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BENCHMARK PROTOCOL

**BELGIUM, ESTONIA, GREECE,
ITALY & SPAIN**

2022



ENCLAVE

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



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WP2. Benchmark Protocol

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CHAPTER 1. INTRODUCTION

1.1. OBJECT

ENCLAVE is a European scale action research project in collaboration with five EU Member States: Belgium (BE), Estonia (EE), Greece (EL), Italy (IT) and Spain (ES). Born under the scope of the RE-TREAT project (JUST-AG-2019/JUST-JACC-AG-2019), reshaping treatment approaches towards victims of sexual violence within criminal proceedings. A European project aimed at boosting procedural and organisational changes in the criminal proceedings within the justice systems in Greece, Italy and Spain to improve their responsiveness to particular needs of victims of sexual crimes¹.

ENCLAVE tackles the current situation and treatment of children victims and witnesses to sexual violence regarding the implementation of the 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 (the Victims' Rights Directive) and of the forensic interview protocol in the five European justice systems. This project is founded on three pillars:

1. Increasing the capacity of legal and justice professionals and victim support organizations in the implementation of the forensic interview protocol with victims of child sexual abuse.
2. Increasing the interprofessional collaboration of the different actors involved in the judicial process, including victim support organizations.
3. Preventing the re-victimization of child victims and witnesses² to sexual abuse.

The overarching focus of the Benchmark protocol is to present a set of standards that define an integrated child protection system, the level of compliance of **BE, EE, EL, ES** and **IT** with these touchstones and a collection of good and promising practices from different European Union (EU) countries. This resource revolves around two 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. Since it is part of the training materials for ENCLAVE's pilot capacity building national and international workshops.
2. Provide criminal justice leaders with guidance to implement best practices regarding the forensic interview protocol minimum standards in procedural, operational and assistance terms. As it will be available online in English and five EU languages and disseminated through other platforms.

¹ <https://sexualviolencejustice.eu/re-treat-project/>

² For disambiguation purposes two terminological remarks must be made: (i) In accordance with art. 1 of the Convention on the Rights of the Child, the term child is understood as any person under the age of 18 years, "the legally defined age at which a person becomes an adult". In Susanna Greijer and Jaap Doek, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse* (Luxembourg: ECPAT International, 2016). Throughout the text it is employed as an umbrella term for children and adolescents. It is also worth mentioning the principle of evolving capacity to acknowledge that children are to be treated based on their degree of maturity. Meaning that measures should be tailored to their cognitive and psychological development and not only applying generic measures based on their age. The impact of victimisation and the current knowledge of psychological trauma is also a key aspect in this case because it affects the appropriateness of measures. (ii) Even though the figure of the victim and that of the witness have different repercussions in the judicial process in this Project are dealt with jointly. "[T]he definition of adult victimisation is not suitable for children (...) due to their unique characteristics, vulnerabilities and needs, the injurious effect of crime to children goes far beyond direct victimisation" In Michal Gilad, «The Young and the Helpless: Re-defining the Term 'Child Victim of Crime'», Public Law and Legal Theory Paper, n.º 14-23 (2014): 23-24. Understanding that being a witness to sexual offences is victimising for children and that the protection measures applied to victims should also be applied to witnesses, especially regarding the forensic interview - and in general concerning the participation of the child by means of his or her testimony. Some specific issues addressed here are only applicable to the victim, although it should be noted that the victim's participation is often as a witness.

Drawing on the conclusions reached in RE-TREAT, this Benchmark protocol is presented in an interest-based structure that considers different rights and needs of victims, adjusted to the specific situation of child victims and witnesses to sexual crimes³.

As for the scope of this report, due to the specific characteristics that would require a differentiated approach, the crimes of child grooming, exploitation of children for prostitution, child pornography and child sex tourism, are not included in this Project. Furthermore, for delimiting purposes, the concept of the Child victim's journey is present in this Benchmark protocol, which includes the assistance to child victims and witnesses from the police report to the trial hearing.

1.2. METHODOLOGY

As a reference framework for the five countries, a one-size fits all model that represents an integrated child protection system was created. It is grounded on the Directive 2012/29/EU, the United Nations Convention on the Rights of the Child (UNCRC) and the European Barnahus Quality Standards (BHQS).

To assess the level of compliance of **BE, EE, EL, ES** and **IT** with the different benchmarks that define the integrated child protection system and to detect and collect good, bad and promising practices, each country conducted interviews with different stakeholders involved in cases of child sexual abuse. Namely: judges, magistrates, prosecutors, lawyers, Law Enforcement Agency officers (police), child psychologists and forensic psychologists –from victim support agencies and from courthouses–.

This is a peephole through which to gain insight into the daily practice of professionals, and to detect not only facilitating factors of the legal process but also gaps caused by regulatory, training or structural barriers.

Furthermore, this qualitative data was complemented with literature research to detect good and promising practices regarding the forensic interview protocol, not only in **BE, EE, EL, ES** and **IT** but in other European countries. The main studies consulted are:

- The 1st implementation report of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse in the circle of trust (Lanzarote Convention).
- The European Commission, Directorate-General for Justice's Study on children's involvement in judicial proceedings. Contextual overview of the criminal justice phase.
- The European Union Agency for Fundamental Rights (FRA)'s study on Child-friendly justice: Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States.
- The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (CoE Guidelines).

Although some questions are presented here in a schematic way they are further developed in ENCLAVE's Comparative Report.

³ The rights and measures required for child victims are adapted based on the recognition of interests established in the RE-TREAT Project, which is based on the Victimization and Justice Model that allows for the evaluation of justice mechanisms from the victim's perspective, developed in Daly Kathleen, «Conventional and Innovative. Justice Responses to Sexual Violence», Australian Centre for the Study of Sexual Assault, n.º 2 (2011): 1-35.

1.3. STRUCTURE

The Benchmark protocol is structured in two macro categories: (I) Integrated child protection system and (II) Forensic interview or Video recorded interview which are subdivided in smaller categories. The reason for this is that the Forensic Interview is not an isolated procedure, but it is embedded in a broader and complex system, in which multiple agencies, institutions and actors are involved.

This system is necessary to ensure the correct functioning of the protocols as well as to ensure the proper use of the forensic interview, in time and form, and to maximise its benefits throughout the process. Specific measures for better participation and protection of the rights of minors are not new but have been developed for years.

Specific measures

Part of these specific measures can be found in the General Comments of the Committee on the Rights of the Child. For instance, General Comment No. 12 (2009) on The right of the child to be heard paragraph 64 states that: *“The right of the child victim and witness is also linked to the right to be informed about issues such as availability of health, psychological and social services, the role of a child victim and/or witness, the ways in which “questioning” is conducted, existing support mechanisms in place for the child when submitting a complaint and participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibilities of receiving reparation, and the provisions for appeal”*.

Other specific measures for better participation and protection are found in The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice In particular, in its definition of child-friendly justice as: *“accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity”*. To this end, the Council highlights participation, the best interests of children and adolescents, dignity, protection against discrimination and the rule of law as fundamental principles. As general elements, it recognises information and counselling, protection of privacy and family life, security through special preventive measures, training of professionals and a multidisciplinary approach.

More examples of specific measures for better participation and protection are in child-friendly justice during judicial proceedings and its different dimensions noted in the CoE Guidelines on child-friendly justice: access to court and to the judicial process, legal counsel and representation, right to be heard and to express views, avoiding undue delay, organisation of the proceedings, child-friendly environment and child-friendly language and evidence/statements by children.

On the topic of the Evidence/statements by children, mention is made to the specialised training of the person carrying out these interventions and maintaining as far as possible the same person in future necessary interventions, the importance of an appropriate environment, recording of these statements respecting procedural guarantees, the reduction in the number of interventions and the avoidance of confrontation with the accused party. It is worth noting the importance of designing interview protocols that

include the different evolutionary stages of children and adolescents as well as the flexibility or the reduction of strict rules.

In practice, however, there are significant shortcomings due to the lack of a sufficient institutional structure, which sometimes limits the benefits of these measures and sometimes even cancels them out completely. This situation makes projects such as ENCLAVE more necessary.

Brief definition of the sub-categories:

(I) Integrated child protection system:

- **Integrated system:** full coordination between the different services, professionals and measures with which victims/witnesses will have to interact. Structural examples of this are specialised Courts on violence against children, the Barnahus model and Child's Advocacy Centres created to foster an adequate coordination of mechanisms in the justice, social and health systems.
- **Mechanisms to guarantee children real access to justice** is one of the key elements to ensure a comprehensive system. The path to follow is agile and adapted, meaning that it facilitates the victim's access to justice, interventions are kept to a minimum and there is professional specialised attention. Part of the access is bound to the right to participation, which is composed of the right to be informed, to express their opinion and be heard and to have their voice duly considered in matters that concern them, in accordance with their maturity and development. However, enshrined in all the current protection laws for children and adolescents, it varies in scope and effectiveness⁴.
- **Child-friendly environment: Reporting and interview points.** Nowadays, environmental appropriateness is often referred to as one of the defining elements of child-friendly justice. However, what child-friendly environments mean in practice is often not defined. That is why in this report we break down key elements to facilitate its translation into practice. Thus, we talk about: Adequate building access, Appropriate waiting area, Interview and Observation rooms and Technological equipment.

(II) Forensic interview or Video recorded interview:

- **Criteria for the use of forensic interview as pre- trial evidence:** the existing regulation in each country here is addressed as a key element in the effective implementation of forensic interview protocols. Regulation sets the boundaries within which forensic interviewing takes place. Furthermore, it also reveals the gaps in which the evaluation of the practice is often complex and therefore the rights and interests of the victims are not fully protected. Issues such as its regulation based on age, the type of crime or the assessment required on a case-by-case basis are analysed.
- **Training:** includes the (A) Interviewers professional training requirements: their basic and specialised training, expertise, joint training in multidisciplinary teams

⁴ Anna Massons-Ribas, M. Ángeles Basells, Neus Cortada, «The Participation of Children and Adolescents in the Protection System: The Case of the Spanish Legislation», *Social Sciences*, n.º 10 (7) (2021): 268, <https://doi.org/10.3390/socsci10070268>.

and continuous training. Where it is analysed the way in which these requirements are implemented in each of the partner countries, detecting the obstacles that persist at present, because of regulation and/or the lack of required training. The (B) Basic training of related professionals to the forensic interview who, although may not be actively involved in it, have a direct or indirect impact on it. For instance, the assessment of the need to conduct the forensic interview to be used as pre-trial evidence.

- **Methodology (standardised protocol):** includes the (A) analysis on the presence or absence of an institutionalised forensic interview model, their phases, facilitating factors and barriers and (B) the uniformity and minimum requirements in the transfer of forensic interview outcomes into the judicial process.

Therefore, the structure of the Benchmark protocol is comprised of two macro-categories and six subcategories. In each subcategory is first the Rationale behind it, second its link to rights and interests of the provisions of Directive 2012/29/EU. Finally, a set of Minimum standards which would ensure sufficient satisfaction of the rights and interests involved in each section and that facilitate its practical application.

Based on these, the Level of compliance of each partner state is detailed. As well as the Promising practices of both partner and non-partner EU countries. Meaning, remarkable measures still in force or that have been in force at some point in time, seen as good practices and inspiration for the improvement of the ENCLAVE Project partner countries.

Finally, funded on all this, general Recommendations are made with the determination to move towards a justice model more adapted and respectful of the rights, needs and interests of child victims and witnesses.

CHAPTER 2. BENCHMARK PROTOCOL

2.1 INTEGRATED CHILD PROTECTION SYSTEM

2.1.1 INTEGRATED SYSTEM

► **Rationale:**

- Harmonious coordination of the different services and not just a chronological sequence of the victim's journey through each institution. There must be clear lines of communication and a division of tasks for each of the professionals' roles. They must form an interagency working team, with a single accessible file to provide complete information without delay, ensuring the rights of victims/witnesses, especially in relation to the protection of their privacy and intimacy (under high standards of respect for dignity).
- This entails assistance to victims/witnesses from a child-rights perspective (non-adult centred approach), gender perspective⁵ and respect for the rights of persons with disabilities.
- Achieving clear and coordinated systems facilitates the register of these victimisations in a clear and orderly manner, allowing for a better understanding of the reality of victimisation and facilitating the adaptation of measures.

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

- **Adequate and respectful information** on children's rights (art. 6 and 7)
- **Minimization of stress-mental health:** 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 and d); Interview conducted without unjustified delay after the complaint (art. 20.a).
- **Security and protection** (art. 18)
- **Privacy** (art.21): Throughout the process (environment); Anonymity (art. 23): in relation to the protection of personal data
- **Dignity** (art.18): Specialised environments (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)
- **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 trauma support and counselling. (art. 9.3.b)

► **Minimum standards:**

- Regulated requirement for specialised training of all professionals involved in child victimisation cases: theoretical and practical capacity building.
- 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 Adolescents⁶.

⁵ Council of Europe Gender equality strategy 2018-2023, which focuses on 6 strategic areas among which are Preventing and combating gender stereotypes and sexism and Preventing and combating violence against women and domestic violence. Available in <https://www.coe.int/en/web/genderequality/gender-equality-strategy>

⁶These units are created under the premise that violence against children is a specialised field. They are staffed by professionals from forensic medicine (specialized in paediatric forensic medicine), forensic psychology and forensic social work, to include the three perspectives in the evaluation of the child victim, aggressor, environment and circumstances and thus provide the maximum information to the judge in his or her task of resolving the criminal and civil aspects derived from the prosecuted facts. Also, this professional collaboration drastically helps reducing judicial timeframes and avoiding undue delay.

BE, EE, EL, ES and IT level of compliance:

Regarding structures such as Child Advocacy Centres (CACs) and Children's Houses or Barnahus (Nordic model) that potentially ensure the multidisciplinary and interagency collaboration, only **Estonia** has put this measure in practice. The initiative started in 2017, so far it is present in three regions: Tallinn, Tartu and Jõhvi, although the service is available for the whole country⁷.

As for specialised Courts for violence against children, none of the **five countries** have implemented them. However, **Spain** is at a decisive moment in promoting the creation of these specialised courts since the approval of the Organic Law 8/2021 on the comprehensive protection of children and adolescents against violence (LOPVI). On another note, in **BE, EL, ES** and **IT** there are special courts when the offender is a minor, on the understanding that the adult system (ordinary procedure) does not respond to their specific rights particularly in the specialised response it requires. Nevertheless, when the victim is a child, a fragmented system of care is in place, and constant adaptations that do not fit in with the daily procedures of the legal operators must be made.

Promising practices:

- ✓ In **Belgium**, a 2017 pilot project led to the creation of the **Care centres after sexual abuse**, with the opening of 3 centres (in Brussels, Ghent and Liège). Due to its success and increasing demand, at the end of 2021, 2 new centres opened (in Charleroi and Antwerp). In 2022-2023, 5 new centres will open (in Roeselare, Leuven, Namur, Genk and Arlon). In the Care Centres, a multidisciplinary team provides with the necessary care for victims of sexual violence. Victims can reach these centres for medical and psychological care and follow-up, to file a complaint with the police if desired and to get examined in view of initiating a forensic investigation. Care Centres are available 24h a day, 7 days a week.

There are also **Family Justice Centres** in the regions of Antwerp and Kempen that act as a form of cooperation between services that work with families where there is repeated violence and a multiproblem situation.

Since 2010 there is a **Protocol on Child Abuse** signed by the Federal Minister of Justice and the Flemish Minister for Welfare, Public Health and Family. This protocol provides with clear guidelines for the cooperation between all relevant stakeholders in the aim to effectively address the complex phenomena of child abuse.

- ✓ In **Estonia's** Children's Houses (lastemaja), one-stop-shop where multiagency cooperation is fostered, a team of specialists assess the child's health, social situation and skills and the need for (further) assistance. They also coordinate investigative activities to resolve cases, and provides the child with the necessary assistance, counselling, and referral to a family psychologist or therapist.⁸ Besides, case management duties are performed by child protection workers at the local government level.

Since 2016, there are **Sexual assault centres (SACs)** present in Tallinn, Tartu, Pärnu and Kohtla-Järve's hospitals and are co-funded by the Social Insurance Board. There, among other duties, experienced professionals in the field of sexual violence work closely with the Children's Houses and co-operate with the police upon official request in the use of evidence collection kits in rapes cases and in the implementation of a standardized protocol in the assistance to victims.

⁷ With a partnership between regional Prefectures of the Police and Border Guard Board, districts' Prosecutor's Office, the Forensic Science Institute, the Children's Mental Health Centre of the Tallinn Children's Hospital, the Tartu Sexual Health Clinic, the Tartu Children's Support Centre and local governments.

⁸ Frank-Viron, A. & Lind-Liiberg, A. (2018). Seksuaalselt väärkoheldud laste parimaks abistamiseks avatakse Lastemajad (*The Children's Houses will be opened for providing the best assistance to sexually abused children*); In Estonia, in January 2018, the practice of investigating and solving offenses committed by minors was changed, the Juvenile Sanctions Act was repealed, the work of juvenile commissions closed. These changes placed more important responsibilities on the person conducting the proceedings (law enforcement agencies) and on the local government in order to influence the minors. The principles of restorative justice play a key role in determining measures and sanctions for juvenile offenders.

- ✓ In **Greece**, with the implementation of Law N.4478/2017(ΦΕΚ 91 Α'91/23-06-17) it is foreseen the creation of Independent Protection Units for Minor victims in Athens, Thessalonica, Piraeus, Patras and Heraklion. These Units are provided by law in accordance with Child Advocacy Centres (CACs) of the USA. **In practice** the implementation of these Units has been severely delayed and only Athens' CAC operates. Although it is in its first stages of implementation, this CAC has started to coordinate comprehensive services for children impacted by sexual assault and their families.
- ✓ In **Italy**, some professionals' associations are particularly active on **multidisciplinary cooperation**. The association, *Psicologia in Tribunale* (Psychology in Court) born in 2020 was created to foster better and reliable cooperation among professionals with different backgrounds during all the phases of the trial, and of the investigations. Although promoted by forensic psychologists, lawyers, magistrates, social workers, and other interested stakeholders are also part of it.
- ✓ In **Spain**, there are pilot projects of the Barnahus model in different stages of development and implementation in several autonomous regions (Barcelona, Madrid, Vasque country, Valencia). The Ministry of Equality plans to extend to the rest of the autonomous communities by 2023 the **Crisis centre for women victims of sexual violence Pilar Estébanez**, a Pilot project based in Madrid, that is 24h/365 days open. **Spain** currently runs a pilot project of **Courts for Violence against Children and Adolescents** in the Canary Islands, which has more than 10 years of experience in specialising in the care of victimised children. **Spain** relies on the Victim Support Offices for a correct assessment of the specific needs of each victim (art. 22 and 23 of Directive 2012/29/EU).
- ✓ In **England and Wales**, since 2009, in The Crime Survey, children between 10 to 15 years are asked about their experiences of "victimisation and negative behaviours in the previous 12 months". Meaning, experiences with crime, bullying, thoughts on the police, steps taken to keep belongings safe, cyber bullying, truanting from school, alcohol and drugs, carrying knives and street gangs. In the survey it is also registered if the child has a long-term disability or illness. This is useful for professionals to obtain accurate information on crime levels and attitudes towards the police⁹.
- ✓ In **Germany**, information and resources are shared between professionals in parallel criminal and civil investigations. For instance, to avoid multiple hearings the video recorded testimony is shared¹⁰.
- ✓ In **Sweden**, usually in the investigation phase, professionals from different disciplines and agencies (social services, the police, prosecutors, forensic doctors, paediatricians and the Authority for Child and Youth Psychiatry) gather in a child-friendly environment in Children's Houses (Barnahus, present in some municipalities), and interchange information and provide attention and support to children victims of (sexual) violence¹¹.

Recommendations:

- Although specialised courts are not a prerequisite for the adequate protection of children's rights, they do facilitate greater specialisation and better supervision and evaluation of its overall functioning. Thus, it is recommended that **BE, EE, EL, ES** and **IT** review nationwide the existence of reference entities that currently have a sufficiently stable structure and specialised training to be able to function as a reference centre. The main objective of these reference entities is to function as a meeting and cooperation point for information about the

⁹ For more information see: <https://www.crimesurvey.co.uk/en/index.html> and «Violence against children with disabilities: legislation, policies and programmes in the EU», Luxembourg: Publications Office of the European Union. (European Union Agency for Fundamental Rights (FRA), 2015).

¹⁰ «Child-friendly justice: Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States», Luxembourg: Publications Office of the European Union. (European Union Agency for Fundamental Rights (FRA), 2015).

¹¹ «Child-friendly justice: Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States».

child victim/witness to be able to coordinate the responses given to them. This therefore requires an individual assessment of the specific needs of the victims as provided for in Directive 2012/29/EU (art. 22 and 23) and allows for the coordination of specific protection measures in time and form. The experience of the partner countries in Youth Courts for juvenile offenders can help in finding analogous approaches to proceedings involving child victims.

- It is essential to have a national registry or data bank of (sexual) violence against children, with due respect for the requirements of personal data protection, to avoid biases and stigmatisation, which includes the following data: type of violence, age, gender, disability, relationship between victim and aggressor, how the violence was detected, resources used by the victim, expert reports and response of the process¹².

2.1.2. MECHANISMS TO GUARANTEE CHILDREN REAL ACCESS TO JUSTICE

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

▶ **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)¹³.*

▶ **Minimum standards:**

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

BE, EE, EL, ES and IT level of compliance:

In **BE**, children can report an offence on their own, but they do not act as civil parties or injured persons. That can only be done through their legal representative. Children have access to free assistance from a legal counsel (no need to prove any other conditions, such as low income)¹⁴.

In **EE** the law does not contain specific provisions concerning children's ability to report a crime; they can do so through helplines (e.g., 11611), gateways for children in danger and in need (e.g., Lasteabi.ee)¹⁵ and police channels (in person, phone call, police website). Free legal aid is available since 2019 through the Victim Support service scheme which provides victims of human trafficking and sexual abuse compensation for the cost of the psychological care and state compensation to

¹² "Data Collection Register, information sharing and awareness raising: Aggregated and disaggregated data/statistics is collected and shared with relevant stakeholders, including decision-makers, academia, child protection professionals, and the broader public, to create awareness about violence against children and the role of media responses, to facilitate research and to support evidence-based legislation, policy and procedures" (BHQS 10.1).

¹³ Although they are not specifically recognized as rights in Directive 2012/29/EU, they can be deduced from the harmonious reading of articles 3, 5.13 and 25. Additionally, it is also backed up in Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law and Related Commentary, pp. 13-14 (art. 9, Right to be informed; art. 10, Legal assistance).

¹⁴ Nathalie Meurens, «Study on children's involvement in judicial proceedings: contextual overview for the criminal justice phase: Belgium», Luxembourg: Publications Office of the European Union. (European Commission, Directorate-General for Justice, 2014).

¹⁵ In urgent cases the gathered information is forwarded to the police and to Children's Houses.

victims of crimes of violence. The foreseen amendment in 2022 of the Victim Support Act will recognise the same provisions to witness of violence.

In **EL**, there are age restrictions to submit a complaint: if the child victim is below 13 years, only their parents or legal guardians can submit a complaint, whereas if they are above 13 years of age both their parents (or legal guardian) and them have the right to file a complaint. When the minor turns 18 they are the only ones entitled to do.

In **ES**, minors can file a complaint either through their representatives or by themselves without the presence of their legal guardians and by law they are entitled to free legal aid¹⁶.

In **IT**, as well as in **EL**, there are age restrictions to file a complaint: for children below 14 only their parents or legal guardians can submit a complaint, even against the children's will¹⁷, whereas children over 14 can report an offence on their own. Although Social services of the juvenile justice administration cannot act on behalf of the child, they can assist children in reporting a crime. Only children from low-income families can access free legal aid¹⁸.

There are statutory provisions in the **five EU countries** to provide child victims information on their rights and the criminal procedure in which they are involved, in a child-friendly manner and in the first contact with the authorities (verbally, in writing -leaflets- or in institutional webpages). Still, communication using a child-friendly language is not an extended practice, as a child-friendly attitude depends on the specialised knowledge and skills.

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 room¹⁹.
- ✓ 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 equipment²⁰.
- ✓ 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 rights²¹.

¹⁶ Arts. 17. 14 and 50.2.fLOPIVI.

¹⁷ Art. 120 Italian Penal Code.

¹⁸ Emanuela Canetta, «Study on children's involvement in judicial proceedings: contextual overview for the criminal justice phase: Italy», Luxembourg: Publications Office of the European Union. (European Commission, Directorate-General for Justice, 2014), <https://data.europa.eu/doi/10.2838/74916>.

¹⁹ «Child-friendly justice: Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States».

²⁰ Elena Jurado, Simone Klinge, James Kearney, «Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union», Luxembourg: Publications Office of the European Union. (European Commission, Directorate-General for Justice, 2014), <https://data.europa.eu/doi/10.2838/71517>.

²¹ «Child-friendly justice: Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States».

- ✓ 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”²².

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.

(B) Specialised Figures

► Rationale:

There must be a specialised figure(s) that allows for adequate legal assistance, appropriate participation and protection of the child's interests. Their duties can be carried out by the same professional.

► Reflection in the Directive 2012/29/EU articles:

- **Adequate and respectful information** on children's rights (art. 6 and 7)
- **Participation** (art. 10): *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); Special representative for child victims (conflict of interests) (art. 24.1.b)*
- **Minimization of stress-mental health:** *Fixed reference person (art. 23.2.c), To be accompanied (arts. 3.3 and 20.c)*
- **Dignity** (art.18): *Carried out by professionals trained for that purpose (art. 23.2.b)*

► Minimum standards:

- 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.

BE, EE, EL, ES and IT level of compliance:

In the **five jurisdictions** children have the right to legal representation which covers all stages of the proceedings²³. Also, representation is assigned in cases of conflict of interest between the child and their legal representative: in **BE**, a special representative or *ad hoc* guardian is appointed by the judge to act and speak on behalf of the child (upon request of any interested party or *ex officio*), as damages claimant or issue a direct summons without the permission of the district court²⁴. In **EE** and **EL**, in judicial proceedings, a special representative (a lawyer in **EE**) is designated. In **ES** a defender is designated to represent the minor before a conflict of interest.

²² *Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly justice* (Council of Europe Publishing, 2011).

²³ Jurado, Klinge, Kearney, «Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union».

²⁴ «1st implementation report. Protection of children against sexual abuse in the circle of trust: The framework» (Council of Europe, 2017), p.123, <https://rm.coe.int/1st-implementation-report-protection-of-children-against-sexual-abuse-/16808ae53f>.

In **IT**, different figures can be appointed, a guardian, who “informs the child of the outcomes and the status of the proceedings that interest him/her”²⁵, guardian ad litem “to ensure the adequate representation of the child from the beginning of the preliminary investigation”²⁶ or a lawyer.

In none of the studied jurisdictions exists the figure of a fixed reference person to inform the child victims and their family throughout all the legal process. Instead, there are different figures in charge of this duty: police officers, the legal counsel, the public prosecutor and victim support services.

In **EE** exists the figure of the Child protection specialist, at the local government level, who has case management duties. This professional assists children and families, is responsible for the protection of the rights and interests of children, makes appointments for the reception of the Children's House, looks for rehabilitation services, assesses the child's need for help and identifies how it affects his/her interests and well-being.

It is of utmost importance defining the role of each professional involved in the different phases of the judicial proceeding, as well as the training and experience needed:

- For example, in **BE** the role of the lawyer is defined in the legal framework (Joint Circular of 14 October 2021, 2.6 Role of the lawyer). Their participation during the forensic interviews/TAM interrogation is possible, if the minor so requires, however their presence is not required, and it is in practice unlikely. When the lawyer attends the hearing, it is preferably from the control room, but it is also possible to be in the interview room, in the background, out of the field of vision of the person being interviewed. One of the purposes of the presence of the lawyer is to control the regularity of the hearing by ensuring that the person being heard is treated properly, that no unlawful pressure or coercion is manifestly exerted and that an interpreter is present if necessary to take the testimony of the person being heard. The lawyer is expressly recommended not to intervene directly but wait until the end of the hearing to make any observations. Before observed procedural irregularities, their remarks are to be recorded in the hearing minutes.
- For instance, in **IT**, the lawyer can play a major role, not envisaged by law and based on the personal ethics and specialised knowledge of the professional in charge, in the supervision of the proper conduct of the forensic interview. Both by knowing the case file and documents - according to CC the lawyer can have access to the investigative documents- and by ensuring that during the protected hearing the testimony of the minor suspected of being a victim of sexual abuse is collected in a correct manner, avoiding the contaminating effect on the reconstruction of the facts on account of procedural errors.

Promising practices

- ✓ In **Belgium**, the Flemish Bar Association and the Youth Lawyer Commission offer a two-year certificate as Youth Lawyer. The training consists of legal modules on children's rights, complemented with basic training in child psychology and development and practical training such as communicating with children. Attendance of all modules is obligatory²⁸.
- ✓ In **Estonia**, child-friendly justice is highlighted, and specialised training and multi-agency cooperation is taught and funded.²⁹
- ✓ Since 2021, **Spain** has established by law a specialised turn for child victims, which ensure the specialisation of the legal profession.
- ✓ In several **EU countries** there are specialised figures to protect and guarantee children's rights and to facilitate their participation. For instance, in United Kingdom the figure of the intermediary is present when giving testimony and in cross-examination. They

²⁵ Idem p.125

²⁶ Idem p.125

²⁷ Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly justice. Council of Europe Publishing, 2011.

²⁸ Idem.

²⁹ <https://lapsesobralikmenetlus.just.ee>.

support children before, during and after the hearing. The role can be accomplished by professionals with a legal or social background (e.g., judges, prosecutors, psychologist, police officers) and are accredited and trained on child-related justice issues³⁰.

Recommendations:

- It is recommended that States review and define the roles and competences through legal framework of specialised figures who actively participate in the judicial process. In addition to their specialised training in the rights and assessment of the interests of child victims. In this sense, it is advisable to reinforce the specialised training of the professionals who participate in the process directly or indirectly. The creation of new figures and their viability should be reviewed by each State.
- The requirement for these figures should not be interpreted in a restrictive manner, i.e., only aiming to represent minor victims in the process, but rather to advocate for a professionalisation of the incorporation of the interests of minor victims/witnesses in the process.

2.1.3 CHILD-FRIENDLY ENVIRONMENT: REPORTING AND INTERVIEW POINTS

(A) Adequate building access and Appropriate waiting area

▶ Rationale:

- The **access to the building** has an exclusive entrance for children and adolescents (no police control, non-uniformed professionals) and it is easily signposted.
- Close to the interview room there is a **separate waiting area**, designed according to the principles of physical and psychosocial well-being from the design movement of humanizing care spaces and the victim's architecture. Which considers lightning, colours, acoustics, temperature and furniture, among other elements.

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

- **Minimization of stress-mental health:** Avoid contact between victim and offender (art. 19)
- **Privacy** (art.21)
- **Dignity** (art.18): Specialised environments (art, 23.2.a)

▶ Minimum standards (Building access):

- The access ensures no visual contact with the offender.
- Presence of non-uniformed professionals.
- Accessibility (including for children with disabilities and/or special needs).
- Private areas available to ensure privacy.

▶ Minimum standards (Waiting area):

- Set up so that contact between victim and alleged offender can be always avoided.
- Protected area with access designed only for the victim (not a transit point).
- Furnishing and material are child and family-friendly and age-appropriate.

BE, EE, EL, ES and IT level of compliance:

Where? In **BE** forensic interviews usually take place only in police precincts with a specifically equipped interrogation room (art. 94 CCP) approved by the public prosecutor. Child victims are never heard in court and usually they aren't present during the hearings. Whereas in **EE**, forensic interviews are carried out in Children's Houses or in police stations, but if the victim is older than 13, also in Courtrooms. In **EL** interviews are usually carried out in police stations but also in

³⁰ «Child-friendly justice: Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States».

prosecution structures and Courtrooms. While in **ES** and **IT** interviews usually take place in Courtroom facilities and Prosecution Offices.

Building access: In **BE, EE, EL, ES** and **IT** usually there is no separate entrance for child victims, meaning that access to police precincts and courthouses is not adapted or child-friendly, with few exceptions (e.g., **ES**'s Juvenile prosecutor's Offices, Specialised Court of violence against children in Gran Canaria, *Lastemaja* (Children's Houses) and some police stations in **EE**³¹ and **BE**). Children usually access buildings very hostile to them and get exposed to unsettling images before they reach child-friendly rooms and can even encounter the alleged offender.

In **BE** the TAM interrogation takes place in an environment with enough privacy and usually with non-uniformed officers. Although this is not the case when minor victims file their initial report. Belgian law requires that on the day of the interview, three spaces are provided for minors: a reception room, an interview room and an observation room.

EE's three Children's Houses (*Lastemaja*) are located in different regional centres, in Tallinn, Tartu and Jõhvi, and a fourth will open in 2022. The service is coordinated on the national level by the Social Insurance Board (SKA, *SotsiaalkindlustusAmet*). There are separated, soundproof and private areas and Children's Houses' addresses are not disclosed to ensure the safety of children and employees. There, it is expected to happen preliminary investigations and meetings in the framework of the criminal proceeding and that specialists come to meet the child victim in the same place.

Waiting area: In **EE, EL, ES** and **IT** in police stations, courthouses and prosecutor's offices there are no specific waiting rooms for child victims/witnesses (with some exceptions like **EE**'s Children's Houses). Children are made to wait where all beneficiaries wait. However, in courthouses, sometimes as a protective measure, they are made to wait, if necessary, in other rooms (e.g., the library).

Promising practices

- ✓ In **Belgium** mobile interview teams are available if, for example, a child needs to be interviewed in a hospital.
- ✓ In **Estonia**, the Ministry of Justice runs a project on child friendly proceedings and has issued guidelines about child-friendly legal protection spaces.³²
- ✓ In **Greece** the law foresees the creation of Independent Protection Units for Minor victims: housed in detached buildings within the urban area, accessible by public transport, formulated with safety standards for the minor victim and witness of abuse and inclusive infrastructures for minors with disabilities. These Protection Units are not still in place (see section 2.1 promising practices).
- ✓ In **Iceland**, in the Reykjavik Barnahus there are two waiting room. One for pre-schoolers and young children with age-gap appropriate toys. One for pre-teens and teenagers, with magazines for teenagers, age-appropriate board games. Besides an open waiting area, with magazines and newspapers for parents/caregivers³³.

Recommendations:

- It is recommended that partner countries establish *protected access* for child victims/witnesses: no uniformed professionals, fast access meaning no official security

³¹ «Child-friendly justice: Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member», Luxembourg: Publications Office of the European Union. (European Union Agency for Fundamental Rights (FRA), 2017). European Union Agency for Fundamental Rights (FRA) (2017).

³²Justiitsministeerium (2021). Lapsesõbralik keskkond õiguskaitstes (*Child-friendly legal protection spaces*). *Kriminaalpoliitika lühianalüüs* 2/2021. <https://www.kriminaalpoliitika.ee/et/soovitused-lapsesobraliku-keskkonna-loomiseks-õiguskaitstes>

³³ Olivia Lind Haldorsson, *Barnahus Quality Standards: Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence*. (Council of the Baltic Sea States Secretariat and Child Circle, 2020), 60, <https://www.barnahus.eu/en/wp-content/uploads/2020/02/PROMISE-Barnahus-Quality-Standards.pdf>.

check, avoid confrontation with the accused person.

- *Waiting rooms* should be spaces for the exclusive use of children, close to the interview room, with direct or semi-direct access, and without being a passageway for other professionals.
- It is also recommended to implement guidelines for inclusion, such as for children with reduced mobility (e.g., ramps for wheelchairs and stair railing extensions) which can help guarantee their presence and participation as well as feeling safer and thus providing a favourable environment for giving the best evidence possible.
- To remember that interview rooms are only a part of the child-friendly environment and "adapted access" is one of the steps to achieve it, if not it ends up being an isolated and fragmented measure. It needs to go together with the intervention of specialised professionals.
- It is therefore essential to professionalise the adaptation of the environment, moving away from adaptations made from subjective perspectives. These adaptations must be based on professional studies on *humanizing of spaces* or *the victim's architecture*: paying close attention to the tone of the colours, the shapes of the furniture, the light, the temperature. It is recommended to rely on existing studies in the health sector, for instance, children's hospitals.
- Adaptation mechanisms that stigmatise victims/witnesses or allow them to be identified as such (e.g., notebooks, backpacks, brochures) should be avoided.

(B) Interview and Observation rooms and Technological equipment.

► **Rationale:**

To ensure adequate implementation of the forensic interview, it is necessary to address the interests of the child victim in the facilities where it takes place (e.g., police precincts, courtrooms, Children's Houses) but also to ensure that the recording can be appropriately used by the judiciary. The possibility to order that the child victim be heard using appropriate communication technologies (art. 23.3 a and b).

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

- **Minimization of stress-mental health:** *Avoid contact between victim and offender (art. 19); Number of interviews and medical examinations of victims is kept to a minimum (art. 20.b and d); Interview conducted without unjustified delay after the complaint (art. 20.a); Recorded interview (art. 24.1.a); To be accompanied (arts. 3 and 20).*
- **Privacy (art.21).**
- **Dignity (art.18):** *Specialised environments (art. 23.2.a).*

► **Minimum standards (Interview room):**

- "Physically safe room for children at all ages and developmental stages, including for children with disabilities and/or special needs" (BHQ 4.2).
- Equipped with a high-quality camera (visible and friendly) able to move and focus properly on the victim and with a high-quality sound system and live broadcast.
- Security measures and restricted access to the recording.

► **Minimum standards (observation room):**

- Gesell camera or video conference connection (preferable to double mirror).
- Interaction system between interviewer and observers.

BE, EE, EL, ES and IT level of compliance:

In **BE** and **EE** interviews are scheduled in the interviewing room closest to the home of the minor (in **BE** there are 35 interview rooms available nationwide). In practice, in **BE** the interviewing room is soundproof, there aren't any toys or posters on the wall, to avoid distracting the minor's attention or stimulating fantasy. As for the *technological equipment*, it is explicitly defined in Annex 2 of the Joint Circular of 14 October 2021. It consists of omnidirectional microphones, not cylindrical in shape, sufficiently sensitive to be able to record whispered conversations in a qualitatively satisfactory manner, and cameras: one fixed and at least one movable with zoom function, able to view the entire room and register the presence of persons other than the person being interrogated and the interrogator in the room. This avoids having to make a choice from the recorded images. In the observation room is located the technical equipment, where the director (second TAM interviewer) and the investigator (case manager) will follow-up on the interview and its technical issues. The interaction system between interviewer and observers is protocolised (in presence, at least one time per interview and before the interview finishes, with no set limit).

In **EE** there are *special interview rooms*, in the Children's Houses (3 centres nationwide) and police stations (the four prefectures have such rooms) with conditions similar to those described for **BE** and **EL**. However, this is not usually the case when children are interviewed in Courthouses.

In **EL**, there is a gap between law and practice. According to provisions on Ministerial Decision 7320/2019 (FEK 2238/B/10-06-2019): they have natural light, good acoustics and sound insulation, are adapted to the age needs of the minor victim and witness of abuse, furnished and decorated in a friendly way but avoids stimuli that distracts attention, count with technical equipment (electronic audio-visual media). Currently, interviews are mainly held in police precincts, children are interviewed in the official's office but sometimes there is no private office available. Consequently, privacy is not guaranteed.

In **ES** interviews mainly take place in courtrooms provided with closed circuit television system (CCTV), some courthouses and Prosecutors' Offices are provided with Gesell chambers, but these facilities are not available nationwide and in all court locations. Usually, there are no professionally adapted rooms, and the quality of the recordings (image and sound) is not always sufficient.

In **IT** the situation is similar to **ES**. Usually, the protected hearing is carried out in the Court's premises (e.g., courtrooms, judge's office). In bigger cities in relevant Court Districts, associations, NGOs, and other entities working in the field have taken care of furnishing and equipping at least one room in their own premises to be used for protected hearings and forensic interviews.

Promising practices

- ✓ In **Belgium**, there is a project³⁴ coordinated by **LUCA School of Arts** in which a multidisciplinary team of professionals from diverse domains (architects, designers, police officers, child psychiatrists and others) together with a team of design students have created a renewed space of the reception and interrogation rooms, where neutral and warm can coexist to offer the child an improved interviewing experience. A 3D tour³⁵ on this coordinated project is already available online.
Annex 2 of the Joint Circular of 14 October 2021 states that *"a visual alarm system should be present in the interview room to indicate any technical problems or other interventions from the control room"*.
- ✓ In **Estonia**, due to COVID pandemic, the Article on telehearing of the Code of Criminal Procedure (CCP) was amended and entered into force on 7 May 2020. A body conducting the proceedings may organise telehearing if the direct hearing of a person is complicated or unreasonably burdensome or if telehearing is necessary to protect the interests of the person.
- ✓ In **Greece**, in Athens, children are referred to the largest police station in the country, where there are two child-friendly interview rooms (although the building access and the path to arrive are the same as for adults).

³⁴ <https://www.vlaamsehogescholelenraad.be/nl/blikopener/spraakmakers/videoverhoorkamer-politie-meetiesland>

³⁵ <https://www.youtube.com/watch?v=HEoqH3VHE0A>

- ✓ In **Italy**, associations, NGOs, and other entities (including, but not limited to, Barnahus-type centres) working in the field have taken care of furnishing and equipping at least one room in their own premises to be used for protected hearings and forensic interviews. In some regions there are services for victims such as the Spazio Ascolto e Accoglienza Vittime Vulnerabili (Tivoli) and rooms for giving evidence, like in the Juvenile Court of Sassari.
- ✓ In **Spain**, some professionals have introduced the concept of a friendly camera, where the device is in full view and children can interact with it just like with a Mr. Potato head toy, creating different appearances with interchangeable parts and pieces (e.g., mouth, eyes, ears).

Due to quality problems in the past, the new Organic Law 8/2021 expressly includes the need to check the quality of the recording immediately after the end of the interview.

Recommendations:

- Given the evident diversity of positions concerning the technological equipment: e.g., the use of one or several cameras, the debate on whether they should be hidden or visible, the importance of considering the camera as a stressor stimulus (e.g., sexual offences where cameras are present). It is necessary to incorporate a professional vision when the measures are to be implemented.
- It is recommended that resources be reviewed and optimised by establishing a structured plan (short and long term) for the creation of rooms that can be easily accessed by the population, as far as possible (e.g., people with reduced mobility, accessible via public transport). As well as a review of the communication mechanisms between the interview room and the observation room to preserve agile communication between the different professionals to guarantee a high quality of the interview and the protection of the procedural guarantees of the accused.
- As recommended in the previous section, these adaptations must be based on professional studies on *humanizing of spaces* or *the victim's architecture*: paying close attention to the tone of the colours, the shapes of the furniture, the light, the temperature. It is recommended to rely on existing studies in the health sector, for instance, children's hospitals.

2.2. FORENSIC INTERVIEW OR VIDEO RECORDED INTERVIEW

2.2.1. CRITERIA FOR THE USE OF THE FORENSIC INTERVIEW AS PRE-TRIAL EVIDENCE

► **Rationale:**

- Complete and clear regulation on the use of the *video recorded forensic interview* is essential. The implementation of the video recorded forensic interview to be used as special *evidence pre-trial* hearing has the potential to avoid children from appearing in court, reduce multiple and inappropriate interventions and encapsulate and protect the child's testimony.
- Therefore, also has the potential of avoiding undue delay, minimising secondary victimisation and of protecting the child's best interest. Other key aspects are the establishment of clear criteria for the cases in which the video recorded forensic interview should be carried out and a case-by-case assessment, to detect situations of special vulnerability.
- This assessment should be a requirement properly regulated and assigned to a professional profile with sufficient skill and knowledge.

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

- **Minimization of stress-mental health:** *Number of interviews and medical examinations of victims is kept to a minimum (art. 20.b and d); Interview conducted without unjustified delay after the complaint (art. 20.a); Recorded interview (art. 24.1.a)*
- **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)*

► **Minimum standards:**

- Regulation in which specific cases the forensic interview should be used.
- The assessment on a case-by-case basis should be focused on increasing, and not reducing, protection measures.
- The protection of the defendant's due process rights should be duly regulated.
- The protocol should be put in place immediately and the forensic interview should be conducted within a maximum of 1 week for the pre-trial evidence to take place, the welfare of the victim/witness should always be paramount:
 - 1-4 days to collect external information.
 - 1-3 days to conduct the interview.
- Assessment of the timing of the interview (time of the day, duration, breaks, attention lapse according to age) and of child's fatigue. **Stigmatisation.**
- Possibility of interviews being conducted by a person of the same sex as the victim.

BE, EE, EL, ES, and IT regulation:

In **BE's** regulation, which dates back to 2001³⁶, are detailed clear criteria for the use of TAM³⁷ interrogation, established in articles 91 and 92 of the Code of Criminal Procedure (CCP). The criteria are linked to serious forms of the crimes whose victims or witnesses are minors or particularly vulnerable adults. Therefore, there is no age discrimination.

³⁶ Ministerial Circular of 16-07-2001, approved by the College of Procurators General, on the audio-visual recording of the interrogation of minor victims or witnesses of crimes substituted by Circular Nr. 03/2021 from the Minister of Justice, the Minister of Interior and the College of Public Prosecutors relating to the audio-visual recording of the hearing of minors and vulnerable adults who are victims or witnesses of crime. The pursuant to Article 153 of the Law on the Integrated Police and Article 143ter of the Judicial Code, mandatory directive of the Minister of Justice of 01-03-2002, which determines the rules of cooperation, coordination and division of tasks between the Local Police and the Federal Police regarding missions of judicial police (Col 2/2002).

³⁷ TAM is short for "technisch audiovisueel verhoor van minderjarigen", or: technical audiovisual interrogation of minors.

Although the law foresees the possibility of a child to be heard in court upon reasoned decision³⁸, as a result of the TAM legislation in Belgium, in practice minor victims are rarely heard in court; usually they aren't present during the hearings and judges and prosecutors rarely interview children. This judicial measure is obligatory addressed under certain offences and in others under the discretion of the public prosecutor or the investigative judge³⁹.

In **EE**, the article 70 of the CCP includes the specifications concerning the hearing of child witnesses, such as who can interview a child, when the interview needs to be video recorded and how a suspect can ask questions to the victim. These measures are envisaged when the witness is up to ten years of age and repeated hearing may have a harmful effect on the mind of a minor, when the witness is up to fourteen years of age and the hearing is related to domestic violence or sexual abuse, when the witness is with speech impairments, sensory or learning disabilities or mental disorders.

In **EL**, Ministerial Decision 7320/2019 defines the approach and the form of the forensic examination addressed to minor victims and witnesses of abuse. As well as in **BE**, the forensic interview acts as pre-trial evidence for child hearings for specific crimes and for serious circumstances⁴⁰, except when the investigative judge or the prosecutor states something different. According to the law, the minor victim or witness of abuse recurs to the Independent Protection Units to testify. Children who are victims of sexual crimes, are rarely ordered to testify in the court room, child victims of domestic violence are not summoned to trial⁴¹.

In **ES** the recent regulation establishes the recorded interview as pre-trial evidence in all cases when the victim/witness is under 14 years of age for sexual violence crimes. However, victims/witnesses between 14 and 17 years of age are discriminated against based on age, as they are left without this kind of protection. In these cases, it is possible to make an assessment on a case-by-case basis, as was the rule of action previously to the new law.

In **IT**, the legal system does not provide clear and homogeneous indications regarding how to carry out the forensic interview (*audizione protetta*) as pre-trial evidence (*incidente probatorio*). It usually takes place during the judicial phase; it is called special evidence pre-trial hearing. The *pre-trial hearing* is a judicial tool included in art. 392 CCP anticipating the acquisition of evidence at the preliminary investigations phase, prior to the trial phase. Art. 498 paragraph 4 CCP., states that the interview of the minor victim or witness is carried out by the judge, who asks the questions proposed by the Prosecutor and by the defendant (through the lawyers). During this exam, the judge can use the help of a family member of the minor or an expert in child psychology. The victim is identified as an atypical vulnerable⁴² victim by the Public Prosecutor, during the phase of the preliminary investigations and by the Judge, during the trial. The judge, assisted by the expert, can

³⁸ Art. 100 CCP. *The minutes of the interrogation and the audio-visual data carriers of the recording shall be submitted to the investigating court and to the sentencing court, instead of the personal appearance of the minor or the vulnerable adult. However, if the sentencing court deems the appearance of the person interviewed necessary in order to establish the truth, it may, by means of a reasoned decision, order the appearance.*

³⁹The offences for which an audio-visual recording of the interrogation is obligatory, unless the public prosecutor or the investigating judge decides otherwise by reasoned decision, taking into account the circumstances of the case and in the interest of the minor or the vulnerable adult, are the following: Voyeurism and non-consensual dissemination of sexually explicit images and recordings (art. 371/1 cc); Indecent assault and rape (arts. 372 to 377 cc); Grooming (art. 377quater cc); Fornication, corruption of youth and pimping (arts. 379, 380§ 4 and 5 cc) Female genital mutilation (art. 409 cc). The public prosecutor or the investigating judge may order the audio-visual recording of the interrogation of minor or vulnerable adult victims or witnesses of crimes as referred to in Article 91bis of the Code of Criminal Procedure: Hostage-taking (art. 347bis Code of Criminal Procedure); incitement to fornication and pimping, advertising (arts. 380, 380bis, 380ter CC); Public indecency and child pornography (arts. 383, 383bis, 385, 386, 387 CC); Deliberate infliction of bodily harm (arts. 398 to 405ter, and 410 CC); Trafficking in human beings (arts. 433quinquies to 433octies CC). The audio-visual recording of the hearing of minors or vulnerable adults who are victims or witnesses of offences other than those referred to in Article 91bis CCP may be ordered on account of serious and exceptional circumstances, which are assessed by the judge (art. 92§2 CCP).

⁴⁰ sex tourism targeting minors (Article 323B PC); rape (Article 336 PC); insult of sexual dignity (Article 337 PC); indecent assault (Article 338 PC); seduction of children (Article 339 PC); abuse of a child (Article 342 PC); exploitation with abuse of power (Article 343 PC); incest (Article 345 PC); incest between relatives (Article 346 PC); facilitation of indecent acts (Article 348 PC); child pornography (Article 348A PC); pandering (Article 349 PC); human trafficking for sexual exploitation (Article 351 PC); indecent acts with children for consideration (Article 351A PC).

⁴¹ Article 19 Law 3500/2006 'Combating domestic violence'.

⁴² Atypical vulnerable victims: applied to minors and specially to child victims of sexual crimes, and sexual violence. Inferred from: age, state of infirmity, intellectual disability, type of crime, the modalities and circumstances of the fact object of the trial, whether the offense is committed with violence to the person or with racial hatred, connection to organized crime or terrorism, including international ones, or human trafficking, characterized by discrimination, and if the offended person is emotionally, psychologically or economically dependent on the offender.

decide that it is not appropriate to interview the minor (even the protected hearing), or can consider the testimony not fully reliable, based on particular vulnerabilities and traumas suffered by the victim or the witness.

In the **five countries** studied the time lapse between the police report and the video recorded interview varies depending on circumstances such as: the crime, situations of special vulnerability (i.e., toddlers and pre-schoolers, children with disabilities), its (perceived) seriousness, the assessed urgency, the organisation in place and the material and human resources available case by case. While in **BE** and **EE** the waiting times are per norm short, from the very same day of the first report to a couple of weeks later. In **EL**, **ES** and **IT** it can take from 15 days to 1 month or even more.

Promising practices

- ✓ In **Estonia**, when a child is a suspect, police guidelines (on treating children that have committed a crime or children who need support) establish that proceedings shall be concluded within three months (from the first interrogation until the case is sent to the prosecutor). This is not however the case when a child is a victim or witness⁴³.
- ✓ In **Finland**, in the Espoo area, to shorten proceedings and reduce stress, children's cases in criminal courts are prioritised and automatically skip forward in the queue on certain days called 'Jouko-days'⁴⁴.
- ✓ In **Sweden**, the Barnahus in Linköping monitors the timing and delays of each intervention of the process by collecting data and statistics, to assess in advance the actions necessary to prevent undue delay⁴⁵.

Recommendations:

- States are recommended to clarify the use of forensic interviewing, focusing efforts on specialised care, reducing interventions and increasing the quality of testimony. To this end, the audio-visual recording of the interview is essential.
- Regarding the criteria followed for the use of these recorded forensic interviews that allow the victim not to testify again in court, it is recommended to recognise sexual offences as one of them, regardless of their criminal seriousness, without restrictions for minors (thus avoiding discrimination within the group of children). The case-by-case assessment must ensure that it is carried out by experts and the non-use of this protection measure must be justified.
- It should always be approached as a protective measure and never as a restriction of rights, so that the victim can in any case testify again in court if he or she wishes to do so, and it is not contrary to his or her best interests.
- The protection of the defendant's due process rights should be duly regulated.
- Under no circumstances should it be considered respectful of children's rights that these interviews are conducted by professionals not specially trained for this purpose.

2.2.2 TRAINING

(A) Interviewers' professional training: requirements

► Rationale:

- As a further requirement of real access to justice for child victims, to guarantee their participation, the form and interpretation of the victim's account must be adequately protected. The complexity of

⁴³ Haruoja, Merie, Marianne Meior, Kiira Nauts. «Study on Children's Involvement in Judicial Proceedings: Contextual Overview for the Criminal Justice Phase: Estonia».

⁴⁴ «Child-friendly justice: Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States».

⁴⁵ Haldorsson, *Barnahus Quality Standards: Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence*.

properly incorporating it into the process requires highly trained professionals (certification) in a defined structure for the supervision of their practice.

- **Topics (specialized training):** Psychology of testimony, interviewing children and adolescents, interviewing in situations of victimisation, sexual violence, domestic violence, trauma, how to work with the language interpreter and other professionals during the interview.

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

- **Adequate and respectful information on children's rights (art. 6 and 7)**
- **Participation (art. 10):** To understand and to be understood (art.3); 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); Specialist training (police officers, court staff, judges and prosecutors, lawyers (art. 25)
- **Dignity (art. 18)**

▶ **Minimum standards:**

- The interview must be carried out by two professionals.
- **Basic training:** Forensic psychology (collection of adequate information) and Clinical psychology (support and assistance).
- **Specialised training and expertise:**
 - Must be accredited and required to be able to participate in these interviews.
 - Expertise should be considered: interviewers should spend one year under supervision (or be paired with a more experienced interviewer) in the work post.
- **Joint training in multidisciplinary teams:** To help enhance multidisciplinary and interagency collaborative teamwork for example by building a common understanding and consensus as well as better understanding of the respective agencies' roles and responsibilities. (Coordinated round-table meetings). (BHQS 9.1)
- **Continuous training:** Training should be renewed at least once a year, with case analysis, individual performance review and supervision.

BE, EE, EL, ES and IT level of compliance:

In **BE**, *specifically trained* police officers, called TAM interrogators, conduct the video recorded interview with children. Their *base-training* as police officers consist of a one-year training, but some TAM interrogators have acquired degrees before joining the force (e.g., psychologist, criminologist) and most have a frontline function within the police in intervention or specialised teams (e.g., domestic violence, vice crimes, human trafficking, prostitution and family crimes).

Their *compulsory specialised training* comprises theory and practice and has a 116h duration. The contents include: the legal framework of the TAM interrogation, child development, language of and communication with children and child victims, introduction to language learning behaviour and language development, children with mental disabilities, psychological profiles and sexuality of the child, problems of mistreatment and abuse, profiles of the perpetrator of sexual abuse, roles of the expert, drawing up specific reports, the importance of social media, role-play interrogations, working with interpreters.

New TAM interrogators immediately join a TAM network and are paired with a more experienced interviewer, as they work in pairs (the Interrogator in the interview room and the Director in the observation room). TAM interrogators are required to do a minimum of 10 interviews a year. As for *continuous training*, each TAM interrogator must attend compulsory training every year, there are local (once or twice a year, depending on the network⁴⁶) and national (once a year) intervision days, where interrogators, trainers and coordinators meet to engage in intervision of their cases and to freshen up their techniques via role-play and to update the interrogator's training.

⁴⁶ Forensic interviewing in Belgium is organised in the heterogeneous context of nearly 200 police zones with notorious differences in terms of density, population size, police force size and surface area. Within those police there is also quite a difference in terms of internal organisation, which is the prerogative of the police chief. The work of forensic interviewers, in this context, is organised in geographical TAM "networks", which are, again, quite heterogeneous in terms of size, but also in how they are distributed in provincial, urban, municipal or judicial districts.

Prosecutors and judges are allowed by law to interrogate minor victims if considered necessary but in practice they rely on the TAM qualified police officers to interview child victims and witnesses.

In **EE** *pecially trained* police officers conduct the investigative interviews of children. Police officers receive a 3-year training in the Estonian Academy of Security Sciences. The specialised police officers must pass a compulsory three-week capacity building course organized for investigators who focus on offences against minors, at the Estonian Academy of Security Sciences. Sometimes psychologist attend and assist to the interview, but there is no legal obligation. Police investigators working with minors learn often through in-house training (case analysis), Network and cooperation through Children's House is empowering and enriching.

In **EL**, according to the legislation, in criminal offences against children, psychologists or psychiatrists specially trained in this domain, they should be present during the whole procedure of the forensic interview of the child and they should have previously prepared the child for this process. Furthermore they should also evaluate the child's intellectual and cognitive abilities and this evaluation report will be include in the file of the case. The forensic interview should be conducted by a police or judiciary officer who should be trained and have full knowledge of the current legislative protocol of the forensic interview.

In practice, interviews are primarily conducted by police officers on duty when the victim arrives, and who is not necessarily qualified for this task. In some units, there are some police officers in charge of this procedure, but the selection for this role depends mostly on the professional experience of the police officer. Although, there is group of five psychologist trained in the USA on issues regarding forensic examination by the best international training centre, The National Children's Advocacy Centre in Huntsville, Alabama, the public prosecutor rarely asks these highly specialised professionals to be the forensic interviewers in child abuse cases. In extremely rare occasions, child psychologists and child psychiatrists, or in their absence, psychologist or psychiatrist in the list of experts participate in the testimony phase as external contractors; whereas when it happens, the role of forensic- or child-psychologists is supplementary.

In **ES**, forensic psychologists conduct the forensic interview, however, there is a significant regulatory gap in this regard, which leads to great difficulty in supervising the overall specialisation of forensic interviewers. Specialisation or accreditation of previous experience is not required. While many forensic interviewers are highly specialised, this is not required by law and many of the public contracts do not require it and a membership of a professional association is also not needed. There is also a lack of human resources, which leads to few stable working teams. Some forensic psychologist work in pairs. Continuous training is not regulated and depends on the practitioner.

In **IT** the law establishes that the professional in charge of the interview is the magistrate with the support of a forensic psychologist, child psychologist or psychiatrist or a qualified social worker. They can come from public institutions or from the private domain –in most cases, they work in NGOs dealing with minor victims of crime–. Usually, magistrates do not have specific training and are not aware of the criticalities of this kind of interview. A specialized CV for the forensic psychologist is not requested and neither the attendance to child sexual abuse (CSA) training courses, as this is done voluntarily. Nevertheless, there are main guidelines –The Noto Charter, SINPIA Guidelines, National Guidelines– in selecting experts and professionals for the forensic interview (*audizione protetta*) that have been set out by professionals' associations, whose authority is recognised by the judiciary, the Supreme Court and law enforcement agencies. As for continuous training, experts are required to ensure their constant interdisciplinary professional updating, yet the attendance of training courses in the field is not requested and is not a selection criterion.

Promising practices:

- ✓ In **Belgium**, from December 2015 to March 2016, the researchers Katalin Balogh and Heidi Salaets provided training for about 600 TAM police officers from Flanders and Wallonia on working with an interpreter in a TAM interview (i.e., during the interrogations of minors). The title of the training was: "The interpreter and the interrogator of minors: T.(E).AMwork !" Subsequently, a Training for Trainers was organized for the teachers in the TAM department. These trainings were developed

under the umbrella of the CO-Minor-IN/QUEST I & II projects. The EU research project CO-Minor-IN/QUEST I (JUST/2011/JPEN/AG/2961) examined the practices used in interpreter-mediated interviews of minors in criminal justice contexts. In the follow-up project CO-Minor-IN/QUEST II (JUST/2015/JTRA/AG/EJTR/8678), a joint training module was developed for the various professionals as well as training materials to enable the joint training of legal actors, interpreters, psychologists and social assistants. Katalin Balogh and Heidi Salaets are currently teaching a fixed module twice a year at the National Police Academy in Etterbeek.

- ✓ In **Croatia**, in Zagreb's Child and Youth Protection Centre, an annual plan for continuous training is prepared, by asking staff members about their preferences and needs. There are in-house trainings taught by national and international teachers. Some training topics have been: trauma and empathy, attachment and trauma, trauma-focused cognitive behavioural therapy and work with non-offending parents⁴⁷.

Recommendations:

- Establishing strict recruitment systems regarding professional training is recommended, as the lack of specialisation of the professionals distorts the results and the very purpose of the forensic interview.
- This training should include sufficient knowledge of trauma and the impact it has on the assessment of the conduct of the forensic interview and the impact it has on the outcome.
- Regular and systematic clinical supervision is recommended. Clinical supervision should be provided to forensic interviewers to enable them to deal with the challenges inherent in working with abuse children, to support them to handle difficult and complex cases. It's encouraged self-reflection, to build better competencies, to increase their skills, confidence and competence when working with minors and to protect them from pain and burn out.
- It should also include basic notions about the victim's journey, to be aware of previous interventions and the impact of the outcome of their work on both the victim and the process. Thus, joint training in multidisciplinary teams is key in this respect. The required training must provide professionals with a critical perspective and the ability to adapt the techniques learned to the specific case.
- It is recommended that members of the team "have access to regular guidance, supervision, counselling and peer review both in relation to individual cases and in addressing professional and personal emotional strain, challenges and ethical dilemmas in working with child victims and witnesses of violence" (BHQS 9.2).

(B) Basic training of related professionals

► Rationale:

Ensure the specialised training focused on the actions of each professional (I) that has contact with the victim (II) that assess the application of protection measures (use of the forensic interview) (III) that will incorporate the outcome of the forensic interview into the process (judiciary). In general terms, it refers to:

- First contact professionals and professionals assessing the need for the forensic interview.
- Fixed reference person or person involved in the defence of the rights and interests of the victim.
- Legal defender; victim's lawyer; intermediaries (see section 2.1.2. B.).
- Professionals making use of the outcome of the forensic interview as evidence.

► Reflection in the Directive 2012/29/EU articles:

- **Adequate and respectful information** on children's rights (art. 6 and 7)

⁴⁷ Haldorsson, Barnahus Quality Standards: Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence.

- **Participation** (art. 10): *To understand and to be understood (art.3); 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); Specialist training (police officers, court staff, judges and prosecutors, lawyers (art. 25)*
- **Dignity (art. 18)**
- **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 trauma support and counselling. (art. 9.3.b)*

▶ **Minimum standards:**

- Training in the detection of situations of particular vulnerability.
- Specialised training on the rights of children and victims of sexual offences.
- Basic training with a guide on what to do/what not to do (theoretical and practical).
- Referral protocol
- Regularly updated according to international best practices.
- Basic training on forensic interview objectives and mechanisms.
- Training in determining and assessing children's interests (Legal defender; Victim's lawyer; Intermediaries).

BE, EE, EL, ES and IT level of compliance:

In **BE**, frontline police officers are told not to take the statement of the child themselves and to hear the accompanying adult separately. They're instructed to notify the public prosecutor's office immediately. Juvenile courts and family law judges have a specific module on TAM interrogation. As for prosecutors and judges they attend short-compulsory trainings. A five-day training course on domestic and sexual violence (prosecutors). A three-day compulsory introductory course on sexual and intra-family violence (judges). Besides, Judges with a speciality in youth and family crime are obliged to do an intensive course of 5 days on sexual violence and intrafamilial violence.

In **EE** although the division of tasks plan ensures specialisation of judges in matters involving minors, only some county courts follow this principle and there are no judges who have specialised in matters involving minors in some regions.

In **EL** official training for police officers in terms of CSA cases virtually does not exist nor in terms of their basic education as police officers, neither later during their career. Specialised training for judges and prosecutors is not mandatory. Not even for Juvenile investigating judges, although to be appointed as one a five years' experience, voluntary trainings from the National School of judges, a PhD or a master's degree on juvenile justice are considered⁴⁸.

In **ES** the specialisation in children's rights in the Judiciary, the Public Prosecutor's Office and the Bar has been incorporated since 2021 and adequate training of specialised police units was observed in previous years, there are specialised police units that deal with child victims and/or offenders.

In **IT** although there are judicial police units specialised in juvenile justice, there is no compulsory training in CSA for LEA officers, judges and prosecutors.

Promising practices:

- ✓ In **Austria**, judges and prosecutors before accessing their posts, are required a minimum of two weeks experience in a victim protection agency or social welfare institution or experience in education, social work or another field related to child welfare to better understand the experiences of children in criminal proceedings. Beside their four years-legal training, in which the rights and needs of child suspects/offenders, victims and witnesses are tackled.⁴⁹

⁴⁸ Kaltsouni, Styliani. «Study on children's involvement in judicial proceedings: contextual overview for the criminal justice phase: Greece».

⁴⁹ Jurado, Klinge, Kearney, «Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union».

- ✓ In **Luxembourg**, national police officers from the department of Youth Protection are required to attend a multidisciplinary three-week training which includes: Juvenile criminal law (as well as different types of crimes committed by child offenders), Child psychology (as well as special training on how to welcome children in police stations); Communication with children (including special interview techniques); Social questions of particular relevance to children (along with children and religious sects, children and new social media, children in schools, children and drugs); Crime prevention (especially prevention of sexual abuse); Forensics and forensic science. Followed by another two-week training course especially focused on child sexual abuse. Additionally, there is an optional seminar on “cognitive hearing”, an interview technique to foster rapport between the investigator and the child to avoid traumatising.⁵⁰

Recommendations:

- Before the lack of comprehensive justice system for child victims/witnesses that would assure specialized training for the professionals involved, gaps in the knowledge and skills of professionals are observed. This makes it difficult for each professional to clarify their role in the process, sometimes making up for structural deficiencies and assuming competencies that do not correspond to them.
- The clarification of the role of each professional and enhance synergies between the professionals involved is recommended. As well as reviewing and supervising the basic training in the care of child victims/witnesses, facilitating the task of professionals by means of support guides (do's and don'ts), clear structures for referral and practical training, ensuring adequate communication with the child when appropriate.
- It is recommended to avoid cascade training⁵¹. Although it is a way of training many people, especially in large organizations, if it is not well planned and monitored and there are too many training levels, it can result in the dilution of content, the repetition of bad practices, false beliefs (e.g. ideal victims) and mechanised responses.

2.2.3 Methodology: standardised protocol

(A) Interview Protocol

► Rationale:

- “The main aim of the interview is to avoid (re)traumatisation and to elicit the child’s free narrative in as much detail as possible while complying with the rules of evidence and the rights of the defence” (BHQS 6.1). For that it is necessary to adapt the interview to “the child’s age, development and cultural background and consider special needs, including interpretation”. (BHQS 6.6).
- The number of interviews is limited to the minimum necessary for the criminal investigation. If possible and appropriate, the same professional conducts the interview when multiple interviews are necessary and there will always be two specialised professionals to conduct the interview. All arrangements are made in the best interests of the child, which in some cases can involve carrying out more interviews and/or changing the professional who interviews the child.
- The forensic interview should be conducted with the information necessary so that the professionals can gather a complete victims’ account of the events - with particular emphasis on the existing

⁵⁰ *Idem*

⁵¹ A group of training masters are trained in a topic, who then train smaller groups on the same topic. This process is repeated until all the target staff has been trained. It is a cost-effective training practice as well as a way of reaching geographically disperse staff. It is not advised for soft-skills and complex technical skills that require constant feedback to guarantee a well transfer of knowledge. “Webinar: Training health workers virtually during covid-19 – lessons from Angola and India (2021). Best practice brief: Cascade training”. Available in: https://www.linkedimmunisation.org/wp-content/uploads/2021/01/4_BestPractices_Cascade-Training.pdf

information available on the child and, if applicable, on the facts⁵²-. They must know other types of evidence to be able to consult on specific elements (place, clothes, objects) and they must know the different types of crime to know what information is relevant in the account of events.

- Additionally, the victim's capacity to testify will be assessed —addressing not only the victim's ability to articulate his/her story but also his/her emotional wellbeing—.
- *All interviews with a child victim or where appropriate a child witness, may be audio-visually recorded and such recordings may be used as evidence in criminal court proceedings (art. 24.1.a Directive 2012/29/EU).*
- Safe mechanisms for accessing the child's statement are required to avoid repeated interviewing by the different professionals who require access to the child's disclosure.
- Mechanisms to monitor the use and results of these protocols must be in place.

► **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): *To be heard and decision-making (art. 10).*
- **Security and protection** (art. 18)
- **Minimization of stress-mental health:** *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 and d); Interview conducted without unjustified delay after the complaint (art. 20.a); Recorded interview (art. 24.1.a); To be accompanied (arts. 3.3 and 20.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 trauma support and counselling. (art. 9.3.b).*
- **Dignity** (art.18): *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).*
- **Privacy** (art.21).

► **Minimum standards:**

- "Forensic interviews are carried out according to evidence-based practice and protocols, which ensure the quality and quantity of the evidence obtained" (BHQs 6.1). These protocols shall provide for:
 - Preliminary data collection.
 - Assessment of the victim's capacity to testify, in a broad sense, incorporating applied knowledge of psychological trauma.
 - Information about the interviewing process in a language adapted to the child's personal situation.
 - Including the reason and purpose for the interview, description of all the rooms, technical equipment, persons present and their role, right to be accompanied by an adult of choice or not, who can view the recording.
 - The participation of two interviewing experts.
- Mechanisms/guidelines for adapting these protocols to the specificities of the case: age, context of victimisation, cultural background and disabilities.
- Ensure a quality recording that allows its use in the judicial process, equally safeguarding the guarantees and rights of the accused party and the victim.
- Protocols must be fully respectful of the rights of minor victims/witnesses, in particular: to duly inform the victim/witness, to be accompanied and to respect their privacy and dignity.
- The gender perspective is addressed.

⁵² There are different positions on the appropriateness of having very detailed information or not, which are developed in ENCLAVE's Comparative Report.

- Possibility of interviews being conducted by a person of the same sex as the victim.

BE, EE, EL, ES and IT level of compliance:

In **BE**, the forensic interview of a child victim or witness (regulated by Joint Circular of 14 October 2021) is inspired on the NICHHD protocol⁵³, its structure is comprised of four phases divided in ten steps⁵⁴. The TAM interview protocol is centred on the principles of non-suggestiveness and respect⁵⁵. The forensic interview is seen as a team effort because the director (second TAM interviewer) and the case investigator follow the interview closely and can provide input at the later stages of the interview. The premise of non-suggestiveness is central, thus limited prior knowledge is advised, and the preparation of the interview is often limited to the knowledge of key elements from the file. The case manager or investigator, who leads the police investigation and does the follow up of the case, knows every detail of the case.

During the TAM interview legal provisions and rights are explicitly explained to the child in a child-friendly manner: reason for the interview; description of all the rooms, technical equipment, persons present and their role; right to be accompanied by an adult of choice or not; who can view the recording and reasoning for the recording; right to give consent for the recording (if she/he is 12 years or older) otherwise information of recording is enough; request at any time that the recording be interrupted; right to stop the hearing at any time; possibility to have a free of charge copy of the text of the hearing (children of 12 years of age or more or with cognitive capacities expected of children of 12).

In **EE**, there is no unified forensic interview protocol, although the Cognitive interview and NICHHD protocol are known and used and a handbook for interviewing children and guidelines for interviewing children with special needs has been developed by the government.⁵⁶

In **EL**, the Ministerial Decision 7320/2019 sets an evidence-based protocol funded on standardized protocols: NICHHD, The protocol of the Child Advocacy Centre of Alabama and The Memorandum of Good Practice of the U.K. This protocol defines the way of conducting the forensic interview⁵⁷. However, in daily practice this protocol is not officially and/ or uniformly applied.

In **ES**, although there is no unified forensic interview protocol, the NICHHD protocol and the Cognitive interview are known and used. Although the law contains the victim's right to participate, and the Organic Law 8/2021 speaks of good treatment regarding adaptation in language and form, especially in police stations, there are no established mechanisms for transferring information in the appropriate form and language, which depends on the professionals in charge. There is no unanimity regarding the information provided to the victim regarding the development of the pre-trial evidence nor regarding the victim's privacy. Improvements in procedural regulation have been

⁵³ Protocol from the National Institute of Child Health and Human Development (NICHHD) in the United States.

⁵⁴Phase 0. Salduz : Step 0. Identity. The Salduz law foresees that before the forensic interview is initiated the minor has to be informed about the reason for their citation. Phase 1. Introduction.: Step 1. Presenting the premises; Step 2. Presenting legal provisions; Step 3. Making appointments; Step 4. Neutral subject, scan environment. Phase 2. Free Story: Step 5. Invite to a free story. Phase 3. Questioning; Step 6. Complete (Info already added in the free story); Step 7. Deepen info outside the free story); Step 8. Verify other file elements. Phase 4. Ending of the interrogation: Step 9. Presenting legal provisions; Step 10. Thanking.

⁵⁵ The premise of being non-suggestive means that the interview is aimed at finding the truth and not at confirming one or more hypotheses. Being respectful means respecting the wishes and the rhythm of the child, which implies that no pressure should be put on the child.

⁵⁶ Liivamägi-Hitrov, A. and Kask, K. (2016). *Lapse küsitlemise käsiraamat (Handbook of interviewing children)*. Justiitsministeerium. Tallinn. Available in Estonian at: <https://www.kriminaalpoliitika.ee/et/lapse-kusitlemise-kasiraamat-0>; Kask, K. (2019). *Psüühilise erivajadusega lapse küsitlemise juhendmaterjal (Guidelines for interviewing a child with special mental needs)*. BADEV project output.

⁵⁷ (1) The preparation of the minor victim: acquaintance with the interviewer, discussion of neutral topics, rapport building, illustration of the process, its aim, basic rules and principles. (2) The assessment of a minor victim's perceptual ability and mental state. (3) The methodology and protocols of forensic interviewing. (4) The examination of the victim's family: especially siblings, as well as examination of family environment, family history and especially history of abuse and/or neglect, mental health issues. (5) The preparation and examination of minor victims with disabilities, intellectual disabilities and neuro-developmental and mental health disorders. (6) The examination of minor victims from different cultural backgrounds: taking into consideration mother language; the peculiarities of its culture, its cultural and religious differences etc. and, if necessary, appoint an interpreter.

incorporated by means of OL 8/2021 to ensure better protection of the victim's participation in intra-family cases⁵⁸.

In **IT**, as well as in **EE**, and **ES**, there is no unified forensic interview protocol. Some of the standardised protocols employed are the Cognitive interview, the Memorandum of Good Practice, and the NICHD. When the interview is carried out fully and directly by the magistrate in charge, there is usually no science-based protocol, forensic psychologists and other professionals do not have a direct role, they can only provide support if the magistrate so requires. The victim is granted broad rights to information and participation from the preliminary investigations phase⁵⁹, the victim is an eventual party of the trial, meaning that they *can* participate, but they *are not obliged* to do so. However, it is not envisaged that the minor could *refuse* to testify.

There is a **common** concern with the applicability of standardised forensic interview protocols in cases in which the victims are small children, children with cognitive disabilities and other especially vulnerable children, and before certain types of crime where the facts are prolonged in time (e.g., loverboys), which require a higher degree of flexibility and creativity from the interviewer. In practice, the gender of the interviewer with respect to that of the victims is not factorised in any of the **five countries**, unless it represents a problem for the child victim.

The figure of the interpreter is present **in the five jurisdictions**, child victims who cannot understand or speak the language of the proceedings are entitled to the assistance of an interpreter/translator⁶⁰, so they can be informed of their legal rights. Usually, interpreters are not trained in the specificities of the standardised interview protocols (e.g., TAM interview, Ministerial Decision 7320/2019 protocol) or in CSA issues, which is key as these interviews can be technically and emotionally challenging. In **EE** their appointment does not depend on a request from the child, also there is a remarkable amount (32%) of Russian-speaking population and therefore interviewers fluent in Russian are preferred. In **BE** Justice professionals have stated the desirability to create an up-to-date national list for sworn interpreters stating their expertise and experience that can be extrapolated to the rest of the Project countries.

In general, there are important gaps in relation to respect for the right to information for the victim/witness, with victims being instrumentalised and their dignity violated. The same applies to the right to accompaniment, which is limited by the obstacles it represents in the proper conduct of the interview. We also find more flexible positions on the privacy of victims, not protecting necessary but unrelated issues in the recordings.

Promising practices

- ✓ In **Belgium**, it is preferred to schedule interviews in the morning, preferably without prior judicial procedures, e.g., medical examinations, or after a school day. The aim is to respect the natural rhythm of the children and to avoid interviews late in the evening or at night⁶¹.
In cases where the gender of the interviewer is a problem, the second TAM interviewer takes the lead.
- ✓ In **Estonia**, when investigating authorities interview a child victim or witness with any speech impairment, learning disability or other mental health problem, an expert social worker, child protection officer or psychologist must be present⁶².
- ✓ In **Spain**, in some courthouses, for psychological support, child victims can be accompanied by their family pet, during the forensic interview, as they act as a

⁵⁸ Art. 416 CCP.

⁵⁹ The inclusion of the victim among the trial parties took place following the implementation of the Directive 2012/29 / EU, which was received in the Italian legal system with the Legislative Decree no. 212 of 15.12.2015.

⁶⁰ BE: Ministerial circular of 16 July 2001, section 5.2.1. and art. 47bis § 6; 4) CCP. EE: Code of Criminal Procedure, § 10 (2). EL: Article 49(3) Law 3386/2005 Law 3386/2005 'Entry, residence and integration of third-country nationals in the Greek Territory'.

⁶¹ «1st implementation report. Protection of children against sexual abuse in the circle of trust: The framework». Council of Europe, 2017. <https://rm.coe.int/1st-implementation-report-protection-of-children-against-sexual-abuse-/16808ae53f>.

⁶² «Child-friendly justice: Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States».

comforting presence and a communication aid and thus support the child give the best quality evidence.

Recommendations:

- Create comprehensive protocols that allow for the collection of prior information to conduct high quality interviews in terms of content, reducing possible new complementary interventions.
- Establish selection and hiring criteria that incorporate the requirement of accreditation in the use of evidence-based interview protocols such as the ABE, NICHD or NCAC⁶³.
- Establish an appropriate balance between the use of clear, delimited and justified protocols, and to allow for their adaptation to the specific situation of the victim/witness.
- Create special forensic protocols: a) for children with development disabilities and children who cannot understand and communicate effectively and b) for children from other cultures (language differences and cultural issues need to be considered). The importance of interviewing children in their own language and the problems in interpreted interviews, should be taken into consideration.
- Foster teamwork to help minimize the effects of any biases from the interviewer.
- Ensure an adequate pre-assessment of the victim not only focused on her/his ability to recount the events but also in balance with her/his well-being and best interests as a child and victim, incorporating current knowledge on trauma.

It is necessary to delimit what corresponds to an assessment of the victim's capacity to testify and their age maturity and what corresponds to the forensic interview. The meeting (sometimes called exploratory interview) may in any case be recorded in its entirety.

- Respect the child's natural rhythm and avoid interviews late in the evening or at night⁶⁴.
- Avoid children's instrumentalization as a source of evidence which can lead to the reduction of child victims' rights. It is therefore necessary to include adaptations of these rights in practice, and not to limit them.
- In practice, it is recommended to consider:
 - Age and developmental level.
 - Avoiding the use of leading questions or techniques,
 - Putting emphasis on the rapport-building phase and establishing a trust relationship
- It should be foreseen in the interview protocols other assessments linked to it (e.g., Credibility assessment, psychological, emotional and cognitive sequelae assessment, assessment of the capacity to testify in court):
 - To reduce interventions with the child,
 - To provide coordinated responses to the judicial process and victim protection measures,
 - To secure the assistance of other experts in the observation room and
 - To facilitate the recording for analysis from another perspective.
- In every case, the forensic interview minutes and video material should be signed accordingly by interviewer(s), and other professionals with that duty, immediately afterwards.
- In some cases, the judge requests an expert report on the Credibility of the testimony of the child. A review of the tools used for this end from a trauma literacy, gender perspective and the child victim perspective are recommended.
- Create unified protocols to evaluate and monitor the proper functioning of the forensic interview to draw objective conclusions for improvement.

⁶³ Achieving Best Evidence in criminal proceedings (ABE); National Institute of Child Health and Human Development (NICHD); National Children's Advocacy Center (NCAC).

⁶⁴ «1st implementation report. Protection of children against sexual abuse in the circle of trust: The framework». Council of Europe, 2017. <https://rm.coe.int/1st-implementation-report-protection-of-children-against-sexual-abuse-/16808ae53f>.

(B) Interview's outcome

► **Rationale:**

As the purpose of the forensic interview is to incorporate its results into the judicial process, the transfer of information to the professionals who will make use of the information obtained must be properly addressed.

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

- **Participation** (art. 10): *Specialist training (police officers, court staff, judges and prosecutors, lawyers (art. 25)*
- **Security and protection** (art. 18)
- **Minimization of stress-mental health:** *Number of interviews and medical examinations of victims is kept to a minimum (art. 20.b and d); Recorded interview (art. 24.1.a).*
- **Privacy** (art.21): *Shame and informative self-determination; Anonymity (art. 23): in relation to the protection of personal data.*
- **Dignity** (art.18): *Avoid unnecessary questioning concerning the victim's private life not related to the criminal offence (art. 23.3.c).*

► **Minimum standards:**

- Forensic interview report, transcriptions and recording.
- Established deadlines for the delivery of (expert) reports.
- Justification of the tools and protocols used.
- Necessary measures to protect the privacy, identity and image of child victims and to prevent the public dissemination of any information that could lead to their identification.
- Smooth channels of communication between professionals.

BE, EE, EL, ES and IT level of compliance:

In **BE**, the contents of the forensic interview report are specifically regulated in articles 47 bis §6.1 and 96 of the CCP. It is comprised of the main elements of the interview and possibly contains a transcription of the most relevant passages. The record shall show precisely the time at which the hearing begins, is interrupted and resumes, and is concluded. It shall specify the identity of the persons who are to participate in the questioning, or in part of it, and the time of their arrival and departure. It shall also mention the particular circumstances and anything which may shed light on the statement or on the circumstances in which it was made. The report is delivered within 48 hours or immediately if the suspect is deprived of his/her liberty or for instance a VOS⁶⁵ case, meaning that the child has to be removed from the family or that a judicial investigation has to be conducted. Belgian regulation⁶⁶ includes privacy protection measures, such as the number of copies of the hearing (original on an audio-visual data carrier and duplicate (legally and original too) on non-rewritable media), the authorized persons allowed to watch the videorecording (limited to the parties to the proceedings and persons professionally involved in the information, the investigation or the trial within the framework of the judicial file, among others). It further notes that at the hearing the competent court may order that the proceedings be held in camera.

In **EE**, the contents of the interview report consist of the minutes of procedural operations, including the transcription of the video recordings and the documenting and evidence collection.

In **EL**, although according to law the child's statement should be made in writing and recorded on an electronic audio-visual medium, replacing his/ her physical presence in the next stages of the justice process, in practice, this does not apply on a systematic basis. Usually, child victims' testimonies are on writing. On trial, every statement, either written or recorded, is always read

⁶⁵ "Verontrustende Opvoedingssituatie" or "Disturbing parenting situation".

⁶⁶ Circular 03/2021.

aloud to the audience. As for privacy measures, Police officers in charge of the preliminary investigation “in domestic violence cases are prohibited from revealing the victim’s name, address and any other elements which may disclose his or her identity⁶⁷. If they breach this obligation, they may be punished with imprisonment of up to two years”⁶⁸.

In **ES**, until recently, the transfer of information has been observed to be inconsistent and sometimes unsatisfactory. The recent 2021 Law incorporates certain improvements that need to be developed in protocols. Art. 449 ter CCP states that “(...) *the judge, after hearing the parties, may request a report from the expert giving an account of the development and result of the hearing of the minor*”.

In **IT**, the contents of the interview report consist of the main elements of the interview and possibly a transcription. The protected hearings are fully transcribed by the judge’s office personnel.

In the **five jurisdictions** there is state regulation of the media to protect the identity of child victims⁶⁹.

Promising practices

- ✓ In **Greece**, the Code of Conduct for news and political shows prohibits the disclosure of children’s identity, including image, name or other elements which could reveal their identity when these children are witnesses or victims of crimes or accidents or are involved in ‘troubled situations’; except when it is considered necessary to inform the public and is not harmful to the child and with the written consent of his/her custodian (art. 10(1) PD 77/2003 ‘Code of Conduct for the news and political shows’). This does not apply to crimes against sexual freedom and economic sexual exploitation such as rape. The media must refrain from sharing any information that may lead to the disclosure of the child’s identity⁷⁰.
- ✓ In **Sweden**, in the Linköping Barnahus, a formal framework for multidisciplinary and interagency collaboration is set. It considers the different regulations, laws and procedures of the professionals in terms of teamwork. A formal agreement has been made to clarify the parameters of the collaboration (purpose, goals, commitments, responsibilities, organisation and finances); a steering group monitors this agreement⁷¹.

Recommendations:

- It is recommended that states establish clear guidelines for the transfer of the information obtained, including in any case the recording of the interview and the transcription of its content.
- A report on the development and outcome of the interview should be added, as this allow the rest of the professionals an adequate interpretation of what happened in the interview (e.g., existing difficulties and context in which it is carried out).

⁶⁷ Article 20(1) Law 3500/2006 ‘Combatting domestic violence’.

⁶⁸ Kaltsouni, Styliani. «Study on children’s involvement in judicial proceedings: contextual overview for the criminal justice phase: Greece». Luxembourg: Publications Office of the European Union. European Commission, Directorate-General for Justice, 2014

⁶⁹ Jurado, Elena, Simone Klinge, and James Kearney. «Summary of contextual overviews on children’s involvement in criminal judicial proceedings in the 28 Member States of the European Union». Luxembourg: Publications Office of the European Union. European Commission, Directorate-General for Justice, 2014. <https://data.europa.eu/doi/10.2838/71517>.

⁷⁰ Kaltsouni, Styliani. «Study on children’s involvement in judicial proceedings: contextual overview for the criminal justice phase: Greece». Luxembourg: Publications Office of the European Union. European Commission, Directorate-General for Justice, 2014.

⁷¹ Haldorsson, Olivia Lind. *Barnahus Quality Standards: Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence*. Council of the Baltic Sea States Secretariat and Child Circle, 2020.

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