



**Individual assessment – a gateway to a child centered justice:**  
**International Human Rights Standards**

December 2021



Working together for children in criminal proceedings



Terre des hommes  
Helping children worldwide.



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## Acknowledgments

The **Individual assessment – a gateway to a child centered justice: International Human Rights Standards** has been developed as part of the FOCUS project and are a component of a set of **FOCUS tools and resources**. International human rights standards represent a summary of applicable standards on individual assessment of circumstances and needs of children in criminal proceedings.

Annemieke Wolthuis, Research, mediator and trainer, took a lead role in the development of the research, while receiving valuable input from FOCUS experts, and Silvia Randazzo, Child Justice Expert, Rebecca O'Donnell, Child Circle and Mariama Diallo, Regional Programme Manager Access to Justice, Regional Office of Terre des hommes for Europe and Orinda Gjoni, FOCUS Regional Project Coordinator.



## About the FOCUS project

FOCUS<sup>1</sup>, a European Union co-funded project (2020 – 2022), centred on promoting and supporting the implementation of EU legal obligations to carry out **individual assessments of the needs and circumstances of children involved in criminal proceedings, whether as victims, suspects or accused**. These obligations are set out in three EU Directives concerning combating sexual abuse and exploitation of children<sup>2</sup>, victims' rights<sup>3</sup> and procedural safeguards<sup>4</sup> respectively, as transposed into, and sometimes complemented by, national law.

The **ultimate objective** of the project is to support child-centred justice, and ensure that children in contact with the law, as victims and as offenders, receive individualised care, and have access to personalised support and responses, including through restorative justice processes. FOCUS partners see the implementation of **robust and multidisciplinary individual assessment process as a gateway into child centred justice**. Focus sought in particular to:

1. Make systematic individual assessment practices of more common application with children involved in criminal proceedings.
2. Build the knowledge, capacities and skills of youth justice professionals, about standards, tools, procedures and process in the use of multidisciplinary individual assessment with children in criminal proceedings.
3. Build the knowledge and capacities of children about their rights in the criminal justice system and empower children to be agents of change and advocates for child-centred justice.

The project facilitated learning through international mutual exchange of practices between the five target countries: Bulgaria, Greece, Serbia, Romania and The Netherlands. FOCUS partners identified gaps between theory and practice on the implementation of individual assessment practices, gaps which were addressed by providing professionals with new, practical tools and resources to apply and systematize individual assessment process and practice in their countries.

The main FOCUS tools and resources developed are:

1. The FOCUS Standards: provide guiding principles for undertaking individual assessments for children involved in criminal proceedings, including respect for the Charter of Fundamental Rights and the UN Convention on the Rights of the Child (tool)
2. The FOCUS Standards self-reflection tool: accompanies the FOCUS Standards and supports stakeholders and professionals in reflecting on how the Standards are fulfilled or can be better fulfilled in their practice or in their national systems (tool).
3. The FOCUS Mapping Tool: helps stakeholders review the state of development of individual assessment processes (tool)
4. The FOCUS reference table for progress helps stakeholders identify actions to achieve improvements (tool)

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<sup>1</sup> <https://tdh-europe.org/our-work/focus-on-my-needs-working-together-for-children-in-criminal-proceedings-/7144>

<sup>2</sup> EU Directive 2011/93 on combating the sexual abuse and sexual exploitation of children and child pornography.

<sup>3</sup> EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime.

<sup>4</sup> EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.



5. The FOCUS pilot planning tool: helps stakeholders plan pilot activities to improve individual assessment processes (tool)
6. The FOCUS research summary on individual assessment with children in Europe (resources)
7. International human rights standards applicable on individual assessment practices (resources)
8. Q&A Individual assessment – a gateway to a child centered justice: key concepts and frequently asked questions (resources).
9. The Focus capacity building resources: the Focus Training Handbook, Focus on-line platform and the Focus e-learning module.



## Introduction

This overview provides a brief indication of key sources of law on multidisciplinary individual assessments of circumstances and needs for children involved in criminal justice proceedings at both the international and EU level. It serves as a background to the FOCUS Standards and training materials.

It refers to the UN Convention on the Rights of the Child, the relevant General Comments issued by the UN Committee on the Rights of the Child, the EU Fundamental Rights Charter, and several EU directives, which set out obligations in relation to children involved in criminal proceedings. It also refers to the Council of Europe instruments – in particular, the Lanzarote Convention and the Council of Europe Guidelines on Child-Friendly Justice.



# 1. United Nations

The CRC is the most ratified binding international human rights convention, providing governments and professionals with guidelines that can impact interactions with child victims and child suspects. The words individual assessments are not yet used in the text of 1989, but **the idea that children should undergo assessments to help determine how they are involved and what they need when they come into contact with the justice system is embedded**. We also mention its guiding principles and the key articles pertaining to child justice and protection from violence that deal with the use of individual assessments to address the circumstances and needs of children, and to guide professionals.

## 1.1 Guiding principles

It is good to reiterate the guiding principles of the CRC: According to the objectives of the CRC, the best interests of the child should prevail in all decisions concerning children (Article 3), which includes all children up to the age of 18. Children should not be discriminated against on any basis (Article 2), they have a right to life, health and development (Article 6) and they should be heard and thus participate in issues that concern them (Article 12).

## 1.2 Key articles concerning children in contact with the justice system

### a) Child victims

Article 19 addresses child victims of violence. It emphasises that State Parties must have proper laws in place to prohibit violence, but it also requires states to implement administrative, social and educational measures to protect children. The violence includes all forms of violence, both physical and psychological. A State Party is required to undertake protective measures, including the establishment of social programmes and mechanisms for addressing cases of child maltreatment.

Article 39 directly lays out protection for child victims, stating that children and young people have the right to recover from difficulties they encounter, and they should expect to receive the help that allows them to do so. This includes help to victims and survivors of violence, sexual violence, neglect, exploitation of any kind, abuse, torture, armed conflict and trafficking.

Article 39 does not directly refer to the use of assessment tools. However, it does say that the help that should be provided needs to ensure that children and young people are able to recover in an environment that





promotes their dignity, health and self-respect, and that their views are taken into account as to the kind of assistance they receive, which should also be in their best interests.

## b) Child suspects and/or accused

In Articles 37 and 40, the CRC sets detailed standards for child justice systems, stating that: “Member states shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law”.

Articles 37 and 40 address fair trial rights and a special child-oriented approach. Everyone working with children within the penal system has to take pedagogical objectives such as the child’s development and evolving capacities into account. Because children are continuously growing – improving their abilities and skills and further developing themselves – they need to be able to learn from their mistakes. Important aspects include education and reintegration, a minimum age of criminal responsibility, the role of parents, and child-friendly proceedings – including effective participation. The use of diversion is promoted where possible (keeping children away from the criminal justice system) as well as the use of child-specific sentences and incarceration as a last resort and for the shortest appropriate period of time.

## 1.3 General Comments

Since the adoption of the CRC, children’s rights have evolved. The Committee on the Rights of the Child, responsible for state reporting and making recommendations to state parties, also wants to include these clarifications and trends in their work. Several General Comments of the Committee on the Rights of the Child have been issued during the last decennia to make this work. Some make specific reference to the child’s individual assessment, especially the most recent ones:

**General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1)**<sup>5</sup>

Part V deals with implementation: assessing and determining the child’s best interests. It says: *the “best interests of the child” is a right, a principle and a rule of procedure based on an assessment of all elements of a child’s or children’s interests in a specific situation. When assessing and determining the best interests of the child in order to make a decision on a specific measure, the following steps should be followed: (a) First, within the specific factual context of the case, find out what are the relevant elements in a **best-interests assessment**, give them concrete content, and assign a weight to each in relation to one another; (b) Secondly, to do so, follow a procedure that ensures legal guarantees and proper application of the right. **Assessment and determination of the child’s best interests are two steps to be followed when required to make a decision.***

<sup>5</sup> [https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf)



The “**best-interests assessment**” entails evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children. It is carried out by the decision-maker and his or her staff – if possible, a multidisciplinary team – and requires the participation of the child. The “**best-interests determination**” describes the formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment.

**General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6) which can be very relevant to systems building in relation to developing an individual assessment process<sup>6</sup>**

In the foreword to this General Comment (GC) it is stated that: *The Committee on the Rights of the Child has drafted this general comment to outline States parties' obligations to develop what it has termed “general measures of implementation”. The various elements of the concept are complex and the Committee emphasizes that it is likely to issue more detailed general comments on individual elements in due course, to expand on this outline. Its general comment No. 2 (2002) entitled “The role of independent national human rights institutions in the protection and promotion of the rights of the child” has already expanded on this concept.*

Thus, in implementing all aspects of the rights of the child, state parties have obligations to have implementation skills in place (e.g. independent national human rights institutions) to see if these rights are indeed embedded and carried out.

**General Comment No. 13 (2011) The right of the child to freedom from all forms of violence<sup>7</sup>**

This GC provides additional details about what is needed to protect children from violence and information on how they should be treated if they have experienced violence.

In nr 50 about Referral the following is mentioned also dealing with multi-disciplinary assessment of their needs: *“ The person receiving the report should have clear guidance and training on when and how to refer the issue to whichever agency is responsible for coordinating the response. Following this, intersectoral referrals may be made by trained professionals and administrators when children are found to be in need of protection (immediate or longer-term) and specialized support services. Professionals working within the child protection system need to be trained in inter-agency cooperation and protocols for collaboration. The process will involve: (a) a participatory, **multi-disciplinary assessment of the short- and long-term needs of the child, caregivers and family**, which invites and gives due weight to the child's views as well as those of the caregivers and family; (b) **sharing of the assessment results** with the child, caregivers and family; (c) referral of the child and family to a range of services to meet those needs; and (d) follow-up and evaluation of the adequateness of the intervention. ”*

<sup>6</sup><http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhysiQql8gX5Zxh0cQqSRzx6Zd2%2FQRsDnCTcaruSeZhPr2vUevjbn6t6GSi1fheVp%2Bj5HTLU2Ub%2FPZZtQWn0jExFVnWuhiBbqgAj0dWBoFGbK0c>

<sup>7</sup>[https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf)



### General Comment No 24 (2019) on children's rights in the child justice system<sup>8</sup>

This GC includes a specific paragraph (109) on individual assessments and multi-disciplinary approaches, but it first mentions under nr. 11:

*“Early intervention for children who are below the minimum age of criminal responsibility **requires child-friendly and multidisciplinary responses** to the first signs of behaviour that would, if the child were above the minimum age of criminal responsibility, be considered an offence. Evidence-based intervention programmes should be developed that reflect not only the multiple psychosocial causes of such behaviour, but also the protective factors that may strengthen resilience.”*

*“Interventions must be preceded by a comprehensive and interdisciplinary assessment of the child’s needs. As an absolute priority, children should be supported within their families and communities. In the exceptional cases that require an out-of-home placement, such alternative care should preferably be in a family setting, although placement in residential care may be appropriate in some instances, to provide the necessary array of professional services. It is to be used only as a measure of last resort and for the shortest appropriate period of time and should be subject to judicial review.”*

Under the section: **V. Organization of the child justice system**

Nr 109 states: *“In addition, **individual assessments of children and a multidisciplinary approach are encouraged**. Particular attention should be paid to specialized community-based services for children who are below the age of criminal responsibility, but who are assessed to be in need of support.”*

### General Comment No 12 (2009): Participation of the child<sup>9</sup>

The focus of this general comment is a further explanation of Article 12 of the CRC, the right to be heard. It does not mention individual assessments as such, but it addresses in several items the importance of assessing the capacity of the child. See nr 44:

**Assessment of the capacity of the child 44:** *“The child’s views must be given due weight, when a case-by-case analysis indicates that the child is capable of forming her or his own views. If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue. Good practice for assessing the capacity of the child has to be developed.”*

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<sup>8</sup> <https://undocs.org/en/CRC/C/GQC/24>

<sup>9</sup> <https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>



In compliance with Article 12 of the CRC and the General Comment CRC/C/GC/12 of 2009 on the right of the child to be heard; children have the right to be heard in any judicial and administrative proceedings affecting them. This includes individual assessment processes, where the child – either victim or suspect – has to be listened to, their views have to be taken into account and given due weight, and their participation made possible and appropriate to their age. The application of this right has been broadly conceptualised as ‘participation’, although the term itself does not appear in the Convention.

*“The concept of participation emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children’s lives” – CRC/C/GC/12.*

This right to participate is further specified by the Committee in General Comment 12 in the five steps of **‘Meaningful Participation’**. For children and young adults, participation in criminal cases is their right. When young suspects or victims are uninformed about the procedure and cannot communicate about what happened to them, they may miss out on opportunities that can substantially enhance their well-being. When they are taken seriously and feel listened to, they are better connected to society, increasing the chance that they understand, trust, cooperate and communicate better with authorities such as the police, youth-care and social workers. Participation provides young people the opportunity to learn what they are good at, to take responsibility for their actions, and to develop in a broad sense. The Committee notes that child participation is a tool to stimulate the full development of the personality and the evolving capacities of the child. The concept emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults. Furthermore, participation assures the rights for children with vulnerabilities are protected. (Berger & Wolthuis, 2021))

To make participation ‘meaningful’, five steps need to be taken into account according to the Committee (GC 12):

- ◆ **Information:** Children need to know about their right to express their opinion and about the impact that their views will have on the outcome, such as the possible decisions and their consequences.
- ◆ **Listening:** Children need to be sure that the adult who is responsible for the hearing is willing to listen and will seriously consider what the child has decided to communicate. Important here is that child participation is voluntary and should be carried out in a safe environment where children feel free to share their views.
- ◆ **Assessment of the capacity of the child:** If children are capable of forming their own views, these are weighed as a significant factor in the settlement of the issue. Good practices for assessing the capacity of the child have to be developed.
- ◆ **Feedback:** Children’s views are given due weight. This means that they need to be informed of the outcome of the process explaining how their views were considered.
- ◆ **Complaints, remedies and redress:** When the rights of children are disregarded or violated, it needs to be clear whether mediation or a complaint mechanism can be addressed.



## 2. Council of Europe

### 2.1 Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention of 2007) contains important rules and regulations, as well as rules and regulations relevant to the investigation, prosecution and procedural law (chapter VII). There is no mention of individual assessments, but related aspects such as child-friendly methods and principles are dealt with in this Convention.

Under Chapter V – Intervention programmes or measures Article 15 – General principles in item 3 it says: “ *Each Party shall provide, in accordance with its internal law, for **an assessment of the dangerousness and possible risks of repetition of the offences** established in accordance with this Convention, by the persons referred to in Article 16, paragraphs 1 and 2, with the aim of identifying appropriate programmes or measures.* ”

### 2.2 Guidelines on child-friendly justice

In line with the CRC, the Council of Europe developed Guidelines on child-friendly justice in 2010. These guidelines outline that the procedures in child justice need to be child-friendly. A child-friendly justice system must treat children with dignity, respect, care and fairness. Mechanisms must be accessible, understandable and reliable, listening to children, taking their views seriously and making sure that the interests of those who cannot express themselves are also protected. It adjusts its pace to children: it is neither expeditious nor lengthy, but reasonably speedy – Council of Europe Guidelines on Child-Friendly Justice (Foreword).

Child-friendly justice is justice that is:

- ◆ Accessible
- ◆ Age appropriate
- ◆ Speedy
- ◆ Diligent
- ◆ Adapted to and focused on the needs of the child
- ◆ Respectful of the right to due process
- ◆ Respectful of the right to participate in and to understand the proceedings
- ◆ Respectful of the right to private and family life
- ◆ Respectful of the right to integrity and dignity

On assessment it says under item 5. Multidisciplinary approach in nr 16: “ *With full respect of the child’s right to private and family life, close co-operation between different professionals should be encouraged in order to obtain a comprehensive understanding of the child, and an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation.* ”



And in nr 17 it is stressed that: “**A common assessment framework should be established** for professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children’s interests in a given case.”

In section B on Best interests of the child nr 36 states: “*The child’s best interests should be a primary consideration in all cases involving children. **The assessment of the situation needs to be done accurately.** These guidelines promote the development of **multidisciplinary methods for assessing the best interests of the child** acknowledging that this is a complex exercise. This assessment becomes even more difficult when these interests need to be balanced with the interests of other involved parties, such as other children, parents, victims, etc. This should be done professionally, on a case-by-case basis.*”

Also important is nr 37: “**The best interests of the child must always be considered in combination with other children’s rights**, for example, the right to be heard, the right to be protected from violence, the right not to be separated from parents, etc. A **comprehensive approach** must be the rule.”

## 2.3 Guidelines on child protection

The Council of Europe addresses the various forms of violence against children through its standard setting, capacity-building and awareness-raising activities. It is committed to working with and supporting its 47 member states in implementing the United Nations 2030 Agenda for Sustainable Development, in particular Article 16.2 on [ending all forms of violence against children](#).<sup>10</sup>

In the Council of Europe Policy guidelines on Integrated National Strategies for the Protection of Children from Violence and Recommendation CM/Rec (2009) 10, it is stated under 4.2 dealing with Professional training: Nr 4. “*All relevant professionals should have skills to prevent, detect and respond effectively to violence against children. To this end, national curriculum regulations should include compulsory, ongoing training on the prevention, identification, **assessment and reporting of violence** against children, and the protection and continuity of care of children. The training should pursue a **comprehensive approach and prioritise early identification of potential risks to a child’s well-being.***”

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<sup>10</sup> <https://rm.coe.int/ending-all-forms-of-violence-against-children-by-2030-the-council-of-e/1680732f2d>




## 3. European Union

### 3.1 EU Strategy on the Rights of the Child of 2021

The most recent document produced at the European Union (EU) level dealing with child-friendly justice is the EU Strategy on the Rights of the Child of 2021 that has been developed for children and with children. Children should have access to information provided in a child-friendly way so they can clearly know what their rights are and, in this case, what the EU plans to do for them.

Part 4 deals with child-friendly justice and strives for 'an EU where the justice system upholds the rights and needs of children'. It does not go into details by describing the individual needs assessment, but it emphasises the importance of taking all decisions with the involvement and say of the children themselves.

 We need a strategy that is inclusive of all children and that supports children in vulnerable situations and we need a strategy that promotes and supports our right to participate in decisions that affect us. Because nothing that is decided for children should be decided without children. It's time to normalize child participation.

Children's conclusions,  
13th European Forum on the  
rights of the child, 2020

### 3.2 EU Charter of Fundamental Rights<sup>11</sup>

Article 24 of the EU Charter of Fundamental Rights (2012) deals with:

The rights of the child 1. *“Children shall have **the right to such protection and care as is necessary for their well-being**. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. **In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.**”*

The word individual assessment is not used.

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<sup>11</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT>



## 3.3 Directives relevant to child suspects and child victims

### a) Child suspect

#### Article 7 - Right to an individual assessment

1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.
2. For that purpose, children who are suspects or accused persons in criminal proceedings shall be individually assessed. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have.
3. The extent and detail of the individual assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty of the alleged criminal offence, and whether the child has, in the recent past, been the subject of an individual assessment.
4. The individual assessment shall serve to establish and to note, in accordance with the recording procedure in the Member State concerned, such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when:
  - a. determining whether any specific measure to the benefit of the child is to be taken;
  - b. assessing the appropriateness and effectiveness of any precautionary measures in respect of the child;
  - c. taking any decision or course of action in the criminal proceedings, including when sentencing.
5. The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, subject to paragraph 6, before indictment.
6. In the absence of an individual assessment, an indictment may nevertheless be presented provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court.
7. Individual assessments shall be carried out with the close involvement of the child. They shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15, and/or a specialised professional.





The child's right to an individual assessment of their needs when they are a victim, suspect or accused in criminal proceedings is more clearly provided in Article 22 Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime<sup>12</sup>

and Article 7 of Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.<sup>13</sup>

**A proper, multi-disciplinary and robust individual assessment conducted at the earliest stage possible is in fact essential to guarantee the full exercise of a number of other rights for the child involved in a criminal proceeding, either as victim, suspect or accused. It is a crucial tool to activate an overall fair and child-centred justice process, where the child is first and foremost looked at as a child.**

With reference to particularly vulnerable categories of child victims, **EU Directive 2011/92 on combating the sexual abuse and sexual exploitation of children and child pornography** (recital 30)<sup>14</sup> and **EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims** (Art. 16)<sup>15</sup> also include provisions on individual assessments for children conducted in their bests interest.

The latter says for example in Article 12 sub 4 on the Protection of Victims of Trafficking in Human Beings in Criminal Investigation and Proceedings:

*“Without prejudice to the rights of the defence, and **according to an individual assessment by the competent authorities of the personal circumstances of the victim**, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:*

- a. unnecessary repetition of interviews during investigation, prosecution or trial.*
- b. visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies.*
- c. the giving of evidence in open court; and*
- d. unnecessary questioning concerning the victim's private life.”*

Individual needs assessments shall be conducted with the close involvement of the child – Directive (EU) 2016/800, 7/7.

<sup>12</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>

<sup>13</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0800>

<sup>14</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0093>

<sup>15</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>



## Provisions on what the individual assessment should entail

Even though much is left to member states to decide on how to implement such mechanisms, some provisions are mentioned in the Directives.

For child suspects/accused, Directive (EU) 2016/800 provides guidance. In the introductory remarks the following is mentioned:

*(36) "The individual assessment should, in particular, take into account the child's personality and maturity, the child's economic, social and family background, including living environment, and any specific vulnerabilities of the child, such as learning disabilities and communication difficulties."*

*(37) "It should be possible to adapt the extent and detail of an individual assessment according to the circumstances of the case, taking into account the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence. An individual assessment which has been carried out with regard to the same child in the recent past could be used if it is updated."*

*(38) "The competent authorities should take information deriving from an individual assessment into account when determining whether any specific measure concerning the child is to be taken, such as providing any practical assistance; when assessing the appropriateness and effectiveness of any precautionary measures in respect of the child, such as decisions on provisional detention or alternative measures; and, taking account of the individual characteristics and circumstances of the child, when taking any decision or course of action in the context of the criminal proceedings, including when sentencing. Where an individual assessment is not yet available, this should not prevent the competent authorities from taking such measures or decisions, provided that the conditions set out in this Directive are complied with, including carrying out an individual assessment at the earliest appropriate stage of the proceedings. The appropriateness and effectiveness of the measures or decisions that are taken before an individual assessment is carried out could be re-assessed when the individual assessment becomes available."*

*(39) "The individual assessment should take place at the earliest appropriate stage of the proceedings and in due time so that the information deriving from it can be taken into account by the prosecutor, judge or another competent authority, before presentation of the indictment for the purposes of the trial. It should nevertheless be possible to present an indictment in the absence of an individual assessment provided that this is in the child's best interests. This could be the case, for example, where a child is in pre-trial detention and waiting for the individual assessment to become available would risk unnecessarily prolonging such detention."*

*(40) "Member States should be able to derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, taking into account, inter alia, the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence, provided that the derogation is compatible with the child's best interests. In that context, all relevant elements should be taken into consideration, including whether or not the child has, in the recent past, been the subject of an individual assessment in the context of criminal proceedings or whether the case concerned may be conducted without an indictment."*



## b) Child victims

### Article 22

#### Individual assessment of victims to identify specific protection needs

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.
2. The individual assessment shall, in particular, take into account:
  - (a) the personal characteristics of the victim;
  - (b) the type or nature of the crime; and
  - (c) the circumstances of the crime.
3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.
4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.
5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.
6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.
7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.



The child's right to an individual assessment of their needs when they are a victim is more clearly provided in Article 22 Directive 2012/29/EU, which establishes minimum standards on the rights, support and protection of victims of crime. A proper, multi-disciplinary and robust individual assessment conducted at the earliest stage possible is in fact essential to guarantee the full exercise of a number of other rights for the child involved in a criminal proceeding, either as a victim, suspect or accused. It is a crucial tool to activate an overall fair and child-centred justice process, where the child is first and foremost looked at as a child.

With reference to particularly vulnerable categories of child victims, EU Directive 2011/92 on combating the sexual abuse and sexual exploitation of children and child pornography (recital 30), and EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims (Article 16), also includes provisions on individual assessments for children conducted in their best interests.

**The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have (Article 7 Directive 2016/800). During the assessment, it is necessary to ensure that the child is informed in the appropriate way, that they give the proper opportunity and conditions to form their own views and express those views freely, and in accordance with their age and maturity.**

A multidisciplinary and holistic assessment provided at the earliest stage possible will allow the best interests of the child to be a primary consideration in the proceedings, for example by supporting access for children to the available support services measures, including restorative justice. Furthermore, an individualised and multidisciplinary approach is crucial to avoid discrimination: in particular where it identifies children's diversity/ies as encompassing strengths and vulnerabilities that need to be addressed rather than discriminated against.

For child victims, there are fewer specific provisions on how an individual assessment should be undertaken and by whom than there are concerning child suspects or offenders (when compared with the 2016 Directive on Child Procedural Safeguards).

For this category of children, the individual assessment aims in particular to determine the extent to which they are at risk of secondary and repeat victimisation, of intimidation and retaliation, and what special protection measures they require.<sup>16</sup> The individual assessment should take into account:

- ◆ The personal characteristics of the victim, such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender, as well as their previous experience of crime.

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<sup>16</sup> Art. 22 (1, 4), par. 55 EU Directive 2012/29/EU; Art. 19(3) EU Directive 2011/92; Artt.12 (3,4), 13, 14, EU Directive 2011/36



- ◆ The type or nature and the circumstances of the crime, such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang-dominated area, or whether the victim's country of origin is not the member state where the crime was committed.<sup>17</sup>

The exact wordings used in the EU Victim Directive:

*(55) "Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, can such a risk be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require."*

*(56) "Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed."*

*(57) "Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures."*

*(58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure."*

*(59) "Immediate operational needs and constraints may make it impossible to ensure, for example, that the same police officer consistently interview the victim; illness, maternity or parental leave are examples of such constraints. Furthermore, premises specially designed for interviews with victims may not be available due, for example, to renovation. In the event of such operational or practical constraints, a special measure envisaged following an individual assessment may not be possible to provide on a case-by-case basis."*

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<sup>17</sup> Article 22 (2), par. 56 Directive 2012/29/EU



*(60) "Where, in accordance with this Directive, a guardian or a representative is to be appointed for a child, those roles could be performed by the same person or by a legal person, an institution or an authority."*

*(61) "Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. Where relevant, such training should be gender sensitive. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest roadmap."*



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