



ENCLAVE

Enhancing the capacity of legal & justice
professionals on forensic interview procedures
for child victims and witnesses of violence

| 12/01/23



THE ENCLAVE PROJECT'S FINAL CONFERENCE

SUPPORTING CHILD VICTIMS AND WITNESSES OF SEXUAL ABUSE:
TOWARDS AN INTEGRATED CHILD PROTECTION SYSTEM

Benchmark Protocol &
Comparative Report

101005464 — ENCLAVE — JUST-AG-2020 / JUST-JACC-AG-2020

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1. BENCHMARK PROTOCOL

Focus: creation of a reference framework for the five countries. A one-size fits all model that represents an integrated child protection system.



Objectives:

1. Increasing the capacity and knowledge of legal and justice professionals in EU civil, criminal and fundamental rights instruments addressed to child victims or witnesses of sexual violence (ENCLAVE's workshops material).
2. Provide criminal justice leaders with guidance to implement best practices regarding the forensic interview protocol minimum standards in procedural, operational and assistance terms.



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1. BENCHMARK PROTOCOL



Based on:

- Directive 2012/29/EU,
- United Nations Convention on the Rights of the Child (**UNCRC**) and
- European Barnahus Quality Standards (**BHQS**).



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RIGHTS (Convention on the Rights of the Child)	INTERESTS (Directive 29/2012/UE)	MEASURES
Right to participation and to the promotion of progressive autonomy (art. 12)	<ul style="list-style-type: none"> • Adequate and respectful information on children's rights (art. 6 & 7): <ul style="list-style-type: none"> - To understand and to be understood (art.3) • Participation (art. 10): <ul style="list-style-type: none"> - To be heard and decision-making (art. 10) - To ask, to demand, to agree, to get answers (art. 11, when no prosecution, art. 12 restorative justice, art. 13 legal aid- Participation in Daly model) - Free legal aid and Legal advice (art. 13 & 24.1.c) - Special representative for child victims (conflict of interests) (art. 24.1) - Specialist training (police officers, court staff, judges and prosecutors, lawyers (art. 25) 	<ul style="list-style-type: none"> ✓ Assessment of the victim/witness capabilities so as to take appropriate measures (pre-interview meeting). ✓ Adapt the information according to the maturity, cognitive development and emotional state of the victim/witness. ✓ Consultation of the victim/witness for participation. ✓ Right to file a complaint on their own. ✓ Right to specialized and free legal assistance. ✓ Specialized training of all professionals involved in child victimization cases. ✓ Accessibility (including for children with disabilities and/or special needs).
	<ul style="list-style-type: none"> • Support: <ul style="list-style-type: none"> - Victim support services (art. 8) - Special representative for the child victim in cases of conflict of interest (art. 24.1) 	<ul style="list-style-type: none"> ✓ Support/information to the victim/witness and family on protective measures and support services. ✓ Requirement of a figure that specifically defends their interests (different from the lawyer)
Right to protection against abuse and neglect (art. 19)	<ul style="list-style-type: none"> • Security and protection (art. 18) 	<ul style="list-style-type: none"> ✓ Requirement of unified action protocols. ✓ Coordination of professionals (judicial, health and social sectors). ✓ Malpractice control requirements.
Right to rehabilitation and reintegration, from the perspective of the right to physical and psychological health (art. 39)	<ul style="list-style-type: none"> • Minimization of stress-mental health: <ul style="list-style-type: none"> - Avoid contact between victim and offender (art. 19) - Avoid visual contact with accused (art. 23.3.a) - Testimony without being present (art. 23.3.b) - Number of interviews and medical examinations of victims is kept to a minimum (art. 20.b & d) - Interview conducted without unjustified delay after the complaint (art. 20.a) - Recorded interview (art. 24.1.a) - To be accompanied (arts. 3.3 & 20.c) - Minimum contact with different professionals (art. 23.2.c) • Support from victim support services: Support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including support and counselling (art. 9.3.b) 	<ul style="list-style-type: none"> ✓ Immediate protection measures mechanisms. ✓ Coordination of professionals (judicial, health and social sectors). ✓ Measures to avoid visual contact with accused (in halls, rooms, entrances, etc.). ✓ Pre-trial evidence in the investigation phase and protection mechanisms at trial. ✓ The right to be accompanied by a trusted person of their choice (to be substituted in case they do not have it). ✓ Time reduction (assessment and interview deadlines). ✓ Fixed reference person
Right to dignity and privacy (art.16)	<ul style="list-style-type: none"> • Privacy (art.21): <ul style="list-style-type: none"> - Shame and informative self-determination - Throughout the process (environment) - Anonymity (art.23): in relation to the protection of personal data - (During court proceeding) a hearing to take place without the presence of the public (art. 23.3.d) 	<ul style="list-style-type: none"> ✓ Measures to protect the victim's privacy in relation to the environment (rooms, adequate access). ✓ Specific measures for the protection of personal data (reports and recordings). ✓ Information for the victim/witness about the assistance/presence of different professionals and the recording of the interview, in an appropriate way to her/his maturity, cognitive development, emotional state and situation.
	<ul style="list-style-type: none"> • Dignity (art.18): <ul style="list-style-type: none"> - Avoid unnecessary questioning concerning the victim's private life not related to the criminal offence (art. 23.3.c) - Interviews with the victim carried out in premises designed or adapted for that purpose (art, 23.2.a) - Carried out by professionals trained for that purpose (art. 23.2.b) - Carried out by the same person (art. 23.2.c) - Same sex interviewer (art.23.2.d) 	<ul style="list-style-type: none"> ✓ Informing the victim/witness of the recording of his or her interview. ✓ Review of the data included in the forensic report (protection of the victim's personal life). ✓ Adequacy of the environment in a broad sense: room, halls, furniture, clothing, etc. ✓ Specialized and continuous training: childhood, victimization, sexual violence, domestic violence, gender. ✓ Professionals' coordination (judicial, health and social sectors) ✓ Unification in a single expert request of all the necessary reports. ✓ Same sex interviewer.

1. BENCHMARK PROTOCOL



Structure: two macro-categories and six subcategories.

- **Rationale** behind it.
 - **Link to rights** and interests of the provisions of Directive 2012/29/EU.
 - **Minimum standards** that facilitate its practical application.
-
- **Countries' Level of compliance** with the minimum standards.
 - **Promising practices** of both partner and non-partner EU countries.
 - **General Recommendations** to achieve a justice model more adapted and respectful of the rights, needs and interests of child victims and witnesses



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1. BENCHMARK PROTOCOL



Structure:
Two macro-categories
and six subcategories.

INTEGRATED CHILD PROTECTION SYSTEM	Directive 2012/29/EU articles
<i>INTEGRATED SYSTEM</i>	<i>Art. 6, 7, 9.3.b, 18, 19, 23.3.a, 20 (a, b, d), 21, 23.</i>
<i>MECHANISMS TO GUARANTEE CHILDREN REAL ACCESS TO JUSTICE</i> (A) Child Victim's complaint and free legal aid (B) Specialised Figures	<i>Arts. 3, 5 6, 7 10, 11, 12, 13, 18, 20.c, 23.2.b and c, 24.1.b, 25)</i>
<i>CHILD-FRIENDLY ENVIRONMENT: REPORTING AND INTERVIEW POINTS</i> (A) Adequate building access and Appropriate waiting area (B) <i>Interview and Observation rooms and Technological equipment</i>	<i>Arts. 3, 18, 19, 20, 21, 23.2.a, 24.1.a.</i>
FORENSIC INTERVIEW OR VIDEO RECORDED INTERVIEW	Directive 2012/29/EU articles
<i>CRITERIA FOR THE USE OF THE FORENSIC INTERVIEW AS PRE-CONSTITUTED EVIDENCE</i>	<i>Arts. 9.3.b, 20, 24.1.a.</i>
<i>TRAINING.</i> (A) Interviewers' professional training: requirements (B) Basic training of related professionals	<i>Arts. 3, 6, 7, 9.3.b, 10, 11, 12, 13, 18, 25</i>
<i>METHODOLOGY: STANDARDISED PROTOCOL</i> (A) Interview Protocol (B) Interview's outcome	<i>Arts. 3, 6, 7, 9.3.b, 10, 18, 19, 20, 21, 23, 24.1.a, 25</i>



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1. BENCHMARK PROTOCOL



Example:

2.1.2. MECHANISMS TO GUARANTEE CHILDREN REAL ACCESS TO JUSTICE

Child Victim's complaint and free legal aid.

Structure of each subcategory:

- **Rationale** behind it.
- **Link to rights** and interests of the provisions of Directive 2012/29/EU.
- **Minimum standards** that facilitate its practical application and evaluation.

▶ **Rationale:**

Child victims should have the right to make a complaint for themselves, without the presence of representatives, and be assigned legal assistance immediately. They should be provided at this time with **information** appropriate to their personal situation.

▶ **Reflection in the Directive 2012/29/EU articles:**

- **Adequate and respectful information** on children's rights (art. 6 and 7): *To understand and to be understood (art.3)*
- **Participation (art. 10):** *Right to be heard and to decision-making (art. 10); Right to ask, to demand, to agree, to get answers (art. 11, when no prosecution, art. 12 restorative justice, art. 13 legal aid-Participation in Daly model); Special representative for child victims (conflict of interests) (art. 24.1.b); + Right to self-report (art. 3 and 5); Right to specialised legal assistance (art. 13 and 25).*

▶ **Minimum standards:**

- Recognition of the right to file a complaint on their own.
- Clear mechanisms for allocation of specialised legal aid.
- Free legal aid.



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1. BENCHMARK PROTOCOL



Example: Child victim's complaint and free legal aid

Structure of the Benchmark protocol:

- **Countries' Level of compliance** with the minimum standards.
- **Promising practices** of both partner and non-partner EU countries.
- **General Recommendations** to achieve a justice model more adapted and respectful of the rights, needs and interests of child victims and witnesses.

Promising practices:

- ✓ In **Estonia**, leaflets on child friendly court proceedings have been issued for child witnesses, explaining in a language, understandable for a child, what one can expect when giving a testimony in court.
- ✓ In **Spain**, the Court of the Canary Islands, specialised in violence against children and adolescents, is working on technological tools to get closer to children in the way they communicate and interact with data related to the judicial process (e.g., summons via a mobile app instead of being delivered by the police, as well as appointment reminders and explanation of what the forensic interview consists of).
- ✓ Familiarising children with the court environment is a common practice in **several EU countries** (e.g., United Kingdom, France, Germany). Children receive written information on the criminal justice process and their role and next they are invited to a pre-trial familiarisation visit. They are shown the separate child's entrance, an empty court room, the witness waiting area and the live link room.
- ✓ In **Austria**, the Victim Assistance Service has created a brochure called Millie goes to court, which is addressed to child victims and witnesses to prepare them for a court visit (using cartoons). The main topics dealt in the leaflet are frequently asked questions when giving testimony and the physical environment. There are actual photographs of the court building, the way to court, the courtroom, the chair where children sit and the video equipment.
- ✓ In **France**, with the program *Avoc'enfants*, present in several cities, children and young adults involved in a civil or criminal case can access free and confidential meetings with specialised lawyers to receive legal advice, support, and information on their rights.
- ✓ In **Georgia**, persons under the age of 18 in criminal cases are granted *ex officio* the right to legal aid. There are no conditions required for children to benefit from this service since they are "socially vulnerable".



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1. BENCHMARK PROTOCOL

Example: Child victim's complaint and free legal aid



Structure of each subcategory:

- **Level of compliance** with the minimum standards.
- **Promising practices** of both partner and non-partner EU countries.
- **General Recommendations** to achieve a justice model more adapted and respectful of the rights, needs and interests of child victims and witnesses.

Recommendations:

- Access to justice for child victims/witnesses, as rights holders, must not only be real but adequate. It is recommended that States review materials adapted to age groups, to provide information to victims about their rights and the process. It is recommended that national regulations on access to legal aid be reviewed, so that the victim's situation of dependence does not jeopardise their access to it.
- Finally, it is recommended that specialisation of the legal profession be required, ensuring sufficient understanding and attention to their rights, needs and interests.



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1. BENCHMARK PROTOCOL



Applied Benchmark Protocol

1. Rubric to determine system alignment to minimum standards.
2. Rubric to determine adherence to best practice standards.



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1. BENCHMARK PROTOCOL

Rubric to determine system alignment to minimum standards



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INTEGRATED SYSTEM

	1 Low	2	3	4 High
Regulated requirement for specialised training of professionals involved in child victimization				
Specialised physical access for victims.				
Coordination protocols and timeframes for support and care: Priority processes				
Existence of protocols indicating the tasks of each professional (group) and the members of the interagency working team.				
Requirement of coordination roundtables.				
Immediate protection mechanisms.				
Comprehensive Forensic Assessment Unit on Violence against Children and Adolescents.				

MECHANISMS TO GUARANTEE CHILDREN REAL ACCESS TO JUSTICE

(A) Child Victim's complaint and free legal aid.

	1 Low	2	3	4 High
Recognition of the right to file a complaint on their own.				
Clear mechanisms for allocation of specialised legal aid.				
Free legal aid.				

(B) Specialised Figures

	1 Low	2	3	4 High
Legal assistance				
Assigned representation in case of conflict of interest.				
Professional supervision of the interest of the child victim (tailored participation).				
Information and notification by mean of a fixed reference person.				
Accompaniment by their legal representative or a person of their choice.				



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2. COMPARATIVE REPORT



Main goal: increasing the knowledge of legal and justice professionals in EU civil, criminal and fundamental rights instruments addressed to child victims or witnesses of sexual violence.

In particular:

- Victim's Rights Directive (Directive 2012/29/EU) and
- Convention on the Rights of the Child (CRC).

Objectives:

1. Contrasting the knowledge and application of the Victim's Rights Directive, to detect bridges and gaps between theory and practice in the implementation of the forensic interview protocol and
2. Mapping out forensic interview protocols and their impact on the preliminary investigation phase and the oral hearing.



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2. COMPARATIVE REPORT



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QUERIES <ul style="list-style-type: none"> • Interviews (I) • Questionnaire (Q) 	BELGIUM		ESTONIA		GREECE		ITALY		SPAIN	
	I	Q	I	Q	I	Q	I	Q	I	Q
FORENSIC PSYCHOLOGIST	2	-	-	-	2	3	5	24	8	23
LEA OFFICERS	25	2	2	8	3	9	-	-	3	4
JUDICIARY	3	-	1	3	2	1	-	1	6	5
PROSECUTOR'S OFFICE	3	-	3	7	3	2	-	-	6	7
LAWYERS	1	-	-	-	-	2	2	1	1	2
OTHER PROFESSIONALS	5	-	4	-	2	4	-	-	1	-
VICTIM ASSISTANCE PROFESSIONALS	10	-	-	-	-	-	-	-	4	-
TOTAL	51		28		33		33		66	



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2. COMPARATIVE REPORT

Some Conclusions:



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1. **The importance of overcoming a Fragmented system:** means enabling functional mechanisms for cooperation and coordination between the different professional groups involved in the legal, health and social areas in processes involving underage victims/witnesses and facilitating clear protocols in this regard (**achieving an integrated system**).
2. **Real access to justice for children:** recognize child victims/witnesses as true rights holders.
 - Child Victim's complaint, free legal aid and Specialised figures;
 - Child-friendly environment.
 - Child victims should have the right to make a complaint for themselves, without the presence of representatives, and be assigned legal assistance immediately.
 - In a safe, neutral and child-friendly environment to minimize or avoid the risk of secondary victimization.



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2. COMPARATIVE REPORT

Some Conclusions:



- 3. Specialised training:** It is not widely known by judges, prosecutors and social services agencies how much information children can provide in well-conducted interviews, and don't fully grasp that the quality of children's testimony is heavily influenced by the quality of the interviews in which it is elicited (Lamb, 2016).
- Training for child forensic interview should: provide trainees with a structured interview protocol, be spaced over time (not as an intensive training) and provide expert feedback and opportunity to practice (Benson & Powell, 2015).
 - Training and feedback should be two folded: for forensic interviewers so that they learn utilize and adhere to best practice interviewing strategies, and for other professionals in the criminal justice system, “so that they recognize instances of poor practice and insist that standards be improved”(Lamb, 2016).



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2. COMPARATIVE REPORT

Some Conclusions:



4. **The importance of establishing clear criteria for the use of the forensic interview as pre-trial evidence** as it is key to facilitating the proper work of all the professionals involved and to reduce the risk of secondary victimization.
5. **The importance of Multidisciplinary and interagency cooperation.** To give a coordinated response (legal, health and social spheres). The regulation and protocols of forensic interviewing must be harmoniously accommodated within a system that is consistent with the rights, needs and interests of child victims. Which implies having a professional team trained in coherence with this systemic vision.
6. **The importance of a child-centred approach** that permeates policies, cultures and practices (opposed to the adult-centred and androcentric perspectives).
7. **Guaranteeing a Child-friendly environment (building's access, the waiting, interview and observation rooms and the technological equipment).**



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2. COMPARATIVE REPORT

Some Conclusions:



8. **The importance of using a Standardised Interview Protocol (e.g., NICHD, NCAC, ABE).** Provides clarity in the work of all professionals, allows for a correct evaluation of the practices carried out and, where appropriate, intervention in case of malpractice.
9. **The use of tools and props** is a controverted topic. It can be useful under certain circumstances (e.g., children under 5, reluctant children, to overcome linguistic barriers) but it can also compromise children's reliability (e.g., anatomical dolls may elicit sexualized play, Lamb, 2018). Proper guidelines, caution in its use and appropriate training are emphasised.



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