



VICTIMS AND CORPORATIONS



Implementation of Directive 2012/29/EU for Victims of Corporate Crimes and Corporate Violence

Presentation of the Project



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Project website

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THE PROJECT IN BRIEF

European Union Directive 29/2012 inaugurates a relevant **change**: it introduces a 'system' of minimum standards on the rights, support and protection for victims of crimes, and their participation to criminal proceedings, without prejudice to the rights of the offender.

Within the scope of the Directive and its definition of 'victim', though, there is a relevant group of victims who have not yet received enough consideration, and whose access to justice may be at stake. It is the **victims of corporate crimes, and particularly of corporate violence**, meaning those criminal offences committed by corporations in the course of their legitimate activities, which result in harms to natural persons' health, integrity, or life.

These victims are not a minority. The crossing of the pertinent Eurostat

data demonstrates that corporate violence effects within EU are as prevalent as violent criminality. Official statistics provide ample evidence of the vast and **trans-boundary** nature of this victimisation and, moreover, the number of victims of corporate violence will grow dramatically in the future, facing increasingly complex claims for justice also due to **long latency periods** typical of exposure to toxic agents. Not to mention the million victims of financial frauds and other corporate crimes.

Actually, within the vast area of corporate crime, the project focuses on **three main strands** of victimisation: **environmental crime, food safety violations and offences in the pharmaceutical industry**. This choice is due to the idea of exploring – and possibly exploiting – intersections and potential synergies between Directive 2012/29/EU and the existing body of EU legal tools in these three sectors, which – it must be said – currently focus on a different, preventive, risk-based approach, coupled with compensation and reparation remedies. A strategy which, we assume, could benefit from a comparison and coordination with



the *ex post facto*, victim-centered approach of the new Directive.

Victims of corporate violence appear to have an extreme need – quoting from the Directive – to «receive appropriate information, support and protection», and to be supported and made «able to participate in criminal proceedings», as they reveal themselves as a further category – together with more ‘traditional’ victims of family violence, abuses, human trafficking, terrorism etc. – of **extremely vulnerable subjects**, also (and often mostly) due to a lack of (public as well as personal) awareness about their victimisation.

Asymmetry of information and of means between individual victims and corporate offenders has heavy repercussions on **access to justice** and fair judicial decisions. **Lack of awareness among practitioners** and lack of legal attention for the position of these victims in criminal justice systems are other obstacles in accessing to justice. Also, the **long-lasting effects** on their health caused by this sort of violence may require a kind of **support** that public agencies are not currently adequately prepared to provide.

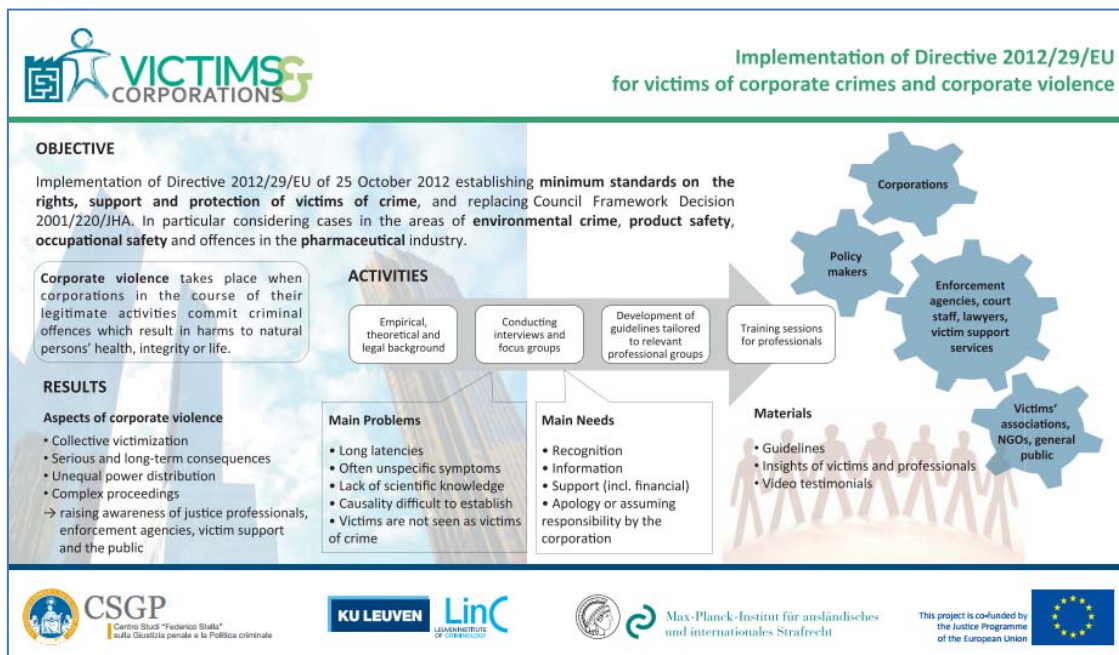
We think that the study of the needs of protection and support of these specific victims could provide a highly revealing insight into the condition of many other kind of victims, as the consequences victims of corporate violence suffer are made more serious and durable due to the imbalance of power and knowledge – we could say the imbalance in the power of knowledge – they suffer



while confronting the often impressive power of huge corporations and their well equipped staffs, including legal staffs.

Due to the complex nature of the issues involved in working on a specific and effective implementation of Directive 2012/29/EU with respect to victims of corporate violence, a **deep and inter-disciplinary preliminary research** has preceded the more operational stages of our project – a research whose results the reader will find summarized in the report *Rights of Victims, Challenges for Corporations. Project's first findings*, available on our website (www.victimsandcorporations.eu) together with the *Data Collection on Leading Cases* of corporate violence and a collection of *European and International Selected Legal Resources and Case Law*.

Building on the results of this preliminary analysis, a set of **interviews and focus groups** with victims of corporate violence, as well as with other people professionally dealing with this kind of offences and



victims, were designed and performed, leading to the collection of precious information on corporate violence victims' needs – information indispensable to guide the delicate operation of «**individual assessment**» that **art. 22 of the Directive** establishes as a fundamental and primary duty when working with victims of crime.

Due to the extreme sensitivity of victims' personal stories and circumstances, a set of **ethical guidelines** was designed to ensure that interviews and focus groups were performed with maximum respect for each person's dignity, freedom, privacy and individual needs. Building on the previous desk research, a set of **guidelines for interviews and focus groups** was designed to help conducting the empirical research 'in the field'. Such research resulted, after the analysis of the collected information in **three national reports**

reflecting the outcomes of **26 individual interviews** and **8 focus groups** carried out in **Italy, Germany** and **Belgium**. The texts of the three national reports were then partly transposed and summarized in a **Practical Guide for the individual assessment of corporate violence victims' needs**, also available on the Project's website. Amongst the professionals who also participated in interviews and focus groups there were public prosecutors, judges, lawyers, victim support staff, staff of a national compensation fund for victims of intentional violence, mediators, medical doctors, a representative of a human rights non-governmental organisation and an ombudsperson.

Our empirical research confirmed that victims of corporate violence appear to have an extreme need – quoting from art. 1 of the Directive – to «receive appropriate information, support and protection», and to be

made «able to participate in criminal proceedings», as they reveal themselves as a further category – together with more ‘traditional’ victims of family violence, abuses, human trafficking, terrorism etc. – of **extremely vulnerable subjects**.

The aforementioned *Practical Guide*, together with its **Italian, German and Flemish adaptations**, is therefore aimed at providing any **professional having to assist corporate violence victims** with a tool that may help them to better understand and assess these **victims’ needs**, as well as to identify and deal with the specific problems they may experience in **accessing justice**, in engaging with the involved



corporations, in dealing with **public authorities** often perceived as indifferent or even hostile and in confronting **the media**. Due consideration is also given to the role potentially played by formal and informal **victims’ associations**, which emerged as often being the sole or, at least, principal source of support for this specific group of victims (also considering the usually widespread nature of victimization related to corporate crime). Specific attention was also paid to the importance of **informal social networks** victims could be able to rely upon.

Building on the desk and empirical research and on its first outputs, as well as on the further debate with experts and professionals, the Project’s staff has then developed, for each of the three involved countries, a series of **specific guidelines for professionals and corporations**, aimed at providing further, more tailored tools to grant an effective implementation of Directive 2012/29/EU for victims of corporate crimes and corporate violence.

Amongst the aims of the Project there is, indeed, **rising awareness** of rights and specific needs of victims of corporate violence at all social and institutional levels, and specifically amongst **law practitioners across EU**. The **training** of people who professionally come into contact with victims of corporate violence is therefore a main objective. Such training is aimed at providing competences and abilities to promptly **recognize** this kind of victim and deal with them in a **sensitive** way; best

assess their peculiar needs; address their specific problems in accessing justice; **support** them. Finally, the Project's action plan is conceived to foster **corporate social responsibility** and reduce controversy loads, while enhancing the victims' chances of fair compensation and restorations.

Target groups of the project therefore are: enforcement officers, lawyers, victim support agencies, restorative justice services, victim organizations, victims, and the general public at large. Corporations constitute a quite relevant intermediate target group, also for the purpose of victimisation prevention and of the implementation of a responsive corporate social responsibility.



THE DIRECTIVE IN BRIEF

The purpose of **Directive 2012/29/EU** is to ensure that victims of crime receive **appropriate information, support, and protection** and are able to **participate in criminal proceedings** (Art. 1).

Victims of crime are in the first place individuals who, above all, must be properly understood in terms of their **needs** and **treated «in a respectful, sensitive, professional and non-discriminatory manner»** (Recital

61). In general terms, this implies that contact and interaction with victims of crime, regardless of who is responsible for and/or handles such, must involve:

- **recognition of the victim** as a victim, regardless of whether an offender is identified, apprehended, prosecuted or convicted (and regardless of any familial relationship between them) and, in addition, regardless of any delay in reporting a criminal offence (due to fear of retaliation, humiliation or stigmatisation);
- **respect for the victim's physical, mental, and moral integrity**, sensitivity, professionalism, and **avoiding any type of discrimination** (based on race, skin colour, ethnic or social origin, genetic features, language, religion or belief, political or



any other opinion, belonging to a national minority, heritage, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residency status or health);

- **consideration for the victim's personal situation** as well as immediate needs, age, gender, possible disabilities, and maturity;

- **protection** from **secondary victimisation** (namely possible negative emotional and/or relational consequences from contacts between the victim and public institutions in general, and the criminal justice system in particular) or from **repeat victimisation**, from **intimidation**, and from **retaliation**;

- **minimisation of unnecessary interactions with the authorities**, by simplifying interaction between the authorities and the victim, ensuring the **avoidance of any unnecessary suffering**, and adopting a respectful approach to allow victims to establish a level of **trust in the authorities**;

- commitment to ensuring appropriate **support** to facilitate **recovery** and ensure that victims have sufficient **access to justice**;

- **protection of the victim's private life** and privacy;

- commitment to providing **information and advice** via the widest possible range of media and in simple and accessible language, to ensure that the victim can be understood and **can take informed decisions** regarding participation in the criminal proceedings;

- commitment to ensure that the victims **can be understood**, taking into account their knowledge of the **language** used to provide information, age, maturity, intellectual and emotional capacity, literacy level, and any mental or physical impairment;

- **consideration also for any indirect victims of the crime**, that is, for example, members of the victim's family who, in turn, are harmed as a result of the crime.

The Directive, therefore, establishes a set of **rights** for victims of crime, which can be summarised as follows:

- the right to **understand** and to **be understood**, when first registering the complaint and at every stage and level of the criminal proceedings (Arts 3 and 5), including a specific right to interpretation and translation (Art. 7);





- the right to receive **information** from the first contact with a competent authority about: the type of support they can obtain and from whom; access to medical support and/or any specialist support including psychological; alternative accommodation; the procedures for registering the complaint; how and under what conditions they can obtain protection; the possibility to access various forms of legal assistance; how and under what conditions they can seek compensation; the right to interpretation and translation; the procedures to follow should they be resident in a different Member State; the procedures available for making complaints where their rights are not respected; the contact person for communications about their case; the restorative justice services available; how and under what conditions they can seek reimbursement for expenses incurred due to their participation in the criminal proceedings (Art. 4); progression of their case at every stage and level of the criminal proceedings (Arts 5 and 6);
- the right to access **victim support services**, free of charge and acting in

the interests of the victims, before, during, and for an appropriate time after the criminal proceedings (Arts 8 and 9);

- the right to **participate in the criminal proceedings** (the right to be heard – Art. 10; the right to a review of a decision not to prosecute and related rights – Art. 11; the right to protection, including in the event of access to restorative justice services – Art. 12; the right to legal aid – Art. 13; the right to a reimbursement of expenses incurred in order to participate in criminal proceedings – Art. 14; the right to the return of property owned by the victim and seized – Art. 15; the right to a decision on compensation from the offender – Art. 16; the right to have difficulties reduced to a minimum, where the victim is resident in another Member State, – Art. 17);
- the right to **protection** (of victims and their family members) from secondary and repeat victimisation, from intimidation, and from retaliation, including against the risk of emotional or psychological harm, and to **protection of their dignity** during questioning or when giving testimony (including the right to avoid contact

with the offender, the right to protection during investigations, the **right to protection of privacy**, the **right to a timely and individual assessment** in order to determine any specific needs and whether and to what extent they would benefit from special measures during the criminal proceedings, the right to access such special measures, where necessary, and the specific right to protection for children – Arts 18-24).



CORPORATE VIOLENCE AND ITS VICTIMS IN BRIEF

‘Corporate violence’ means **criminal offences committed by corporations in the course of their legitimate activity**, which result in **harms to natural persons’ health, integrity, or life**.

For **examples** of this type of offence, the main point of reference are the already mentioned **national reports on empirical research and practical guide on the individual assessment of victims’ needs**. It is important to stress here that even simply alleged criminal offences corresponding to corporate violence cases also fall under the scope of the Directive and its implementation. This is clear from **the definition of «victim of crime» adopted by the Directive**: natural persons who have «suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence» as well as the family members «of a person whose death was directly caused by a criminal

offence» and who have «suffered harm as a result of that person’s death» (Art. 2, par. 1), «regardless of whether an offender is identified, apprehended, prosecuted or convicted» (Recital 19).

It should, however, be made clear that the **concept of corporate violence** has a **criminological and sociological** framework, with the result that **it does not perfectly overlap** with the categories, established in **law**, of **‘violence’** or of **‘corporate criminal liability’**.

In terms of the second category, the concept of corporate violence, without doubt, covers a range of criminal offences extending far beyond those (that are violent in the broad sense or might lead to violent crimes or in any event to harm to an individual’s life or psycho-physical integrity) which are currently included in the list of unlawful acts that might give rise to corporate criminal or quasi-criminal liability, according to the models adopted by the national legislations.

However, this discrepancy stems from the empirical and social origin of the notion of corporate violence and, therefore, lends itself to better reconstruct **actual types of harm and suffering experienced by the victims** of this type of crime, as well as the



specific challenges surrounding adequate protection for this particular group of victims. Therefore, it seems clear that the concept of corporate violence, as well as sensitivity to the **empirical and social reality** underlying it, are essential with a view to the effective and operative implementation of the Directive, and more specifically regarding a **correct individual assessment** of the needs of these victims.

In fact, it is extremely important that anyone who is to come into contact with these victims, for any reason whatsoever, is sufficiently aware of the complex empirical reality of corporate violence victimisation, to ensure that the **victim of the crime is treated with respect**: this being the first and most general pillar of the protection system established by Directive 2012/29/EU.

As mentioned earlier, the **Directive** classifies victims as such upon having suffered **harm**, including **physical, mental or emotional** harm or **economic** loss which was directly caused by a criminal offence (Art. 2, par. 1). As in the case of almost every serious crime, the **harm consequent to victimisation resulting from corporate violence** tends to be **physical, psychological and economic**. The usual complexity of these offences generally implies that the victim does not experience these types of harm separately, but **as aspects of one single traumatic experience** in which each fuels the other. In addition, the harm **often goes unnoticed at first** and is either delayed and/or emerges gradually, as does the feeling by the victim on a psychological level that



they have suffered a particularly serious '**betrayal of trust**'.

Physical harm can range from death (immediate or following a short-term or long-term illness) to personal injury of various degrees of severity and of varying durations, including conditions resulting in a severe disability and/or disfigurement, which, in particular, imply serious **repercussions on the victim's work life, emotional life, and relationships** (see below). Foetuses and new-born babies can also be affected (one example being the phocomelia cases linked to the use of Thalidomide during pregnancy). The harm can emerge in the immediate aftermath of the crime or a considerable time afterwards, possibly decades later, given that diseases linked to the exposure to toxic agents can remain **latent** for lengthy periods of time. The symptoms and/or causes may be **unclear**, given the continuing scientific uncertainty surrounding the origin of the condition in question and the role played (or not played) by exposure to certain substances, to the





extent that it is often impossible to identify conclusively a link between the illness and the criminal offence.

Psychological and emotional harm can result **from a single traumatic event** (in the case of disasters, for example) or be predominantly the **consequence of physical injury and economic loss** and the related stress. In both cases, the results of empirical research carried out as part of this project and of literature review alike demonstrate how psychological and emotional harm can manifest itself **in forms and with levels of intensity that are no different from the harm that arises from 'ordinary' violent crimes** (PTSD, depression and anxiety attacks, etc.). What is nearly always evident is a specific sense of **'betrayal'** regarding the organisation in question and its representatives (which aggravates the psychological effects mentioned above). In fact, the victim is generally

linked to said agents by a **necessary relationship of delegated or implied trust** (a consumer in respect to a manufacturer, a patient in respect to the pharmaceutical industry or an employee in respect to their employer etc.). In some cases, this is magnified by what is an outright **dependency** linking victim and perpetrator (examples here are a haemophiliac who is dependent on lifesaving blood derivatives, or a workforce or entire communities who are financially dependent on factories that are unsafe). This sense of betrayal often extends to public institutions when the victim perceives a failure to carry out checks that could have prevented the crime or a failure to counter it once discovered. Psychological stress can be exacerbated by the **fear that the harm will get worse or be repeated** (think for example to cases involving asbestos and the psychological

suffering linked to, in the case of diagnosis, the certain fatal development of pleural mesothelioma; or to the death of relatives or friends exposed to the same environmental factors to which the current or potential victim is exposed). This is often aggravated by **scientific uncertainty** and by a **fear of retaliation** by the corporate offender, in relation to whom the **disparity in strength and knowledge** is something that the victim is generally aware of. Moreover, given that there are many **cases** here which can be considered to some extent as **'jointly caused'** or **'prompted'** by the victim (because of the choice, perhaps a repeated one, to use a specific product, or of the choice of a certain job, of of the decision to have plastic surgery, and similar), feelings of **shame and self-blame** are

not infrequent, and these have a huge emotional impact on the victim. Where the victim's place of residence has been seriously affected (as in cases of pollution on a severe scale) and they are forced to and/or are able to move out, **harm to interpersonal relationships** can also arise resulting from this forced uprooting. Harm of a similar type can also result from the onset of **medical conditions that are seriously disabling or cause serious disfigurement** (an example being Thalidomide victims) and, more generally, from the **stress caused to victims and/or their relatives** as a result of the crime and its medium and long-term consequences.

In these cases, **economic harm** can mostly be linked to factors such as **medical expenses** incurred in relation to the sustained physical harm (these



are often high, depending on the severity and duration of the medical conditions contracted), **job loss** or **deterioration in working capacity**, the loss of a partner who was the only or main breadwinner in the family, **costs incurred in changing residence**, when possible (e.g. abandoning a seriously polluted area), **or in reducing, using the victim's own resources, the risk** of repeat victimisation (decontamination work or the purchase of protective equipment and devices etc.).

It is apparent from this summary that where **victims of corporate violence are concerned, there is frequently a coexistence of multiple factors of vulnerability** that, when dealing with such victims, are to be taken into consideration both individually and based on how they interact with one another.



TOOLS AND TRAINING MATERIALS

As stated above, the **dissemination** of **information**, **methodology** (through replicable means) and **guidelines**, together with the training of professionals, are the core of a larger programme to raise **public awareness** about victims' rights in general, as well as about protection and support for victims of corporate violence in particular.

Therefore, on the Project's website – www.victimsandcorporations.eu – the reader will find, by December 2017, a comprehensive set of **tools and training materials** which are here briefly summarized:

- ◆ a comprehensive report of the preliminary desk research, *Rights of Victims, Challenges for Corporations. Project's First Findings*, available in English in full text;
- ◆ a reasoned collection of *European and International Selected Legal Resources and Case Law*, available in English in full text;

- ◆ a table of *Data Collection on Leading Cases*, available in English in full text;

- ◆ a comprehensive report of the preliminary empirical research, *Needs of Victims of Corporate Violence: Empirical Findings*, available in English in full text;

- ◆ an English version and three national adaptations (in Italian, German and Flemish) of a **practical guide for the individual assessment of the needs of victims of corporate violence**, all available in full text;

- ◆ national **guidelines for judges, prosecutors and other law enforcement agencies**, in Italian, German and Flemish, complete with an English abstract, all available in full text;

- ◆ national **guidelines for lawyers**, in Italian, German and Flemish, complete with an English abstract, all available in full text;

- ◆ national **guidelines for social workers, victim support services and associations, and restorative justice services**, in Italian, German and Flemish, complete with an English abstract, all available in full text;

**TOOLS IN ENGLISH
FOR CITIZENS
AND PROFESSIONALS**

- ◆ a set of **guidelines for corporations** in English, available in full text;
- ◆ collections of **national legal resources** pertaining to the transposition and implementation of Directive 2012/29/EU, integrated into national **training packages for professionals**;
- ◆ a collection of **Digital Stories**, i.e. a set of videotestimonies from victims and experts, complete with English subtitles.





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"Federico Stella" Centre for Research on Criminal Justice and Policy (CSGP) – Università Cattolica del Sacro Cuore, Milan, Italy.

CSGP is the coordinator of the project. CSGP is a research centre on criminal law and criminal policy, committed to promote theoretical and applied interdisciplinary research, aiming at improving the criminal justice system. Its activities, projects and expertise cover a wide range of themes, including business criminal law, corporate liability, criminal law reform, restorative justice and victim support, environmental law, law and the humanities, law and the sciences. An Advisory Committee of prominent scholars, judges and leading experts in juridical, economic, philosophical and psychological disciplines coordinates its scientific activities.



Leuven Institute of Criminology – University of Leuven, Leuven, Belgium.

The University of Leuven (KU Leuven) is charter member of the League of European Research Universities; European surveys rank it among the top ten European universities in terms of its scholarly output. The Leuven Institute of Criminology (LINC) is composed of about seventy professors and researchers involved in criminological research and teaching. LINC continues the Leuven tradition of combining solid research with a deep commitment to society, a goal achieved through fundamental as well as policy-oriented research. LINC consists of eight 'research lines', one of which is on 'Restorative justice and victimology'.



Max-Planck-Institut
für ausländisches und
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Max Planck Institute for Foreign and International Criminal Law (MPICC), Freiburg i.B., Germany.

Research projects undertaken at MPICC are comparative, international, and interdisciplinary in nature, and focus on empirical studies of criminal law, crime, crime control, and crime victims. Research also involves: harmonization and assimilation of criminal law and criminal procedure in EU Member States; development of criminal law thanks to insights into existing legal solutions to social problems, and into functional criminal and extra-criminal law alternatives.

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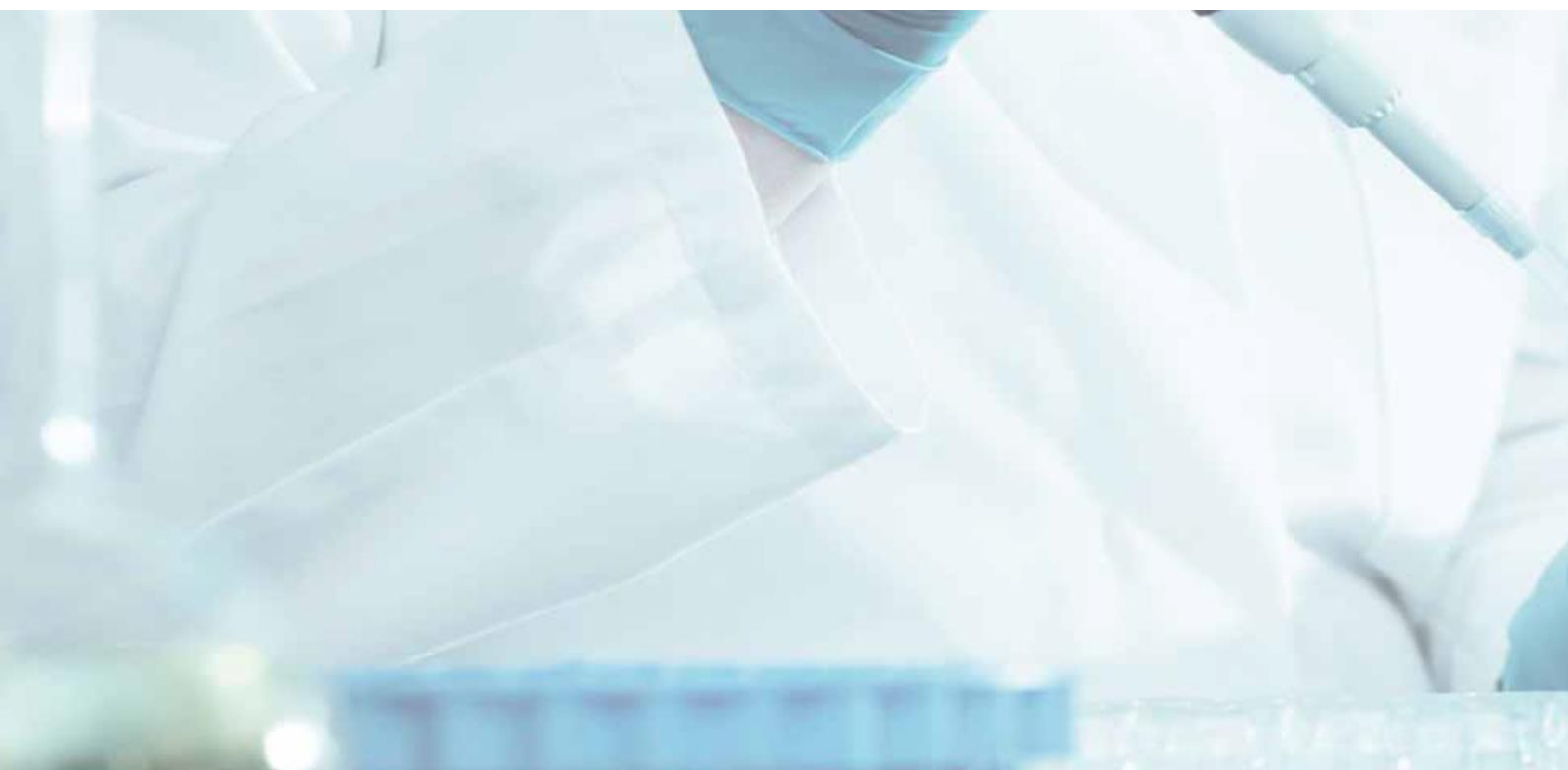


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