizations working on FGM in Europe to acquire a good understanding of the obligations of EU Member States. It is intended to be used primarily by the **members of the End FGM Network**, but it will also be useful to other non-governmental organizations (hereinafter “NGOs”) or civil society organizations (hereinafter “CSOs”) working on victim’s rights. Finally, the guide can serve as a useful source of information for e-learners on the United to END FGM web knowledge platform.

## Part 1 - General provisions

In the Victims' Rights Directive, the **notion of "victim"** is widely defined to **include family members** of a person whose death was directly caused by a criminal offence. Explicit reference is also made to specific rights: the **right to understand and to be understood**; the right to **access victim support services**; the **individual, case-by-case assessment** to identify special protection needs, including for victims of gender-based violence.

### 1. Is the Victims' Rights Directive the only EU legal tool dedicated to effectively protecting victims of crime?

**No**, it is not.

Other than the Victims' Rights Directive, the EU has developed a system of instruments to address the situation of and offer protection to victims of crime. It includes texts<sup>13/14/15</sup> that regulate the **mutual recognition and free circulation** of protection orders, legal assistance and compensation for victims at national level and in cross-borders situations within Member States.

Protection orders and their free circulation in the EU can prove a valuable asset to FGM survivors.

### 2. Was protection of victims from gender-based violence and FGM a matter in its own right when EU legislators drafted the Victims' Rights Directive?

**Yes**, it was, partly as a result of civil society's advocacy efforts.

Victims of gender-based violence, including women and girls affected by FGM, are expected to be given greater attention upon implementation of the Directive.

The EU legislators made clear references to key international texts on the elimination of and fight against violence against women. They also included a **gender-based approach** to violence: "*Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, **female genital mutilation** and so-called "honour crimes".*<sup>16</sup>

They underlined the **specific needs** of victims of gender-based violence: "*Women victims of gender-based violence and their children often require **special support and protection** because of the **high risk of secondary and repeat victimisation, of intimidation and of retaliation** connected with such violence".*<sup>17</sup>

**EU member states can be held accountable in case of failure to take necessary measures and develop proper safeguards for the protection and support of victims of gender-based violence, including FGM.**

### 3. Who is affected by the provisions of the Directive?

The Directive aims to harmonize the national legislations pertaining to the high number of people who fall victim to crime in the EU every year.<sup>18</sup> This means that its **provisions apply to all victims of crime**, within the limitations set by the definition of the term "victim" (see Questions 10-14).

The Victims' Rights Directive applies to **victims of all crimes**, but **does not criminalize acts that are not already punishable** under the national laws of the EU Member States. As a result, if certain behaviours or acts are not considered as a crime under national law, the affected person will *not* be considered a victim nor benefit from the rights set out in the Directive.



## Part 1 - General provisions

### 4. Does this mean that the Victims' Rights Directive also applies to persons affected by FGM, who can thus benefit from its provisions?

Yes, clearly it does.

There are two legal bases for the application of the Victims' Rights Directive to persons affected by FGM.

#### Criminal law provisions specifically prohibiting gender-based violence and FGM in particular

Different EU Member States criminalize different forms of gender-based violence in different ways. Nevertheless, an increasing number of countries in Europe have adopted **specific criminal law provisions to prohibit FGM in particular**. The Victims' Rights Directive applies to FGM victims by virtue of national laws explicitly recognizing FGM as a crime.

#### General criminal law provisions

In the absence of specific legislation for persons affected by FGM or gender-based violence, national legislations on criminal matters rule (e.g. Criminal Codes and Codes of Criminal Procedure).

Notwithstanding the particular nature of FGM as a crime of gender-based violence constituting a form of discrimination against women, this practice remains a form of grievous bodily harm and unlawful wounding in its essence, allowing its prosecution under standard criminal law procedure.

### 5. Which EU Member States must implement the Victims' Rights Directive?

The Victims' Rights Directive does not apply to Denmark.

### 6. Can a person who has undergone FGM outside the EU and is not an EU national and/or resident benefit from the provisions of the Directive?

Yes, provided that they initiate criminal proceedings against the offender within an EU Member State.

The Victims' Rights Directive applies both in relation to **criminal offences committed in the Union** and to **criminal proceedings that take place in the Union<sup>19</sup>, irrespective of the nationality and the place of residence of the victims.<sup>20</sup>** This means that the Directive also confers rights to victims of crimes perpetrated outside the EU), who will become involved in criminal proceedings within the EU Member States.

Thus, Member States should ensure that rights set out in this Directive are not conditional on the victim having legal residence status on their territory or on the victim's citizenship or nationality.<sup>21</sup>

**An FGM survivor does not have to be a national of an EU Member State or to reside in one of them in order to benefit from the provisions of the Victims' Rights Directive.** It is enough that the FGM practice was perpetrated within EU territory or that criminal proceedings to prosecute FGM that took place outside the EU are pending in an EU Member State.

## Part 1 - General provisions

The table below shows the possible scenarios that may arise with regard to the territorial application of the Victims' Rights Directive concerning persons affected by FGM practices:

	Did FGM occur within the EU?	Is the person affected by FGM an EU national or resident?	Has the person affected by FGM initiated criminal proceedings within an EU Member State?	Does the Victims' Rights Directive apply in this scenario?
Scenario no. 1	Yes	Yes	Yes	Yes
Scenario no. 2	Yes	Yes	No	Yes
Scenario no. 3	Yes	No	Yes	Yes
Scenario no. 4	Yes	No	No	Yes
Scenario no. 5	No	Yes	Yes	Yes
Scenario no. 6	No	No	Yes	Yes
Scenario no. 7	No	Yes	No	No
Scenario no. 8	No	No	No	No

### 7. Has the Victims' Rights Directive taken effect at national level?

**Yes**, it has.

Following the adoption of a Directive, Member States are **obliged to transpose it**, i.e. to incorporate this piece of legislation into national law in a way that complies with its content within a deadline specifically set for this purpose.

Member States were obliged to transpose the Victims' Rights Directive **by 16 November 2015**. However, progress made on the front of transposition is rather disappointing. Most States published national implementing measures, which does not presume of the effectiveness or accuracy of the implementation. However, Greece, Ireland, the Netherlands and Luxembourg have not published any implementing measures as of July 18 2016.<sup>22</sup>

### 8. Are there any consequences for those Member States which have not yet transposed the Victims' Rights Directive?

In case a Member State fails to transpose a Directive, or to do so properly, the European Commission can initiate an **infringement procedure**, which can end in referral to the Court of Justice of the European Union and severe financial sanctions. However, this procedure takes time - an implementation report is expected to be published in November 2017, indicating the state of transposition in all Member States and the pertinence of infringement procedures.<sup>23</sup>

**Civil society must remain vigilant and actively push for the transposition of the Directive into the national legislation of Member States where such transposition has not taken place so far.**

## Part 1 - General provisions

### 9. What is the interplay between the Victims' Rights Directive and the Council of Europe Convention on preventing and combating violence against women and domestic violence?

The Victims' Rights Directive makes a clear reference to the Council of Europe **Convention on preventing and combating violence against women and domestic violence** (hereinafter "Istanbul Convention"),<sup>24</sup> requiring EU Member States to take this instrument into account when transposing and implementing the Directive.

State Parties to the Istanbul Convention have committed to adopt a holistic, multidisciplinary response to gender-based violence. It is an important tool in the **fight against FGM in particular**, as it is the first treaty to recognize that FGM exists in Europe and that it needs to be systematically addressed, entailing **obligations to offer protection and support to women and girls at risk**.<sup>25</sup> The Istanbul Convention establishes obligations regarding prevention, investigation, prosecution and punishment, and protection of the victims of gender-based violence within integrated policies.

Compared to the Istanbul Convention, the Victims' Rights Directive offers a **smaller scope of protection to victims of gender-based violence, including persons affected by FGM**, but comes along with a stronger accountability mechanism. The synergy between the two instruments maximizes the protection offered to FGM survivors and thus needs to be promoted.

**The Istanbul Convention is currently the most comprehensive international instrument dedicated to the combat of violence against women.**

## Part 2 – Rights emanating from the Directive of particular importance for FGM victims

### I. Definitions - Scope of application of the Victims' Rights Directive

#### Article 2 - Definitions

#### 10. I HAVE BEEN SUBJECTED TO FGM. AM I TO BE CONSIDERED AS A VICTIM ENTITLED TO THE PROTECTION OFFERED BY THE DIRECTIVE?

The Directive defines a victim as “a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence”.<sup>26</sup>

**FGM survivors clearly fall under this definition**, as the violence they have been subjected to can entail all the repercussions enumerated in this provision, as well as others that are not explicitly mentioned therein.

FGM practices constitute **criminal offences in all cases**, either by virtue of specific legislation criminalizing FGM or under general criminal law, and that a victim falling within the Directive's definition is a victim regardless of his/her procedural role in the national criminal justice system (see Questions 3 and 4).

#### 11. MY WIFE DIED FROM COMPLICATIONS FOLLOWING HAVING UNDERGONE FGM. DOES THE DIRECTIVE VEST ME WITH ANY RIGHTS IN CONNECTION WITH HER DEATH?

**Yes.**

The Directive has **expanded the definition of the notion of “victim” to include certain family members** of the deceased victim who have suffered harm as a result of their relative's death directly caused by a criminal offence.

“Family members” means **spouse, intimate committed companion, children, parents, siblings or other dependent persons** who have suffered from **emotional distress and/or loss, financial or otherwise**.

#### 12. I AM NOT THE ONLY SURVIVING FAMILY MEMBER. DO MY LATE WIFE'S FATHER AND SISTER ENJOY THE SAME RIGHTS?

In the event that there exist several surviving family members, Member States **may limit the number** of those among them who will benefit from the rights set out in the Victims' Rights Directive so as to **avoid disproportionate demands** for support and protection.

#### 13. MY WIFE'S MOTHER PERFORMED FGM. BECAUSE OF HER FAMILY TIES WITH MY WIFE, CAN SHE FALL UNDER THE PROTECTIVE UMBRELLA OF THE DIRECTIVE?

**No.**

The person who inflicted harm to a relative of theirs is **in all cases qualified as the offender**, i.e. the perpetrator of the crime, and thus cannot in any case be recognized by the Directive as a victim of the harm inflicted by him/her.

#### 14. MY SEVENTEEN-YEAR-OLD DAUGHTER HAS UNDERGONE FGM. WHAT ARE HER RIGHTS?

Persons below the age of 18 are considered as **children** by the Victims' Rights Directive. As such, they are **entitled to enhanced protection**.

Member States must ensure that **the child's best interests constitute a primary consideration** and are assessed **on an individual basis**, in accordance with the United Nations Convention on the Rights of the Child and as **full bearers of their rights**. It implies a child-sensitive approach, taking into account and adequately addressing the child's age, maturity, views, specific protection and other needs and concerns.

Assistance and other related personnel must therefore be offered **specialized training** and **adequate resources** to effectively deal with these situations.

## Part 2 – Rights emanating from the Directive of particular importance for FGM victims

### II. Provision of information

*Article 3 – Right to understand and to be understood*

*Article 4 - Right to receive information from the first contact with a competent authority*

*Article 5 – Right of victims when making a complaint*

*Article 6 – Right to receive information about their case*

*Article 7 – Right to interpretation and translation*

#### 15. MY SISTER UNDERWENT FGM AFTER HER ARRIVAL IN THE EU AND ONLY SPEAKS HER MOTHER TONGUE. WILL SHE BE ABLE TO COMMUNICATE ADEQUATELY WITH THE COMPETENT OFFICERS AND UNDERSTAND HER RIGHTS IN CASE SHE DECIDES TO REPORT THE ABUSE SHE WAS SUBJECTED TO?

**Yes**, she will. In line with its personalized approach to victims, and in particular to FGM survivors, and their right to understand and be understood, the Directive offers a number of guarantees ensuring that Member States **provide information to victims who have communication difficulties of any kind**, including when the person does not speak the language of his/her Member State of residence.

#### 16. WHAT ARE THE RIGHTS TO INTERPRETATION AND TRANSLATION SAFEGUARDED BY THE VICTIMS' RIGHTS DIRECTIVE?

**Upon request**, FGM survivors who do not understand or speak the language of the criminal proceedings concerned, are provided with **interpretation** during investigative and judicial authorities' interviews and during their active participation in court hearings, and for other information essential to the exercise of their rights. Interpreters must receive proper training to ensure protection of FGM survivors and understand the challenges of the FGM-specific context.

#### 17. THE PROSPECT OF HAVING TO NAVIGATE HER WAY THROUGH THE COMPLEXITIES OF THE LEGAL SYSTEM OF AN EU MEMBER STATE IS QUITE FRUSTRATING. CAN SHE EXPECT TO BE GIVEN ADEQUATE INFORMATION ABOUT THE PROCEDURE TO BE FOLLOWED?

End FGM Members and other competent NGOs and CSOs must monitor the effective implementation of this provision and be ready to offer their expertise to EU Member States to ensure the development of relevant and effective information tools to be addressed to FGM survivors.

**Yes**, she can.

The Victims' Rights Directive sets out a detailed list of basic information crime victims, including FGM survivors, that must be provided with upon first contact with the competent national authorities.

It implies an **individual, pro-active approach** taking into account the **specific needs of a victim**, and includes **information** on procedures, protection measures, legal advice, compensation, and victim support services.

## Part 2 – Rights emanating from the Directive of particular importance for FGM victims

### 18. IN CASE SHE DECIDES TO FILE A FORMAL COMPLAINT, SHOULD SHE EXPECT TO RECEIVE ANY KIND OF ACKNOWLEDGMENT THEREOF?

**Yes.**

Member States are required to ensure that crime victims receive written acknowledgment of the complaint they file to the competent authorities in respect of the harm they have suffered.

This formal acknowledgment may limit the risk of secondary victimization of victims of gender-based violence. FGM survivors must therefore be advised to request that they be issued with written acknowledgments of their complaint on all occasions.

### 19. AFRAID OF THE REACTION OF HER RELATIVES, IT TOOK HER A LONG TIME TO DECIDE TO FILE A FORMAL COMPLAINT. CAN THE AUTHORITIES REFUSE TO ISSUE AN ACKNOWLEDGMENT OF HER COMPLAINT FOR THIS REASON?

**No**, they cannot.

A delay in the reporting of a crime due to fear of retaliation, humiliation or stigmatization cannot result in refusing acknowledgement of the victim's complaint, without prejudice to the national legislations on prescription periods.

### 20. SHE DECIDED TO FILE A FORMAL COMPLAINT. CAN SHE BE ASSISTED IN THE FORMALITIES? WHAT FORMS COULD THIS ASSISTANCE TAKE?

End FGM Members and other competent **NGOs and CSOs must advocate for the enactment of provisions enabling third-party reporting of FGM cases** allow the prosecution of FGM cases that cannot be pursued by the affected persons themselves.

**Yes**, she can.

Upon filing their complaint to law enforcement authorities, FGM survivors are entitled to receive linguistic assistance by non-official interpreters, if this is deemed necessary and appropriate, and without prejudice to the interests of the affected person.

### 21. VICTIMS, INCLUDING FGM SURVIVORS, MUST RECEIVE INFORMATION UPON FIRST CONTACT WITH COMPETENT AUTHORITIES AND WHEN FILING THEIR COMPLAINT. DOES THE MEMBER STATES' OBLIGATION TO PROVIDE INFORMATION STOP THERE?

**No**, it does not. The Victims' Rights Directive safeguards the victims' **general right to receive information about their case at all stages of the criminal proceedings**,<sup>27</sup> **should they request it** and without prejudice to confidential measures. This implies information on any decision not to proceed with the investigation or the prosecution, on the final judgment or state of criminal proceedings, or on reasons for specific decisions.

The Directive also provides that the competent authorities shall inform FGM survivors of the potential release or escape of their offender **only following submission of a request** by the affected persons to be informed of such developments.

As this could **undermine the affected persons' safety**, survivors should therefore be advised by **competent NGOs and CSOs to always request to receive this information from the competent authorities.**

## Part 2 – Rights emanating from the Directive of particular importance for FGM victims

### III. Access to and support from victim support services

*Article 8 – Right to access victim support services*

*Article 9 – Support from victim support services*

#### 22. I UNDERWENT FGM A FEW MONTHS AGO. I HAVE HAD SERIOUS HEALTH PROBLEMS AND HAVE BEEN SUFFERING FROM ANXIETY ATTACKS EVER SINCE. I AM AFRAID TO TALK ABOUT IT WITH MY FAMILY AND FRIENDS. WHO CAN I TURN TO FOR ADVICE?

Enacting the obligation of Member States to ensure the provision of **victim support services** of a wide range (information, advice, emotional, psychological and practical support), free of charge, before, during and until after criminal proceedings, is one of the cornerstones of the Victims' Rights Directive.

#### 23. WHICH ENTITIES OFFER SUCH VICTIM SUPPORT SERVICES?

Victim support services are currently mostly provided by **specialized NGOs**.

#### 24. WHY CANNOT I FIND SUCH AN NGO TO REFER TO CLOSE TO WHERE I LIVE?

**Geographic distribution** of victim support services is **highly unsatisfactory** at the moment. For any information concerning access to such services, interested persons are invited to contact the End FGM European Network and its partner organizations.<sup>1</sup>

#### 25. SINCE THERE IS NO SPECIALIZED NGO TO REFER TO CLOSE TO WHERE I LIVE, MY ONLY OPTION IS TO CONTACT THE LOCAL POLICE STATION. WILL THEY BE IN POSITION TO HELP ME?

**Yes**, given that EU member states are obliged to **facilitate the referral of victims to support services**.<sup>28</sup> The Directive, as well as the Istanbul Convention, also encourages the creation of “one-stop shops” in EU Member States, which would facilitate the referral of victims to specialist support services, to properly address the victims' multiple needs.

#### 26. I DO NOT WANT TO LODGE A COMPLAINT WITH THE POLICE. AM I STILL ENTITLED TO HAVE ACCESS TO VICTIM SUPPORT SERVICES?

**Yes.**

FGM survivors are not obliged to file a formal complaint in order to have access to victim support services.

<sup>1</sup> The list of these NGOs is available at: <http://www.endfgm.eu/members/full-members/>. Further information can be found on the END FGM website (<http://www.endfgm.eu/>).

## Part 2 – Rights emanating from the Directive of particular importance for FGM victims

### 27. WHAT KIND OF ASSISTANCE CAN VICTIM SUPPORT SERVICES PROVIDE ME WITH?

Victim support services must **inform victims about their rights**, and provide **procedural and practical information** on proceedings, as well as **referral to specialist services**, emotional and psychological support, advice on risk and **prevention of secondary victimization** when appropriate on an individual basis.

**Civil society** must play a pivotal role in securing that Member States will **adopt measures going beyond the Directive's requirements to ensure maximum level of protection** to women affected by gender-based violence and FGM in particular.

Persons at risk of re-victimization and victims of sexual and gender-based violence, including FGM survivors who are in both categories, must be given **special attention** within targeted and integrated services (shelters, trauma and medical support, counselling etc.). It is essential that women's rights organizations **advocate for the setting-up of specialized shelters** and **holistic health services** for FGM survivors in Member States.

The Victims' Rights Directive only lays down minimum rules regarding the provision of effective specialist support services, notably concerning particularly vulnerable persons e.g. victims of gender-based violence. Would national legislations foresee greater protection for affected women, these rules would prevail.

### 28. I UNDERWENT FGM IN A DIFFERENT EU MEMBER STATE THAN THE ONE I RESIDE IN. CAN I SEEK ASSISTANCE FROM SPECIALIZED SUPPORT SERVICES IN MY PLACE OF RESIDENCE OR IS THE MEMBER STATE WHERE MY EXCISION WAS PERFORMED RESPONSIBLE FOR ASSISTING ME?

A Member State is only obliged to **provide assistance when criminal proceedings are conducted in its jurisdiction**. Therefore, it is the Member State of the victim's residence which should provide assistance, support and protection required for the victim to recover.

However, both States share an obligation of support when a victim (e.g. a person affected by FGM) lives in a Member State but falls victim to a crime in another Member State (see Question 6).

#### IV. Procedural rights

*Article 10 – Right to be heard*

*Article 11 – Right in the event of a decision not to prosecute*

*Article 12 – Right to safeguards in the context of restorative justice services*

*13 – Right to legal aid*

*Article 14 – Right to reimbursement of expenses*

*Article 17 – Rights of victim resident in another Member State*

### 29. I HAVE DECIDED TO INITIATE CRIMINAL PROCEEDINGS IN RESPECT OF MY EXCISION. WILL I BE CALLED ON TO TESTIFY BEFORE THE COURT?

**It depends.** The exact extent of affected persons' procedural rights depends on their procedural role, which is dependent on the criminal legal system of each EU Member State. The Directive did not seek to harmonize this specific provision in all EU Member States.

Concretely, as regards the right to be heard, provisions may range from basic rights to communicate with and provide evidence to the competent authorities, to more extensive rights, such as the right to have evidence taken into account, the right to ensure the recording of certain evidence or the right to give evidence during trial.



## Part 2 – Rights emanating from the Directive of particular importance for FGM victims

### 30. I FILED A FORMAL COMPLAINT AGAINST THE PERSON WHO EXCISED ME. IS IT CERTAIN THAT MY CASE WILL BE EXAMINED BY A COMPETENT COURT?

It is **likely** that FGM-related cases will be prosecuted and ruled upon in most instances. However, there may be cases for which a decision not to prosecute will be taken by the competent authorities.

FGM constitutes both a **bias-motivated crime**, a discrimination based on gender and a form of **grievous bodily injury**.

Survivors *should* have the **right to a review of a decision not to prosecute**, but this right depends on the **role of the victim in the criminal legal** system, which is discretionary to each Member State (see Question 29). This disposition can be prejudicial to a right to a review.

However, the Directive requires that victims of **serious crimes** have the right to a review. FGM-related offences should normally fall under this definition.

### 31. WHICH DECISIONS CAN BE REVIEWED AND WHICH AUTHORITY SHOULD CARRY OUT THE REVIEW AT NATIONAL LEVEL?

The right to a review of a decision not to prosecute refers to **decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers**. It should be done by a different – unbiased – authority than the original decision-maker.

It does **not cover decisions taken by courts**.

### 32. MY EXCISION WAS PERFORMED BY A CLOSE FAMILY MEMBER. I AM AFRAID THAT SEEKING THIS PERSON'S CONVICTION WILL DISRUPT AND/OR DESTROY MY RELATIONSHIP WITH MY FAMILY. WHAT ARE MY ALTERNATIVES?

FGM survivors must have the **opportunity to have recourse to restorative justice services**, such as criminal mediation between victims of crime and offenders or family group conferencing, and in case such services are already in place. However, participation to this kind of mediation must not be mandatory under any circumstances. Indeed, it is critical that safeguards exist to **prevent secondary and repeat victimization, intimidation and retaliation**.

FGM survivors should use restorative justice services only if it is in their best interest, and only after free and informed consent.

The competent authorities must **measure the risk of retaliation or intimidation** from other family members that may have been involved in the FGM **before referring a victim to such services**.

### 33. I CANNOT AFFORD A LAWYER TO ADVISE ME IN THE CONTEXT OF THE CRIMINAL PROCEEDINGS I WISH TO INITIATE IN RELATION TO MY EXCISION. HOW CAN I BE ASSISTED IN THIS RESPECT?

Member States must ensure that crime victims have access to legal aid, which should at least cover **legal advice** and **legal representation free of charge**,<sup>29</sup> but only if the victims of crime have the status of parties to criminal proceedings.

## Part 2 – Rights emanating from the Directive of particular importance for FGM victims

### **34. THE COURT HEARING IN RELATION TO MY EXCISION WILL TAKE PLACE FAR FROM WHERE I LIVE. I CANNOT AFFORD THE TRAVEL EXPENSES. AM I ENTITLED TO RECEIVE ANY FINANCIAL ASSISTANCE?**

Reimbursement of necessary expenses (travel, subsistence cost and potential loss of earnings) is offered only in case the national criminal system requires the affected person's presence or participation in criminal proceedings.

### **35. I UNDERWENT FGM IN A DIFFERENT MEMBER STATE THAN THE ONE I RESIDE IN. CAN I INITIATE CRIMINAL PROCEEDINGS IN MY COUNTRY OF RESIDENCE INSTEAD?**

As a rule, crimes committed against non-residents of an EU Member State will be prosecuted **in the Member State where they were perpetrated**. The Directive asks that the competent authorities are able to take a statement from the victim immediately after a complaint and to have recourse to diverse media to hear victims residing abroad.

Nevertheless, the Directive also enables victims to file a complaint in their State of residence **if they were unable to do so in the Member State where the criminal offence was committed, or if they simply did not wish to do so in the event of a serious offence**.

Not a single cross-border FGM-case has been recorded thus far. The Directive's provision facilitating the initiation of criminal proceedings in a Member State other than the one where the criminal offence was committed might well remedy this situation.

**Part 2 – Rights emanating from the Directive of particular importance for FGM victims**

**V. Protection of victims and recognition of victims with special protection needs**

*Article 18 – Right to protection*

*Article 22 – Individual assessment of victims to identify special protection needs*

*Article 23 – Right to protection of victims with specific protection needs*

*Article 24 – Right to protection of child victims during criminal proceedings*

**36. I AM CONSIDERING LODGING A COMPLAINT IN RESPECT OF MY EXCISION BUT I AM AFRAID THAT THE MEMBERS OF MY COMMUNITY WILL RETALIATE AGAINST ME OR MY FAMILY IF I CONTACT THE AUTHORITIES. IS THERE ANY WAY TO BE PROTECTED FROM THIS RISK?**

**Protection** of victims of crime during criminal proceedings is the second cornerstone of the Victims’ Rights Directive. However, the latter only sets minimum protection standards.

These measures include procedures under national law regarding the physical protection of victims and their family members, such as protection/restraining orders.

Member States must take measures to **protect victims and their family members from secondary and repeat victimization, intimidation and retaliation**, including psychological or emotional harm, and to **protect their dignity** during questioning and testifying.

**37. DO VICTIMS OF GENDER-BASED VIOLENCE, INCLUDING FGM SURVIVORS, ENJOY MORE RIGHTS COMPARED TO VICTIMS OF OTHER CRIMES?**

FGM survivors, and even more so girls, fall under the definition of **“vulnerable victims”**, since, as victims of gender-based violence, they experience a **high rate of secondary and repeat victimization, intimidation and retaliation**.

Member States must carry out a case-by-case approach and **timely individual assessments**,<sup>30</sup> which must take into account the **personal characteristics of the victim**”, as well as the **type or nature and circumstances of the crime**”.

A two-step procedure of individual assessment aims at identifying **victims with special needs** and the **appropriate measure to address them**. Without prioritizing any specific category of victims, the Directive pays **particular attention to vulnerable victims**, identified as such according to the harm they have suffered and the potential bias motive of the crime perpetrated against them. These victims benefit from **special protection measures**.

II Such as age, **gender** and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, **relationship to or dependence on the offender** and **previous experience of crime**.

III Such as hate crime, bias crime or a crime committed with a **discriminatory motive, sexual violence, violence in a close relationship**, whether the offender was in a position of control, or whether the victim’s country of origin is not the Member State where the crime was committed

## Part 2 – Rights emanating from the Directive of particular importance for FGM victims

### 38. AFTER HAVING FILED MY COMPLAINT, I KNOW I WILL HAVE TO ANSWER A LOT OF QUESTIONS CONCERNING MY EXCISION. BUT I DON'T FEEL COMFORTABLE TO HAVE THIS DISCUSSION WITH MALE OFFICERS. WHAT CAN BE DONE ABOUT IT?

**Competent NGOs and CSOs can play a pivotal role in ensuring the development of relevant tools to cover those needs at national level.**

FGM survivors have the right to request to give their testimony to female officers. This request cannot be made when interviews are conducted by a prosecutor or a judge further in the prosecution process. In this case however, FGM survivors can be accompanied by a person of their choice<sup>IV</sup>.

Member States need to develop specific protocols to ensure **women's safety and protection of their dignity** during the reception of their testimony and the investigation, including specific, gender-sensitive training to police officers.

### 39. WILL I HAVE TO UNDERGO MEDICAL EXAMINATION FOR THE PURPOSES OF THE CRIMINAL PROCEEDINGS?

Yes.

FGM survivors will have to undergo gynecological/medical tests upon investigation of the crime committed against them. Nevertheless, competent national authorities must keep medical examinations to a minimum.

### 40. I DON'T WANT TO CONFRONT THE PERSON WHO EXCISED ME IN THE COURTROOM. CAN THIS BE AVOIDED?

Yes, it can.

Women and girls affected by FGM have the right to request that any encounter with the practitioner who performed FGM/the defendant is avoided in the courtroom and throughout the criminal proceedings. The means to avoid confrontation are at the discretion of Member States.

**Civil society must thus advocate for the adoption of these measures to the greatest extent possible, in an effort to ensure maximum security for affected persons, which will encourage them to cooperate with the authorities in prosecuting FGM.**

### 41. I KNOW THAT COURT HEARINGS ARE PUBLIC, AS A RULE. I DON'T FEEL COMFORTABLE SPEAKING ABOUT MY EXCISION BEFORE AN AUDIENCE. IS THERE ANY WAY TO PREVENT THIS?

Yes, there is.

FGM survivors have the right to request to be examined by the court **without being physically present** at the public hearing. This request is accepted or rejected after an individual assessment. The court can decide to simply limit the questioning to a minimum as regards the victim's **private life**, to use communication technology to avoid the presence of the victim in the courtroom, or to allow a hearing without the presence of an audience.

The victim's **privacy** and his/her family's also needs to be protected before, during and after the court proceedings, especially when the victim is a child.

### 42. DOES MY MINOR DAUGHTER ENJOY THE SAME RIGHTS IN THE CONTEXT OF CRIMINAL PROCEEDINGS RELATED TO HER EXCISION?

Yes. In fact, she is entitled to even more enhanced protection.

Under the Directive, children are presumed to have **specific protection needs** (See Question 14). Consequently, specific, **individual measures** must be applied to each child victim, notably as regards interviewing techniques and special representation, when necessary.

<sup>IV</sup> Provided, for example, that said person is not suspected of being the perpetrator of FGM.

## Part 2 – Rights emanating from the Directive of particular importance for FGM victims

### VI. Training of practitioners – Cooperation and coordination of services

*Article 25 – Training of practitioners*

*Article 26 – Cooperation and coordination of services*

#### 43. PROFESSIONALS WORKING WITH FGM SURVIVORS MUST SECURE ENJOYMENT OF THEIR RIGHTS AND AVOID CAUSING SECONDARY TRAUMA. HOW CAN SUCH KNOWLEDGE BE ENSURED?

Member States must ensure that all officials likely to come into contact with victims receive **general and specialist training to increase their awareness of the needs of victims**, and to ensure an **impartial, respectful and non-discriminatory** approach.

The Directive makes this requirement mandatory for police services and court staff, and encourages it is made available to lawyers, judges and prosecutors, and promoted for practitioners providing victim support or restorative justice services.

End FGM Network considers that **training of all professionals** working with FGM survivors is **vital**.

#### 44. THE TRAINING OFFERED TO PROFESSIONALS WORKING WITH FGM SURVIVORS IS CURRENTLY NOT OPTIMAL. HOW CAN ITS ADEQUACY AND EFFECTIVENESS BE INCREASED?

Professionals working with FGM survivors must **develop awareness of the notion of “victims’ needs”**, in order to detect persons affected by or at risk of FGM and to conduct effective **individual assessments** to identify and address the specific protection needs of FGM survivors (e.g. prevention of secondary victimization, address of trauma) or persons at risk (e.g. prevention of FGM, protection, education).

This awareness can only come through the **development of clear protocols and guidelines** to ensure continuous and accurate training to professionals working with FGM survivors or women and girls at risk of FGM (e.g. the police, judiciary, health or social sectors).

Belgium<sup>31</sup> and the UK<sup>32</sup> have developed training tools for practitioners who are likely to come in contact with persons affected by FGM. Proliferation of these good practices is of utmost importance for the effective protection of FGM survivors and the overall combat against FGM. It should therefore figure high on the agenda of competent women’s rights organizations.

Trainings must include sessions on: **detection of FGM**; the **rights and needs** of FGM survivors; mechanisms to **prevent secondary victimization** of affected women; **prevention** of FGM.

#### 45. WHAT IS THE CURRENT LEVEL OF COOPERATION BETWEEN EU MEMBER STATES AND OF COORDINATION OF ACTIONS ON FGM SURVIVORS’ RIGHTS AT NATIONAL LEVEL?

Currently, cooperation between stakeholders to prevent and prosecute FGM offences and to protect persons affected by FGM is **insufficient and not effectively coordinated** at all levels.

Furthermore, FGM-affected communities living in the EU and countries of origin, are not actively involved in dialogues on FGM. Thus concrete measures must be taken to ensure a better fight against FGM.

## Part 2 – Rights emanating from the Directive of particular importance for FGM victims

### 46. WHAT MEASURES CAN BE TAKEN TO IMPROVE THE AFFECTED PERSONS' ACCESS TO THE RIGHTS SET OUT IN THE VICTIMS' RIGHTS DIRECTIVE?

**End FGM European Network and its Members** clearly fall into the scope of this provision, and therefore **should actively seek cooperation with competent EU bodies/agencies and EU Member States** in the area of **prevention and prosecution of FGM** and of **protection of persons affected by FGM**.

The Directive requires Member States to take **appropriate measures and action to facilitate cooperation** between themselves to improve the access of their rights to victims.

These measures imply an **exchange of best practices** between Member States (e.g. through the European Judicial System, E-Justice Portal, experts' meetings, workshops and seminars), as well as **enhanced cooperation at EU level and multi-agency, NGOs/CSOs and private sector cooperation at national level**. This cooperation should result in accurate **policymaking initiatives, information and awareness-raising campaigns, national plans, research and education programs, training and monitoring**.

### 47. WHAT DOES THE VICTIMS' RIGHTS DIRECTIVE FORESEE AS REGARDS PRIMARY PREVENTION OF CRIMES, INCLUDING FGM?

Member States must implement **awareness-raising measures**, including information and awareness-raising campaigns and research and education programs. These programs should specifically target **at-risk groups, such as children and victims of gender-based violence**.

As regards **combating FGM**, Member States should also address challenges in **raising awareness among migrant groups** affected by FGM e.g. by including education on gender equality, gender-based violence and FGM in schools, but also by ensuring that all **professionals** likely to be in contact with affected.

End FGM Members and other competent NGOs and CSOs can play a **vital role** in achieving this goal.

## Abbreviations

CSO	Civil Society Organization
DG Justice	European Commission Directorate-General for Justice and Consumers
EIGE	European institute for Gender Equality
EU	European Union
FGM	Female Genital Mutilation
NGO	Non-Governmental Organization
Q&A	Questions and Answers

## Glossary

**Child:** For the purposes of the Victims’ Rights Directive, “child” means any person below 18 years of age.

**Child-sensitive approach:** The requirement that, when implementing the Victims’ Rights Directive, European Union Member States ensure that the child’s best interests constitute a primary consideration and are assessed on an individual basis.

**Council of Europe:** An international organization focused on promoting human rights, democracy and the rule of law, comprising 47 Member States (including the 28 European Union Member States). To be distinguished from the European Council and the Council of the European Union, which are bodies of the European Union.

**Council of the European Union** (also referred to as “the Council”): The main decision-making body of the European Union, representing the governments of the Member States. It meets in different configurations, each one of them comprising the Ministers of the 28 Member States who have the same area of responsibility. *Inter alia*, it is responsible for coordinating Member States’ policies in specific fields; and for negotiating and adopting legislative acts, in most cases together with the European Parliament through the ordinary legislative procedure, known as “co-decision”, on the basis of proposals submitted by the European Commission.

**Court of Justice of the European Union:** The judicial institution of the European Union, *inter*

*alia* responsible for interpreting European Union law to ensure it is applied in a uniform manner in all Member States; and for settling legal disputes between national governments and EU institutions.

**Cross-border crime:** A crime occurring in more than one country; or a crime committed in one country which is not the country of nationality or residence of the victim or the offender; or a crime whose effects occur beyond the country where the criminal offence was committed.

**Directive:** A legislative act of the European Union which sets out goals that all EU Member States must reach without dictating the means to achieve them, thus allowing Member States a margin of discretion in enacting laws that will enable them to achieve the required result.

**European Commission:** The executive body of the European Union, *inter alia* responsible for proposing legislation which is then adopted by the co-legislators, the European Parliament and the Council of the European Union; and for enforcing law, where necessary with the help of the Court of Justice of the European Union.

**European Council:** The institution that defines the general political direction and priorities of the European Union. It consists of the heads of state or government of the 28 Member States, the President of the European Council and the President of the Commission.

**European Court of Human Rights:** An international court established by the European Convention of Human Rights, which has been concluded between the 47 Council of Europe Member States. It examines applications alleging violations by the Contracting States of the human rights provisions set out in the Convention.

**European Parliament:** The directly elected parliamentary institution of the European Union, responsible for exercising the legislative function of the EU together with the Council of the European Union and the European Commission.

**Family member:** For the purposes of the Victims' Rights Directive, the notion of "family member" may refer to: the spouse of a victim; the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis; the relatives of a victim in direct line; the siblings of a victim; and the dependents of a victim.

**Female Genital Mutilation:** All procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons, which has serious, immediate and long-term consequences for affected women and girls.

**Gender-based violence:** Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately.

**Harmonization (of national laws):** A key concept for the integration of European Union Member States, referring to the process of adopting common standards in all 28 Member States, in several areas of governance whose harmonization is foreseen by the Treaties of the European Union.

**Individual assessment:** A two-step procedure, whereby the competent authorities implement a case-by case approach towards victims of crime, taking into consideration the personal characteristics of the victim, the type/ nature and the circumstances of the crime, with a view to determining whether a victim has specific protection needs, and whether and to what extent a victim with specific protection needs shall benefit from special measures in the course of criminal proceedings.

**Infringement procedure:** The procedure initiated by the European Commission in case of failure of a European Union Member State to comply with its obligations under European Union Law.

**Legal aid:** The appointment of a State-funded lawyer to represent a victim who is unable to cover the relevant cost on their own.

**Prescription period:** Legal rule restricting the time that is allowed to elapse between the arising of a legal claim and the filing of a complaint based on this claim, set out in the national legislations of European Union Member States.

**Procedural rights:** Rights related to the progress of criminal proceedings and to the participation of the parties to the case thereto.

**Protection order:** A court order seeking to protect a person from harassment or harm.

**Referral:** Act performed by the competent authority and/or other relevant entities that receive a complaint by a victim of crime consisting in directing the latter to victims support services.

**Restorative justice:** Any process whereby the victim and the offender are enabled, if they freely consent to, to actively participate in the resolution of matters arising from the criminal offence through the help of an impartial third party. Examples of restorative justice services include family group conferencing, sentencing circles and victim-offender mediation.

**Re-victimization (or repeat victimization):** The pattern wherein the victim of abuse and/or crime is at -statistically higher- risk of being victimized again. Re-victimization of persons affected by female genital mutilation can take the forms of total excision following a previous partial one; re-excision after reconstructive surgery; and performance of different types of female genital mutilation practices on the same person.

**Role of victims in criminal proceedings:** The procedural position of victims in the context of criminal proceedings, which is set out in the national criminal procedural laws and varies significantly among EU Member States. In particular, victims may have a specific procedural role in the context of criminal proceedings (e.g. as civil party, witness or private prosecutor) in some Member States or no



formal role at all in others. The enjoyment of several rights enshrined in the Directive has been made dependent on the victims' role in the criminal legal system of each Member State; therefore, victims of crime with different roles in different Member States are bound to enjoy different levels of protection of their rights safeguarded by the provisions at issue.

**Secondary victimization:** The victim-blaming attitudes and/or inappropriate post-assault behaviour or language by the victim's environment and/or services providers who come into contact with the victim, which results in additional trauma for the latter.

**Transposition:** The process of bringing into force the laws, regulations and administrative provisions necessary for a European Union Member State to comply with the requirements of a Directive, within a deadline specifically set for this purpose.

**Victim:** For the purposes of the Victims' Rights Directive, a victim is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; and family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.



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- 6 Sources of international human rights law on female genital mutilation, including relevant initiatives to eliminate FGM at EU level, can be found at: <http://www.endvawnow.org/en/articles/645-sources-of-international-human-rights-law-on-female-genital-mutilation.html> (accessed 18.07.2016).
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- 11 EIGE report, *supra* note 3, p. 16
- 12 EIGE report: “FGM is, by nature, a global, transnational phenomenon. That is why it needs to be addressed in bi- and multilateral discussions among countries and stakeholders at a multitude of levels.” (*supra* note 3, p. 13)
- 13 [http://ec.europa.eu/justice/criminal/victims/index\\_en.htm](http://ec.europa.eu/justice/criminal/victims/index_en.htm) (accessed 18.07.2016)
- 14 Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters, OJ L 181, 29.6.2013, p. 4, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421938843158&uri=CELEX:32013R0606> (accessed 18.07.2016)
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- 16 Recital 17
- 17 *Ibid.*
- 18 According to EU data, around 30 million crimes, excluding minor offenses, are reported to the police every year (Eurostat, Statistics in focus, 36/2009), amounting to up to 75 million direct victims of crime per year (15% of the EU population). European Commission press release of 18 May 2011, [http://europa.eu/rapid/press-release\\_IP-11-585\\_en.htm](http://europa.eu/rapid/press-release_IP-11-585_en.htm) (accessed 18/07/2016).
- 19 Recital 13
- 20 Recital 10
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- 26 Article 2§1(a)(i)
- 27 See Recital 27 for technical practicalities
- 28 Article 8§2
- 29 DG Justice guidance document, *supra* note 21, p. 34
- 30 Article 22§3, see also Recital 55
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**End FGM**  
EUROPEAN NETWORK



**End FGM**  
**European Network**  
Mundo B  
Rue d'Edimbourg 26  
B-1050 Ixelles  
Brussels, Belgium