

FREEDOMS



Addressing forced marriage in the EU: legal provisions and promising practices



EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



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Addressing forced marriage in the EU: legal provisions and promising practices

Foreword

Forced marriage is marriage without consent. It is a form of domestic violence. It violates the right to freely decide whether, when and whom to marry. Most of the victims are women but it can be imposed on men, too. Children and those with learning disabilities are particularly vulnerable.

There are several aspects relating to forced marriage which are covered by EU law. This is first and foremost the protection and support to be afforded to victims of forced marriage, but also issues relating to asylum and immigration law, free movement, as well as legislation relating to protection orders, mutual recognition and data protection.

Civil law provisions to operationalise free consent for marriage, safeguards for marriage contracted by persons under 18 years of age and effective opportunities to annul a forced marriage can contribute to preventing forced marriage and protecting victims. Where domestic law allows for certain aspects of marriage to be regulated by the law of a foreign spouse, safeguards are important to avoid situations where EU Member States find themselves obliged to accept third-country norms which deprive victims of protection against forced marriage.

With this paper the European Union Agency for Fundamental Rights (FRA) encourages European Union institutions to look at the issue of forced marriage in a comprehensive manner. It outlines promising initiatives, both by the authorities and non-governmental organisations addressed at supporting victims of forced marriage and persons at risk of becoming victims of forced marriage. It further suggests that the EU should consider acceding to the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), given that the convention envisages this possibility.

Morten Kjaerum

Director

Country codes

Country code	EU Member State
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom



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Executive summary

Although there is no official, internationally agreed definition, forced marriage can be described as a marriage concluded without the consent of one or both partners, and therefore against the will of at least one of them. It is a serious violation of human rights. This paper briefly describes the phenomenon of forced marriage, examines selected legislative measures taken to address it and lists promising initiatives to prevent forced marriage and support victims. It is primarily based on desk research carried out in five European Union (EU) Member States: France, Germany, the Netherlands, Sweden and the United Kingdom.

Robust and reliable data on forced marriage collected on a regular basis are essential to inform policy making. There are limited data on the prevalence of forced marriage at national level. Crime statistics only exist in Germany, which recorded 56 suspected cases of forced marriage during 2012, but so far only one conviction. In the United Kingdom some 130 protection orders have been issued to victims of forced marriage every year since mid-2009. Police and judicial statistics show only the tip of the iceberg: a German study showed that in 2008, counselling centres in Germany were approached 3,443 times on forced marriage. The United Kingdom Forced Marriage Unit, a joint initiative of the Home Office and the Foreign and Commonwealth Office, provided advice or support to almost 1,500 people in England and Wales in 2012.

Analysing survey data, the Swedish National Board for Youth Affairs estimated that in 2011 there were 8,500 young people who were worried that they would not be allowed to choose whom they wanted to marry. A French survey, conducted with migrants and their descendants in 2008 showed that 'non-consensual marriage' was experienced by 4 % of immigrant women and 2 % of daughters of immigrants. FRA could not find any data on the prevalence of forced marriage in the Netherlands.

The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) obliges to criminalise the intentional conduct of forcing a person to enter into a marriage.¹ There is a trend to criminalise forced marriage in the EU, with seven EU Member States having introduced a specific forced marriage crime. Enforcing

the crime of forced marriage is, however, difficult in practice. Criminalisation alone is unlikely to address this phenomenon, unless it is combined with other measures, both legal and practical.

On the legislative side, civil law provisions to operationalise free consent for marriage, safeguards for marriage contracted by persons under 18 years of age and effective opportunities to annul a forced marriage can contribute to preventing forced marriage and protecting victims. Where domestic law allows for certain aspects of marriage to be regulated by the law of a foreign spouse, safeguards are important to avoid situations where EU Member States find themselves obliged to accept third-country norms which deprive victims of protection against forced marriage.

In case of marriage with third-country nationals, family reunification procedures may apply safeguards to combat forced marriage. These should not be used across the board, however, thereby limiting family reunification where there are no indications of forced marriage. For situations falling under the EU family reunification directive, establishing a minimum age requirement for family reunification of spouses may only be justified in specific cases, following an individual examination of an application for family reunification. Such a requirement must not be used as an overall threshold below which no family reunification is allowed.

Where the victim's right to stay in the EU Member State depends on the spouse, an autonomous residence permit is a pre-condition for victims to seek the necessary protection from the authorities without fearing that the perpetrator will retaliate by withdrawing or threatening to withdraw residence benefits. In addition, in line with the requirements of the Istanbul Convention, when victims are brought abroad, they should be granted effective ways to return to the EU Member States even when, as a result of the forced marriage, they have lost their right to reside in the EU.

Prevention of forced marriage is crucial, also to spare the trauma caused by such a violation of human rights. This paper describes a number of promising practices in areas such as awareness-raising, training of professionals and schooling.

The paper lists promising initiatives, both by the authorities and by NGOs in the five EU Member States addressed at supporting victims of forced marriage and persons at risk of becoming victims of forced marriage. Those examples have been selected which take a holistic approach to victim's support. These also include

¹ The Convention entered into force on 1 August 2014 for five EU Member States. Additional 16 EU Member States signed it, but had not ratified it yet on the day of entry into force. See <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=210&CM=8&DF=22/05/2014&CL=ENG>. All hyperlinks accessed on 1 August 2014.

initiatives taken on the basis of national action plans which cover the fight against forced marriage. The key to effectively tackling and preventing forced marriage is to integrate a diverse range of activities and measures, such as support services, awareness raising, educational initiatives, training and campaigning. Prevention activities should address the different needs of victims in an accessible manner. They should take an inclusive

approach to gender-based violence. Inter-agency cooperation is required to establish and operationalise referral mechanisms and processes. Finally, funding of preventive activities and of those supporting victims must be sustainable.

The paper ends by suggesting that the EU should consider acceding to the Istanbul Convention.



Introduction

Primarily using data and information collected from five EU Member States, this paper briefly describes the phenomenon of forced marriage and selected legislative measures taken to address it. It lists promising practices for the prevention of forced marriage and for supporting victims. The paper covers only one among many forms of violence against women analysed by FRA in its *Violence against women: an EU-wide survey. Main results report (2014)*.

There is no official, internationally agreed definition of forced marriage. It can be described as a marriage concluded without the consent of one or both partners, and therefore against the will of at least one of them. Article 37 of the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) obliges to criminalise the intentional conduct of forcing a person to enter into a marriage. Forced marriage is a grave violation of human rights. It not only infringes upon the right to marry but may also expose victims to different forms of violence and harm, including breaches of to the right to the integrity of the person and deprivation of liberty.

It is important to distinguish forced marriage from the practice of **sham marriage or marriage of convenience**, which describe marriages contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State (see Family Reunification Directive, 2003/86/EC, Article 16 (2) b). Distinguishing between sham and forced marriage can be complex: Europol noted an emerging trend whereby women are trafficked in order to be forced into a marriage of convenience.²

Forced marriages are also to be distinguished from **arranged marriages**. If, however, at least one of the parties does not consent to the marriage, an arranged marriage becomes a forced marriage. For arranged marriages, one or both partners may be subjected to cultural pressures, which may in fact result in limiting the free will to contract marriage. There is also a close link between forced marriage and **child marriage**. International law obliges states to specify in their legislation a minimum age for marriage recommending that this be set at 18 for both boys and girls (see Section 2.2). Marriages concluded by children who lack legal capacity as they have not yet attained the minimum age for marriage are invalid. Many states provide for exceptional situations in which the lack of legal capacity can be replaced by other means, for example, by parents' consent or a court decision.

Forced marriage is primarily practised among certain ethnic communities. Perpetrators of forced marriages are usually parents or family members and can include members of the extended family, potential in-laws and husbands and members of the local ethnic community.³

Forced marriage disproportionately impacts on women and girls. The Istanbul Convention, which is the core European document in this regard, considers forced marriage a serious form of violence to which women and girls are exposed (preamble). According to its Article 37, state parties are under a duty to criminalise "the intentional conduct of forcing an adult or a child to enter into a marriage". The convention entered into force on 1 August 2014. As of end April 2014, Austria, Denmark, Italy, Portugal and Spain had ratified it, with more EU Member States expected to follow soon.

Family law matters including forced marriage are only partly within EU competence. Aspects of this phenomenon are, however, directly or indirectly addressed by EU legislation on anti-discrimination, asylum, immigration, free movement, criminal justice and data protection. Measures taken by EU Member States to combat forced marriage may not undermine the effective implementation of EU law. Prevention of forced marriage cannot, for example, be used to limit free movement rights of third-country national family members of EU citizens beyond what is allowed by the Free Movement Directive (2004/38/EC).

According to Article 8 of the Treaty on the Functioning of the European Union (TFEU), the Union aims to eliminate inequalities and promote equality between women and men in all its activities. Declaration No. 19 on Article 8 of the TFEU annexed to the final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon states that "in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The EU Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims".

² Europol Early Warning Notification, *Marriages of convenience: A link between facilitation of illegal immigration and THB*, March 2014.

³ See European Parliament, Directorate General for Internal Policies (2008) as well as Council of Europe, Parliamentary Assembly, Resolution 1468 (2005), *Forced marriages and child marriages*.

Examples of secondary EU law instruments addressing forced marriages directly or indirectly:

- The Victims' Directive (2012/29/EU)⁴ obliges EU Member States to ensure that victims of crime receive appropriate information and support. It notes that forced marriage is a form of gender-based violence and that victims require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence (Recital 17).
- The Qualification Directive (2011/95/EU)⁵ which defines the persons who are in need of international protection and set forth their rights and duties lists gender-based persecution among possible acts of persecution in Article 9 (2). As explained in Section 2.5, this notion covers forced marriage, although it is not expressly mentioned in the directive.
- The Family Reunification Directive (2003/86/EC),⁶ which regulates the right of third-country nationals residing in an EU Member State to bring their family members, contains specific measures to prevent forced marriage.

Furthermore, parts of the EU *acquis* on criminal justice, such as the European arrest warrant (Council Framework Decision 2002/584/JHA), the European Protection Order (Directive 2011/99/EU) and the European Investigation Order (Directive 2014/41/EU) could be applicable also to cases of forced marriage in which the police or judicial authorities of more than one EU Member State are involved. EU Member States will also have to respect the EU data protection *acquis*, when ensuring that information on victims of forced marriage is treated confidentially.

In 2008, the EU General Affairs Council adopted *EU guidelines on violence against women and girls and combating all forms of discrimination against them*,⁷ as a tool to guide the EU's external actions. They explicitly include forced and early marriage in the definition of violence against women.

Limiting this paper exclusively to aspects falling under EU competence would result in a very fragmented

study. This paper therefore also covers issues which are of Member State competence to put the practice in the appropriate context. Although the EU Charter of Fundamental Rights is only applicable to Member States when they implement EU law, states remain bound by the human rights obligations enshrined in national constitutions and in applicable international human rights law.

The paper is primarily based on information collected from five EU Member States (France, Germany, the Netherlands, Sweden and the United Kingdom) mainly through desk research completed at the end of 2013. These countries were selected either because they were known to be at the forefront of initiatives to fight against forced marriage or because they have taken different approaches to address it. The paper is structured in four parts. The first part provides an overview of available data on the prevalence of forced marriage and the socio-demographic profile of victims and perpetrators. The second part examines selected legal provisions enacted by Member States to address forced marriages. The Annex at the end of the paper provides an overview of which, among the 28 EU Member States had national provisions expressly criminalising forced marriage in 2013.

The third and fourth parts list promising practices concerning the prevention of forced marriage and victims' support. A twofold approach was taken to assign a service or practice the label 'promising'. Three general criteria were adopted: (i) consensus in the secondary data and/or among the national experts on a specific practice as being 'promising'; (ii) existence of external evaluation which has assessed the effectiveness of the practice; and (iii) relevance and transferability to other settings and EU Member States. In addition to the desk research, FRA also contacted three representatives of organisations working on forced marriage to help identify promising practices to combat the phenomenon. These included government institutions with a remit covering forced marriage, youth welfare organisations doing prevention work and NGOs providing support to victims. For each promising practice, the website or other sources which provide more information is given.

4 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, and replacing Council Framework Decision 2001/220/JHA.

5 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

6 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (not applicable to Denmark, Ireland and the United Kingdom).

7 EU, General Affairs Council (2008).



1

Prevalence of forced marriage and profiles of victims and perpetrators



Article 11 of the Istanbul Convention highlights the need to collect reliable data on a regular basis to measure the prevalence of all forms of violence against women and girls. Collecting evidence on the extent and nature of forced marriages can assist policy makers and NGOs in their efforts to address the practice.

There is, however, little information on the prevalence of forced marriage and the circumstances under which it is practised in EU countries. This gap is due in part to underreporting and in part to the limitations of the available data. There are the following three ways to gather data on the prevalence of incidents of forced marriages, which need to be complemented by qualitative research:⁸

- **Population-based surveys** which provide results that are statistically representative and can be generalised to the larger population. They are expensive and raise a number of methodological and ethical challenges.
- **Administrative data**, namely quantitative data collected by government institutions such as judicial systems or the police. Such data are often not comparable between EU Member States, as they are based on diverging national definitions (for example of crimes). They only capture cases which are reported to the authorities, ignoring unreported forced marriages.
- **Civil society data** collected by NGOs while providing services to victims or potential victims of forced

marriages. They only capture persons who make use of such services.

- **Qualitative research** which provides a deeper understanding of forced marriage, including its circumstances and why it took place.

There are advantages and limitations to each type of data. Thus, it is highly recommended to complement statistical data with qualitative research to achieve a comprehensive understanding of this phenomenon.⁹

1.1. Prevalence of forced marriages and development over time

The following figures show that forced marriage is an important phenomenon also in Europe, even if some findings suggest that the prevalence of forced marriage may be declining.

Among the five countries reviewed, only Germany and the United Kingdom have made forced marriage a specific criminal offence. Germany collects crime statistics on forced marriage, while the United Kingdom keeps statistics on civil injunctions forbidding perpetrators of forced marriage to contact their victims (forced marriage protection orders).

The German Federal Criminal Office recorded 56 suspected cases of forced marriage during 2012. The fact that half of them were attempts underscores the relevance of prevention programmes and awareness-raising campaigns to prevent such attempts from

⁸ There are other complementary ways of categorising; see: Walby (2005), p. 2; Latcheva *et al.* (2007), p. 36; Swedish Presidency of the Council of the European Union (2009), p. 70.

⁹ UN, UN Division for the Advancement of Women (2005), p. 19.

leading to actual forced marriage. In the United Kingdom, where forced marriage is not a criminal offence, the Ministry of Justice's statistics show an average of some 33 Forced Marriage Protection Orders issued each quarter since mid-2009, which corresponds to some 130 protection orders per year.¹⁰

Government statistics related to the police or the judicial system seem to show only the tip of the iceberg; counselling services data show a greater prevalence of forced marriage. According to the most comprehensive study conducted on forced marriage in Germany and based on an analysis of counselling cases (see data collection box 2), 3,443 people contacted a counselling centre in 2008 because of threats of forced marriage or actual forced marriage. This number may include double counts. A similar study conducted in the United Kingdom¹¹ estimated that there were between 5,000 and 8,000 reported cases of forced marriages in England in the same year. The United Kingdom Forced Marriage Unit, a joint initiative of the Home Office and the Foreign and Commonwealth Office, provided advice or support to almost 1,500 people in England and Wales in 2012, according to data recorded by the unit.

In France, the Netherlands and Sweden no police or judicial statistics on forced marriages exist. In the Netherlands other data sources on prevalence of forced marriage are lacking.¹² In France and Sweden, surveys provide indications on the prevalence of marriages concluded without free and full consent. Although the experiences reported may not necessarily meet the threshold of forced marriage in the legal sense, they give a sense of the scope of the problem.

In Sweden, a national survey of 6,000 people between the ages of 16 and 25, conducted in 2009 and 2010, found that around 5 % of them, or about 70,000 young people, do not feel they have the ability to choose

whom they want to marry.¹³ Data were collected from victim support services, such as shelters or non-profit organisations working in the area of honour-related violence. They show that of the 806 persons not older than 25 years who contacted these shelters, 248 persons (including 89 under 18 years of age) were at risk of a marriage against their will.¹⁴ The National Board for Youth Affairs (*Ungdomsstyrelsen*) estimated that in 2011 between 250 and 300 people experienced a high or very high risk of being married against their will.¹⁵

In France, 4 % of immigrant women and 2 % of daughters of immigrants experienced non-consensual marriage, according to a population survey of migrants and their descendants conducted in 2008 (see data collection box 1.). The survey also showed a declining trend.

The United Kingdom is the only country that provides some data on the **routes into forced marriage**. The Forced Marriage Unit, jointly set up by the Foreign and Commonwealth Office and the Home Office, provided direct support to victims in 420 cases in 2008. In half of them the unit assisted victims overseas who were rescued and/or repatriated to the United Kingdom. In the other half, the victim had already been forced to marry and constrained to sponsor the spouse's visa for settlement in the United Kingdom.¹⁶ It is probable that these are not the only circumstances in which forced marriage can be performed. There are, however, insufficient data to identify the different 'routes' forced marriages can take.

1.2. Profile of the victims and the perpetrators

Most victims of forced marriage are young women with immigrant backgrounds. Most perpetrators are older male relatives.

The profile of victims

Victims or potential victims of forced marriages are mainly **young women**, although this finding is based only on women who sought advice. German police records and United Kingdom data collected by the Forced Marriage Unit for 2012 indicate that in both EU Member States approximately 70 % of the total victims were young women – aged 16–25 in the United Kingdom

10 See United Kingdom, Ministry of Justice Statistics bulletin, Court Statistics Quarterly January to March 2013, 20 June 2013, p. 28, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207804/court-stats-q1-2013.pdf. The United Kingdom Home Affairs Committee issued a report on forced marriage in 2011, reporting that 293 Forced Marriage Protection Orders were issued in the last two years and four months. See United Kingdom Home Affairs Committee, Eighth Report, Forced marriage, 10 May 2011, <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/88002.htm>.

11 Kazimirski *et al.* (2009).

12 An upcoming research project will however start in 2013 under the authority of the government. The project, led by the University of Maastricht will consist of empirical research on the nature of this phenomenon as well as research on the juridical instruments that are available or can be developed. The research will last five years. See: Femmes for Freedom (2013), 'NWO-Grant allocated to study on marriage captivity' [*NWO-subsidie toegekend voor onderzoek naar huwelijkse gevangenschap*], Press release, 1 July 2013, www.femmesforfreedom.com/nwo-subsidie-toegekend-voor-onderzoek-naar-huwelijkse-gevangenschap/.

13 Sweden, National Board for Youth Affairs (*Ungdomsstyrelsen*) (2009).

14 *Ibid.*, p. 155.

15 Sweden, *Stronger protection against forced marriages and child marriages*, SOU 2012:35 (Stärkt skydd mot tvångsäktenskap och barnäktenskap, SOU 2012:35), p. 24.

16 United Kingdom Foreign and Commonwealth Office, United Kingdom Home Office, *Forced Marriage Case Handling Guide for MPs and Constituency Offices*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35550/fmu-guide-mps.pdf, p. 6.

Data collection box 1

Population survey in France shows decrease of marriages contracted without consent

A 2008 survey in France found a decrease over time in the number of marriages in which the woman's decision is not based solely on individual choice. Around 22 % of immigrant women aged 51–60 did not fully consent to marry, but this figure drops to 9 % for the youngest group, aged 26–30. Among the daughters of immigrants, only 4 % got married without their full agreement.

Other important findings are that non-consensual marriages tend to happen:

- early: 28 % of immigrant women and 11 % of immigrants' daughters were minors on their wedding day and half of them were already married at the age of 19;
- within a few months of the first encounter with the prospective spouse: for almost half (48 %) of immigrant women and one quarter (24 %) of immigrants' daughters, the marriage was performed within three months of the parties' first meeting;
- after parental violence: 8 % of immigrant women married against their will report severe parental abuse before the age of 18, versus just 2 % of those who married freely. This situation is aggravated among immigrants' daughters: 21 % of those married against their will experienced violence, compared with 4 % of those who married freely.

The National Institute of Demographic Studies (Institut national d'études démographiques, INED), which carried out the population survey about the lives of immigrants, immigrants' descendants born in France and members of the majority population (neither immigrants nor children of immigrants), included two questions on forced marriages. It asked who initiated the marriage and the degree of the interviewee's consent to it, using the replies to analyse to what extent these groups of women consented to their marriages. The study found a continuum between desired marriages and those contracted under duress. At one end, 87 % of immigrant women, 95 % of daughters of immigrants and 97 % of women members of the majority population, aged 26–50, say that their marriage was desired. At the other end, 4 % of immigrant women, 2 % of the daughters of immigrants and 1 % of women members of the majority population, aged 26–50, say they entered a 'non-consensual marriage'. In the middle are those who did not freely and fully consent to the marriage.¹⁷

The sampling was designed to overrepresent both immigrants and immigrants' descendants, from sub-Saharan Africa, Turkey, Southeast Asia and French overseas departments and regions (French Guiana, Guadeloupe, Martinique and Réunion). Overall, 21,000 persons aged 18–60 living in metropolitan France were surveyed.

Source: Hamel (2011), *Fewer forced marriages among immigrant women and daughters of immigrants*, Population and Society, No. 479, June 2011, http://www.ined.fr/fichier/t_publication/1541/publi_pdf2_pesa479.pdf

and 16–21 in Germany. Around one third of these young women in both countries were under 18.¹⁸ This confirms the importance of addressing forced marriage in school and post-secondary education institutions.¹⁹ The prevalence of forced marriage for boys and men in 2012 is substantially lower: 18 % in the United Kingdom²⁰ and between 5 % and 8 % in Germany.²¹ These data show the gendered nature of forced marriage.

There is evidence that some EU Roma communities continue to practise child marriage.²² In a recent survey of the Roma population, FRA found that, across the 11 EU Member States surveyed, around 2 % of Roma girls aged 10–15 are reported to be 'traditionally married' or cohabiting with a partner. On average, around 16 % of Roma men and women aged 16–17 are legally or traditionally married or cohabiting, according to the research, which was conducted in the 11 Member States where most Roma live: Bulgaria, the Czech Republic, France, Greece, Italy, Hungary, Poland, Portugal, Romania, Slovakia and Spain. Marriage affects activity patterns, particularly education: only 6 % of Roma women aged 16–17 who are married or cohabiting are in education, compared with 36 % of all Roma women in this age group.²³

17 Unfortunately, there are no data regarding the 18–25 age group. According to the prevalence data on forced marriage gathered by the rest of the countries, it is the most affected group.

18 United Kingdom Foreign and Commonwealth Office, United Kingdom Home Office, Forced Marriage Unit, Statistics January to December 2012, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141823/Stats_2012.pdf; for Germany data are based on Mirbach *et al.* (2011).

19 See Freeman and Klein (2013).

20 United Kingdom Foreign and Commonwealth Office, United Kingdom Home Office, Forced Marriage Unit, Statistics January to December 2012, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141823/Stats_2012.pdf.

21 See Germany, Mirbach *et al.* (2011).

22 See UNICEF (2010); European Roma Rights Centre (2011).

23 FRA (2013), p. 31.

The origin of victims and perpetrators tends to be **country specific**, as a result of the different migration patterns in each EU Member State. In the United Kingdom, for example, the majority of cases of forced marriage reported to the Forced Marriage Unit involved South Asian families: in 2012 almost half (47 %) of the cases reported had a Pakistani background, followed by Bangladeshi (11 %) and Indian (8 %). In Germany, most of the victims had an immigrant background, and 32 % were born in Germany followed by Turkey (23 %), and the Western Balkans (Serbia, Kosovo and Montenegro together amounting to 8 %).²⁴ According to a small-scale study conducted in France,²⁵ most of the 28 victims of forced marriage interviewed were aged 17 and had French nationality, but their parents had foreign nationality. In Sweden, the government inquiry indicated that most of the victims of forced marriage had a foreign background but did not specify further; in the Netherlands there is no overall data regarding the profiles of the victims or the perpetrators.

The Forced Marriage Unit's statistics in the United Kingdom show that 22 (1.5 %) of 1,485 forced marriages in 2012 involved victims who identified themselves as **Lesbian, Gay, Bisexual or Transgender (LGBT)**. The wish

to control a person's sexual preference and identity may therefore be another motive for forced marriages: some families believe that marriage will 'cure' their son or daughter's 'incorrect' sexuality or behaviour.

The profile of perpetrators

Information regarding the relationship between the victim and the perpetrator, as well as the number of persons involved in forcing someone to marry, is important both for prosecution and for effective support to victims. Among the five countries reviewed, however, only Germany and the United Kingdom systematically collect data on the perpetrators of forced marriage.

In the United Kingdom, data on perpetrators identified in Forced Marriage Protection Orders issued between 2008 and 2012²⁶ suggest that most of the perpetrators are men older than the victims and that they are members of the victim's immediate family (91 %) followed by the extended family (7 %). Police statistics in Germany show that in 51 of the 63 cases of suspected forced marriage in 2012, the victim and the suspect belonged to the same family. Of the total number of cases, 76 % (69) of the suspects were male. However, since 2011, the year in which forced marriage became a criminal

Data collection box 2

Research in Germany shows parents as main perpetrators

In 2008, counselling centres in Germany were approached 3,443 times on forced marriage issues. Of the persons approaching the centres, approximately 7 % (252) were men, the rest women. Around 60 % of the persons sought help before being forced to marry, 32 % had already been forced and the remaining 8 % sought help both before and after being forced into marriage. The proportion of those who visited several counselling services is estimated to be between 14 % and 43 %.

The results show that in two thirds of the cases forced marriage occurred in the context of other forms of family violence. The father was the decisive figure in enforcing 80 % of the marriages; 62 % of those seeking help stated that the mothers were also responsible. More than two thirds of the 747 documented cases (71 %) were threatened with forced marriage and 29 % had already been married against their will. Half of the forced marriages occurred abroad (52 %).

Forced Marriage in Germany – Prevalence and Analyses of Counselling Cases is a unique inquiry that examined the structure, prevalence and forms of forced marriage cases in Germany. Carried out between 2008 and 2010, its principle aim was to obtain an estimate of the prevalence of forced marriage in Germany based on empirical data. Because of its design, however, the study is not representative. It is based on a national survey where about 1,500 counselling services were contacted. Of the 830 centres which responded, 358 reported individual cases relating to forced marriage which they dealt with during 2008. It analysed in-depth individual cases of possible forced marriage reported in approximately 100 counselling centres. Besides addressing questionnaires to the counselling centres, the survey contacted general and vocational schools and migrant community organisations. Thirty-one supplementary interviews were carried out with experts and one group interview with young men with immigrant backgrounds. In addition, workshops with scientific experts were held to discuss the methodology and content of the study.

This type of study should be replicated regularly to show trends over time.

Source: *Mirbach et al. (2011)*

²⁴ *Ibid.*

²⁵ Bravo (2012).

²⁶ United Kingdom, Ministry of Justice (2013), Data provided by Ministry of Justice Analytical Services following contact with this government department, data not available publicly.

offence in Germany, only one person, a 21-year-old German man,²⁷ has been convicted. No information is available on his background. Moreover, the number of proceedings without conviction appears not to have been recorded.

An earlier German study highlighted the relationship between forced and early marriage and **poverty**. It was based on an analysis of 331 cases of forced

marriage recorded by the Berlin counselling service Papatya between 1986 and 2006,²⁸ and a subsequent qualitative analysis of 100 of these cases. Among the 100 qualitatively analysed cases, 53 of the victims reported that their families had an average economic situation and 43 a bad one. Violence by a close family member, mostly the father, had affected 88 of the victims. The concept of honour was highly relevant as a traditional value.

Data collection box 3

Research in the United Kingdom leads to the development of guidelines on forced marriage of persons with learning disabilities

The prevalence of forced marriage of persons with learning disabilities is difficult to ascertain, as it is extremely underreported. Most of the victims are between the age of 18 and 25, although the youngest known victim was 14, according to United Kingdom research from 2010. The proportions of males and females with learning disabilities being forced into marriage are similar, although males with learning disabilities are more at risk of being forced into marriage than males without learning disabilities. The research also found that most victims live with their immediate or extended family, who are most likely to instigate the forced marriage. The majority of marriages take place outside the United Kingdom and many families would not view the marriage as forced or see what they are doing as wrong. The vast majority of the cases are reported by a third party, as the victim may need help to report or may not be able to recognise what is happening when (s)he is forced into marriage.

Based on the study's findings, the Forced Marriage Unit produced the multi-agency practice guidelines on forced marriage and learning disabilities. They highlight areas of best practice. Data on victims must be completely confidential and inaccessible to perpetrators, especially when electronically recorded. Some recommendations for agencies are to record information such as impairment, impact of impairment, communication requirements, marital status of services users and whether or not they have children (living with them or not). This kind of information is essential to developing holistic victim support services.

The guidelines show that the key motivations for the forced marriage of persons with learning disabilities include:

- obtaining a carer for the person with a learning disability;
- obtaining physical assistance for ageing parents;
- obtaining financial security for the person with a learning disability;
- believing the marriage will somehow 'cure' the disability;
- a belief that marriage is a 'rite of passage' for all young people;
- mistrusting the 'system' or external (e.g. social care/health) carers;
- fearing that it will be difficult to get younger siblings married if older sons or daughters are not already married;
- seeing marriage as the only option and/or right option.

The research was carried out by Ann Craft Trust in partnership with Judith Trust – two organisations specialised in research on people with disabilities – and used statistics from the Forced Marriages Unit, which funded the research. The aim was to gather information on cases of forced marriages among people with learning disabilities as well as the motivations for the forced marriages, and to identify best practices when handling such cases. In the research, the term 'learning disability' refers to a long-term condition which started before adulthood (18 years of age) and which is characterised by a significantly reduced ability to understand complex information or learn new skills and a reduced ability to cope independently. It consulted 298 professionals (including police, social workers, psychologists and teachers) using face-to-face interviews or online surveys. Ninety-one cases of forced marriage were reported.

Sources: *United Kingdom, Forced Marriage Unit; Clawson and Vallance (2010)*

²⁷ Germany, Information provided by the state statistical office of Berlin-Brandenburg (*Amt für Statistik Berlin-Brandenburg*), email of 18 October 2013.

²⁸ Lobermeier and Strobl (2007).

The data available provide little insight into the reasons that drive someone to force someone else into a marriage. In the United Kingdom, according to the Forced Marriage Unit's Multi-agency statutory guidance,²⁹ some of the key motives are:

- controlling unwanted sexuality (including perceived promiscuity, or being LGBT) – particularly the behaviour and sexuality of women;
- controlling unwanted behaviour, for example alcohol and drug use, wearing make-up or behaving in a 'westernised manner';
- preventing 'unsuitable' relationships, e.g. outside the ethnic, cultural, religious or caste group;
- protecting 'family honour';
- responding to peer group or family pressure;
- attempting to strengthen family links;
- achieving financial gain;
- ensuring that land, property and wealth remain within the family;

- protecting perceived cultural ideals;
- protecting perceived religious ideals which are misguided;
- ensuring care for a child or adult with support needs when parents or existing carers are unable to fulfil that role;
- assisting claims for residence and citizenship in the United Kingdom;
- long-standing family commitments.

In Germany, the 2011 national study on forced marriage³⁰ came to the conclusion that no generally valid assumption could be made about the reasons behind forced marriage. The 2007 study³¹ looked at causative factors for forced marriages and identified three main factors: traditional family system (the father is considered the patriarch and has the power to decide in the name of family cohesion), family politics (for example, ending family feuds by joining families through marriage) and perceived threats to the family honour (mainly represented by the woman's purity and sexual behaviour).

29 United Kingdom, Forced Marriage Unit (FMU) (2010), p. 9.

30 Mirbach *et al.* (2011).

31 Lobermeier and Strobl (2007).

2

Legal framework



Forced marriage is condemned by international and European human rights law. It violates the right to marry, which is enshrined in Article 9 of the EU Charter of Fundamental Rights. Such right also entails the right

not to be forced into a marriage. Forced marriage is also considered a form of gender-based violence. Table 1 provides an overview of relevant human rights law provisions.

Table: Human rights law provisions on the right to marry

Instrument	Provisions
EU Charter of Fundamental Rights, Article 9	The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.
Universal Declaration of Human Rights, Article 16 (1) and (2)	(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
Convention on the Elimination of All Forms of Discrimination against Women, Article 16 (1) (b)	(1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
International Covenant on Civil and Political Rights, Article 23 (2) and (3)	(2) The right of men and women of marriageable age to marry and to found a family shall be recognized. (3) No marriage shall be entered into without the free and full consent of the intending spouses
Convention on the Rights of Persons with Disabilities, Article 23 (1)	States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that: a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

Instrument	Provisions
International Covenant on Economic, Social and Cultural Rights, Article 10 (1)	The States Parties to the present Covenant recognize that: (1) [...] Marriage must be entered into with the free consent of the intending spouses.
European Convention on Human Rights, Article 12	Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.
Istanbul Convention, Articles 32, 37 and 59 (4)	<p>Article 32 – Civil consequences of forced marriages Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.</p> <p>Article 37 – Forced marriage (1) Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised. (2) Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.</p> <p>Article 59 – Residence status (4) Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.</p>

Source: FRA, 2014

In addition, Article 19 of the UN Convention on the Rights of the Child obliges states to protect children from all forms of physical or mental violence. “All forms of” violence also includes forced and early marriage, as noted by the Committee on the Rights of the Child in 2011 in its General Comment No. 13 (paragraph 29). The Committee noted that given their specific vulnerability to maltreatment the obligation to protect a child from all forms of violence should continue to apply when children under the age of 18 attain majority or emancipation through early marriage and/or forced marriage (paragraph 33).

These human rights law norms establish a duty for state parties to prevent and combat forced marriage. This is first and foremost done through the enactment or revision of domestic legislation. This chapter first provides an overview of provisions criminalising forced marriage in the 28 EU Member States. It then describes different ways in which states are using criminal, civil, private international as well as migration and asylum law to prevent and address forced marriage.

2.1. Criminalising forced marriage

According to Article 37 (1) of the Istanbul Convention, state parties are under a duty to criminalise “the intentional conduct of forcing an adult or a child to enter into

a marriage”. Under Article 37 (2) of the convention this duty also extends to criminalise “the intentional conduct of luring an adult or a child to the territory” of a state with the purpose of forcing the person to enter into a marriage.

In a 2006 resolution on women’s immigration,³² the European Parliament called on EU Member States to introduce in their national legislation measures aiming at prosecuting any of their citizens who may seek to contract or help to organise a forced marriage, including when the forced marriage is contracted outside their territory (Point 33). It also urges the Member States which have not yet done so to ensure that effective and deterrent penalties apply under their criminal codes to all forms of violence against women and children, particularly forced marriage (Point 35).

As illustrated in the annex, most EU Member States do not treat forced marriage as a specific criminal offence. Only in seven EU Member States, forcing a person to marry against his or her will is a separately defined criminal offence. These states are Austria, Belgium, Croatia, Cyprus, Denmark, Germany and the United Kingdom. In other Member States, forced marriage may be punished only inasmuch as it constitutes another crime, such as rape, attempted rape, physical and psychological

³² European Parliament, Resolution on women’s immigration: the role and place of immigrant women in the European Union, 2006/2010(INI).

violence, sexual violence, bodily harm, ill treatment, assault, false imprisonment, infringement of freedom and integrity, psychological duress, sexual duress, kidnapping and abduction, offences against the person, infringement of sexual integrity or honour crime.

There is a trend towards criminalisation of forced marriage across Europe. In France,³³ Sweden³⁴ and the United Kingdom, a debate arose on whether or not it is appropriate and useful to criminalise forced marriage. There are advantages and disadvantages to criminalising forced marriage as a specific crime. An analysis of these can be found in the public consultation on forced marriage undertaken in the United Kingdom in 2013.³⁵

Making forced marriage a crime in its own right means that it can be punished as a separate offence and the penalties applicable may be cumulative if another crime is also committed. Furthermore, forced marriage would be punished when the conduct does not otherwise constitute a crime. Not all EU Member States punish marital rape, for example, as the FRA survey on violence against women shows.³⁶ A separate crime would furthermore act as a deterrent and deliver a “strong and clear message: forced marriage is wrong, is illegal and will not be tolerated”.³⁷ It would empower victims to come forward and report incidents of forced marriage. Its supporters believe that the new offence would result in better recognition for the victims of the abuse inflicted upon them, and ensure that perpetrators could be prosecuted for this practice along with any other offences.³⁸

Critics contend that it is difficult to obtain sufficient evidence that the marriage was ‘forced’ to satisfy the burden of proof required to prosecute this conduct.³⁹ Courts have been willing to accept that physical threats and emotional pressure constitute coercion. They have been far more reluctant to accept the influence of factors that may be specific to some communities, and are particularly onerous for women, such as fear of ostracism from

the community or notions of shame. If an individual acts out of deference to cultural, gendered notions such as respect, it would be hard for any court to see this as coercion or duress.⁴⁰ In addition, criminalisation would ultimately deter victims of forced marriage from asking for help or applying for civil remedies due to fear that their families will be prosecuted and/or because of the repercussions from failed prosecutions. It could result in victims being taken overseas for the purpose of marriage at a much earlier age to avoid increased risk of prosecution.

Two of the five EU Member States reviewed have introduced a specific crime of forced marriage. According to Section 237 of the German criminal code (introduced in 2011) forced marriage is punishable with imprisonment for between six months and five years and, in less severe cases, with imprisonment for up to three years or a fine.⁴¹ In the United Kingdom, the Anti-social Behaviour, Crime and Policing Act 2014 envisages imprisonment up to a maximum of seven years for the offence of forced marriage (Section 121 of the Act for England and Wales and Section 122 for Scotland).

Section 237 (2) of the German criminal code also makes it a crime when a person coerces another to marry in a foreign territory or prevents this person from returning to Germany from abroad.⁴² Under the Anti-social Behaviour, Crime and Policing Act 2014, deception to leave the United Kingdom for forced marriage purposes is also a punishable offence (Section 121 (3) for England and Wales). Until recently, the United Kingdom addressed forced marriage primarily through civil remedies. The Forced Marriage (Civil Protection) Act 2007⁴³ gives courts in England and Wales the power to issue “forced marriage protection orders” to prevent forced marriage or protect victims. Victims can, for instance, seek: a protection order, protecting them from, say, harassment; a non-molestation order; or an order concerning their right to occupy the matrimonial home. “Relevant third parties”, including the police or local authorities, may also apply for a forced marriage protection order. Forced marriage protection orders expressly prohibit the practice, inducement or aiding of forced marriage. A breach of a forced marriage protection order is punishable with imprisonment up to five years (Anti-social Behaviour, Crime and Policing Act 2014, Section 120).⁴⁴

33 France, Criminal Code, Article 222-14-4 introduced in 2013 (forcing a person to marry abroad). In addition, Law No. 2010-769 of 9 July 2010 on violence against women introduced forced marriage as an aggravating circumstance.

34 Sweden, *Stronger protection against forced marriages and child marriages*, SOU 2012:35 (Stärkt skydd mot tvångsäktenskap och barnäktenskap, SOU 2012:35), p. 46, www.regeringen.se/content/1/c6/19/35/67/55cbc8d1.pdf.

35 United Kingdom, Home Office (2012).

36 See also in this regard the conclusion on marital rape in FRA (2014), *Violence against women: an EU-wide survey. Main results*, Luxembourg, Publications Office of the European Union (Publications Office), p. 52, <http://fra.europa.eu/en/publication/2014/vaw-survey-main-results>.

37 Part of a speech by the Prime Minister, David Cameron, on 8 June 2012, mentioned in the Parliament of the United Kingdom (2013), p. 9.

38 United Kingdom, Home Office (2012), p. 9.

39 United Kingdom, Home Office (2012), p. 18.

40 Sundari and Gill (2009), p. 175.

41 Germany, German Criminal Code (*Strafgesetzbuch*, StGB), Art. 237, www.gesetze-im-internet.de/stgb/___237.html.

42 Germany, StGB, Art. 237 (2).

43 United Kingdom, Parliament (2007).

44 See for Scotland, the Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011. More information on the 2014 Act is available in United Kingdom, Parliament (2013a), *Anti-Social Behaviour, Crime and Policing Bill*, Explanatory notes, <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0007/en/14007en.htm>.

may be appealed to the administrative court in accordance with Chapter 15, section 2 of the Marriage Code.⁵⁶ The examination of impediments to marriage applies to all marriages performed in Sweden, including those where either or both parties are non-nationals.⁵⁷

A new bill to combat forced marriage proposed in the Netherlands will allow the Public Prosecutor to get permission from the court to obstruct a marriage until further notice if there is sufficient evidence that one or both parties are being coerced.⁵⁸

Safeguards for marriage contracted by persons below 18 years of age

International human rights law obliges states parties to specify in their legislation a minimum age for marriage.⁵⁹ The UN Committee on the Rights of the Child as well as the UN Committee on the Elimination of Discrimination against Women recommended setting the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.⁶⁰

Among the five Member States reviewed, France,⁶¹ Germany,⁶² the Netherlands⁶³ and Sweden⁶⁴ all require both parties to be at least 18 years old to get married, but they allow for exceptions. In the United Kingdom, the minimum age is 16, but both parties need permission from their parents or guardians if they are under 18 (the latter is not needed in Scotland).⁶⁵

As described in the following paragraphs, marriage of persons below 18 years of age may only be possible

in certain cases. Either a court or another authority must authorise it.

In Germany, the family court, on application, may grant an exemption from this provision if the applicant has reached the age of 16 and his/her prospective spouse is of full age.⁶⁶ This refers to both sexes equally. In the Netherlands, there are currently three exceptions to the minimum age rule:

- if a woman can prove she is pregnant (or her child has already been born), the minimum age for both partners is 16;⁶⁷
- the Minister of Justice can grant special permission for people to marry under the minimum age, for 'important reasons' (not specified in the law);⁶⁸
- persons of non-Dutch nationality can marry in the Netherlands at the age of 15, 16 or 17, if their national law allows marriage at that age.⁶⁹

In the Netherlands, as an extra requirement, minors need parental/guardian consent to get married.⁷⁰ If the parent(s) and/or guardian refuse their consent, this can be replaced by consent from the court, at the request of the minor.⁷¹ A new bill proposes removing existing exceptions to the minimum age requirement of 18 years.⁷²

In France, when the prospective spouse(s) is/are under 18, marriage is possible if the government procurator allows it on serious grounds⁷³ (for example, pregnancy of the future wife) and if the consent of the parents is given, according to an interview with a judge with competence in family matters. In Sweden, persons under 18 years may not marry unless the county administrative board (*länsstyrelsen*) grants permission according to Chapter 15, Section 1 of the Marriage Act.⁷⁴

According to the Swedish inquiry into forced marriage, in certain communities great difficulties arise for both

⁵⁶ *Ibid.*

⁵⁷ Sweden, Act on Certain International Legal Relationships in Respect of Marriage and Guardianship 1904:26 s. 1 (*Lagen om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap, 1904:26 s. 1*), https://lagen.nu/1904:26_s.1.

⁵⁸ The Netherlands, House of Representatives (*Tweede Kamer der Staten Generaal*) (2013).

⁵⁹ Article 16 (2) of the UN Convention on the Elimination of All Forms of Discrimination against Women (ratified by all EU Member States) and Article 2 of the UN 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (to which 16 EU Member States are parties).

⁶⁰ Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 20; UN Committee on the Elimination of Discrimination against Women General Recommendation No. 21 (13th session, 1994).

⁶¹ France, Civil Code, Art. 144, www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006421963&cidTexte=LEGITEXTo00006070721.

⁶² Germany, BGB, Art. 1303, www.gesetze-im-internet.de/bgb/_1303.html.

⁶³ The Netherlands, Civil Code Book 1 (Burgerlijk Wetboek Boek 1), para. 30, http://wetten.overheid.nl/BWBR0002656/geldigheidsdatum_14-10-2013.

⁶⁴ Sweden, Marriage Act (Äktenskapsbalk 1987:230), amendments SFS 2009:253, 2 April 2009, www.lagboken.se/dokument/Andrings-SFS/241106/SFS-2009_253-Lag-om-andring-i-aktenskapsbalken?id=33519

⁶⁵ United Kingdom, Matrimonial Causes Act 1973, section 11(a)(ii).

⁶⁶ Germany, BGB, Art. 1303, www.gesetze-im-internet.de/bgb/_1303.html.

⁶⁷ The Netherlands, Civil Code Book 1, Section 30.

⁶⁸ *Ibid.*

⁶⁹ The Netherlands, Civil Code Book 10, Sections 28 and 29.

⁷⁰ The Netherlands, Civil Code Book 1, para. 35, http://wetten.overheid.nl/BWBR0002656/geldigheidsdatum_14-10-2013.

⁷¹ *Ibid.*

⁷² The Netherlands, House of Representatives (*Tweede Kamer der Staten Generaal*) (2013), Explanatory Memorandum. Act against forced marriages. [*Memorie van toelichting. Wet tegengaan huwelijksdwang*], <https://zoek.officielebekendmakingen.nl/kst-3348-3>.

⁷³ France, Civil Code, Art. 145.

⁷⁴ Sweden, Marriage Act (Äktenskapsbalk 1987:230), www.lagen.nu/1987:230#K2P3S2.

the mother and the child if a child is born out of wedlock.⁷⁵ The Swedish government inquiry indicated that it may be that families are so anxious that their underage daughters marry a person selected by the family that the girls are pressured into becoming pregnant, which it is assumed will increase their chances of obtaining a marriage exemption. The authors of the inquiry report recommend abolishing the possibility of granting a marriage exemption for children.

In those countries where persons below 18 years of age are allowed to marry, hearing each party without the presence of any of the parents, the legal guardian or the future spouse could be one way to understand whether the circumstances are such as to justify an exemption from the minimum age rule. It could also help to identify situations of forced marriage. Envisaging some form of supervision by national child protection systems until both partners reach the age of 18 would contribute to detecting situations of forced marriage.

Granting an effective possibility to annul a forced marriage

Article 32 of the Istanbul Convention requires that states parties “take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.”

Civil law typically declares the nullity of a marriage concluded without the full and free consent of the spouses. The degree of lack of consent required varies, with some EU Member States allowing for a broader definition of lack of consent as a ground for nullity of marriage.

In the United Kingdom, nullity is possible in case of “lack of consent due to duress, mistake or other”.⁷⁶ In France, “exercising duress or coercion on one of the spouses, including using reverential fear of an ancestor” represents a ground for nullity of marriage.⁷⁷ In Germany and the Netherlands, a stricter understanding of lack of consent is reflected in the law, and annulment can be obtained if the “marriage was forced by threat” (Germany)⁷⁸ or “severe illegal threat” (the Netherlands).⁷⁹ In the Netherlands, however, a new bill proposes that annulment will be possible in all cases of coercion and that, in addition to the parties,

the public prosecutor will also be entitled to apply for an annulment.⁸⁰

The application of nullity procedures, however, might not always be simple. In France, for instance, a judge contacted for this research reported that ‘lack of consent’ is very difficult to prove. In the United Kingdom, it has been reported that recourse to the law for the purpose of seeking an annulment is expensive,⁸¹ although as a promising practice nullity proceedings can be commenced quickly using the emergency procedure in the High Court’s Family Division.⁸² This procedure allows the victim’s address to be kept secret and a court order requiring a person to do or refrain from doing something, to be obtained for the duration of the proceedings or beyond, if necessary.

In Sweden, a different approach is taken: the victim of forced marriage or unauthorised child marriage is entitled to immediate divorce under Chapter 5, Section 5, of the Marriage Code (*Äktenskapsbalk*).⁸³ The Swedish government inquiry report acknowledges that dissolving a void marriage (such as a forced marriage) by divorce seems illogical and inconsistent. The report suggests, however, that the arguments for and against nullity weigh relatively evenly (e.g. nullity cases would be complex and resource-intensive) and that there can be no doubt that the Swedish provisions on access to divorce meet the requirements set by the Istanbul Convention.⁸⁴

2.3. The role of private international law in the fight against forced marriage

Private international law determines the applicable law when persons of different nationality conclude legal acts. In case of marriages contracted between persons of different nationality, for example, the question arises whether the law of the country of nationality of one or the other spouse or the law of the country of residence, applies. This section reviews the applicable law

75 Sweden, *Stronger protection against forced marriages and child marriages*, SOU 2012:35 (Stärkt skydd mot tvångsäktenskap och barnäktenskap, SOU 2012:35), p. 44, www.regeringen.se/content/1/c6/19/35/67/55cbc8d1.pdf.

76 United Kingdom, Matrimonial Causes Act 1973, Section 12c.

77 France, Civil Code, Art. 180.

78 Germany, BGB, Art. 1314, www.gesetze-im-internet.de/bgb/_1314.html.

79 The Netherlands, Civil Code Book 1, para. 71.

80 The Netherlands, House of Representatives (*Tweede Kamer der Staten Generaal*) (2013), Explanatory Memorandum. Act against forced marriages. [*Memorie van toelichting. Wet tegengaan huwelijksdwang*], <https://zoek.officielebekendmakingen.nl/kst-32840-3>. <https://zoek.officielebekendmakingen.nl/kst-32840-3.pdf>.

81 United Kingdom, interview with academic expert working on the issue of forced marriage.

82 United Kingdom, Forced Marriage Unit, <https://www.gov.uk/forced-marriage#forced-marriage-unit>.

83 Sweden, Marriage Act (*Äktenskapsbalk 1987:230*), amendments SFS 2009:253, 2 April 2009, <https://lagen.nu/1987:230#K3P2S1>.

84 Sweden, *Stronger protection against forced marriages and child marriages*, SOU 2012:35 (Stärkt skydd mot tvångsäktenskap och barnäktenskap, SOU 2012:35), p. 253, www.regeringen.se/content/1/c6/19/35/67/55cbc8d1.pdf.

for marriages contracted with non-nationals in an EU Member State. It also examines the possibility for non-recognition of forced marriage conducted abroad.

Applying the law of residence when performing marriages of non-citizens in an EU Member State

Forced marriage often involves non-nationals. If the marriage is concluded in an EU Member State it is the law of that Member State that normally regulates the necessary formalities for the marriage, but some aspects may be regulated by the law of the nationality of the prospective foreign spouse.

Marriages concluded in France, Sweden or in the United Kingdom are governed by the law where the marriage is performed.⁸⁵ Safeguards in national law to prevent forced marriages apply, therefore, also to marriages concluded with or between non-nationals. This closes the door to the application of civil law rules of foreign legal systems which may be problematic from a forced marriage perspective. One such potentially problematic provision is marriage by proxy, meaning marriage where the person getting married is not actually present. Proxy marriages may lead to a person being married without his/her knowledge. For this reason, the UN General Assembly recommended that “marriage by proxy shall be permitted only when the competent authorities are satisfied that each party has, before a competent authority and in such manner as may be prescribed by law, fully and freely expressed consent before witnesses and not withdrawn such consent.”⁸⁶

In cases of marriages with or between non-nationals concluded in Germany and the Netherlands, certain aspects are or may be regulated by the law of the country of nationality of the prospective foreign spouse. In Germany, when a marriage is concluded between two persons where neither is a German national the law of the country of nationality of the parties may apply.⁸⁷ For example, consular officials posted in Germany and properly authorised under the law of their country may conduct marriage ceremonies for nationals according to the formalities prescribed by the law of that country. In the Netherlands the parties have either to meet the

substantive requirements in Dutch law (regardless of their nationality) or the substantive requirements for marriage according to the law of the country of their non-Dutch nationality.⁸⁸ At least one of the parties has to live in the Netherlands or have Dutch nationality in order to marry, according to Dutch law.⁸⁹

Foreign law is not applied when it would contravene Dutch public order laws.⁹⁰ This includes when the prospective spouses are younger than 15; when one of the parties does not freely agree to the marriage, or is not mentally able to decide freely; and when one of the parties is a direct descendant or sibling of the other party (naturally or by adoption).⁹¹ Similarly in Germany, according to the available case law,⁹² a marriage based on a national law which allows children to be married under the age of 14 is not accepted, as it would contravene Article 6 of the public order law.

Where domestic law allows for certain aspects to be regulated by the law of the country of citizenship of the non-national spouse, it appears important to have exemptions for any stipulations in such laws that would conflict with the protection of human rights and fundamental freedoms.

Non-recognition of forced marriage which took place abroad

If a forced marriage was contracted abroad and the spouses subsequently settle in the EU, the question emerges as to whether and under which conditions such a marriage can be annulled or otherwise terminated. This sub-section describes the approach taken in the five EU Member States studied, first looking at procedures for registration or recognition of marriage and then briefly touching upon the applicable law in cases when a court is requested to annul a forced marriage.

In its 2005 Recommendation on forced marriages and child marriages, the Council of Europe Parliamentary Assembly encouraged states to check the validity of any marriage performed abroad, making its registration subject to the presence of both parties and authorising diplomatic staff to interview either or both spouses beforehand.⁹³

85 Sweden, The Act on Certain International Legal Relationships in respect of Marriage and Guardianship 1904:26 s. 1 (*Lagen om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap, 1904:26 s. 1*), https://lagen.nu/1904:26_s.1. All marriages which take place in the United Kingdom must be carried out in accordance with the requirements of the Marriage Acts 1949–1994. See the UK Home Office website, www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/nationalityinstructions/nisec2gensec/marriage?view=Binary

86 UN General Assembly, Resolution 2018 (XX) of 1 November 1965, at principle 1-b.

87 Germany, Art. 13 (3) EGBGB Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuche*).

88 The Netherlands, Civil Code Book 10, Section 28.

89 The Netherlands, Civil Code Book 1, Section 43.

90 The Netherlands, Civil Code Book 10, Section 6.

91 The Netherlands, Civil Code Book 10, Section 29.

92 Germany, KG Berlin, Beschluss vom 21. November 2011 – 1 W 79/11; see also the legal commentary: Huber/Göbel-Zimmermann (2008), *Ausländer- und Asylrecht*, Munich, Beck, C. H., p. 269.

93 Council of Europe Parliamentary Assembly, Recommendation 1723 (2005), <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/EREC1723.htm>.

According to French private international law, if the marriage is performed abroad, the formal rules are those of the country where the marriage takes place, while the substantive rules are those of the nationality of each spouse. The validity of a marriage contracted abroad is verified during the registration of the marriage certificate in France at the central department of civil status in Nantes. Each time a marriage is registered, the central department of civil status asks each spouse if he or she consented to the marriage. The Public Prosecutor of Nantes is the only authority competent to rule on the registration of a marriage certificate and to call for the annulment of the marriage.⁹⁴ In addition, when referred to, a French judge will refuse to recognise a marriage of someone under 16.⁹⁵

Similarly, in Germany, for the recognition of a marriage performed abroad, the formal rules are those of the country where the marriage is performed and the substantive rules are those of the nationality of each of the prospective spouses. Applicability of a foreign legal provision can however be refused if it is contrary to German public order law (Article 6 of the Introductory Act to the Civil Code, EGBGB). As already mentioned, a marriage based on a national law which allows children to be married under the age of 14 is not acceptable in Germany. There is, however, no legal obligation to have a marriage conducted abroad registered in Germany; neither is there a set procedure or one responsible authority. Generally, the question of whether a marriage is recognised in Germany is clarified as part of other official acts, such as a change of name and tax card entries. In the event of conflicts, the question of whether or not a marriage is recognised in Germany is decided on a case-by-case basis by the courts.

In the Netherlands, as a rule, a marriage that took place abroad will be recognised.⁹⁶ Recognition can, however, be withheld if the marriage contravenes Dutch public order laws.⁹⁷ A new bill⁹⁸ would make clear the conditions under which recognition of a foreign marriage will be withheld. These conditions include the following:

- One of the spouses has not freely agreed to the marriage, unless (s)he explicitly agrees with the recognition.
- One of the spouses was younger than 18 at the time the marriage took place, unless both have reached the age of 18 or more at the time they request recognition of the marriage.

94 See Art. 1056-2 of the Code of Civil Procedure.

95 France, interview with deputy public prosecutor at the district court of Nantes.

96 The Netherlands, Civil Code Book 10, Section 31.

97 *Ibid.*, Section 32.

98 The Netherlands, House of Representatives (*Tweede Kamer der Staten Generaal*) (2013),

- One of the spouses is a direct descendant or a sibling of the other spouse.
- One of the spouses was mentally incapable of agreeing to the marriage, unless (s)he is capable at the time the recognition is requested and (s)he explicitly agrees to the recognition.

In Sweden, if a marriage is valid in another Nordic country with which the spouses have significant ties, it will be valid in Sweden. A marriage according to foreign law is not recognised in Sweden if:

- according to Swedish law there were impediments to the marriage at the time it was concluded (e.g. spouse is under 18) and at least one of the parties was a Swedish citizen or resident in Sweden;⁹⁹
- it is likely that it was concluded under force/involuntarily.¹⁰⁰

Exemptions from the rule are possible only on exceptional or particular grounds. A person who marries abroad is required to inform the Swedish authorities of the marriage. If the authorities decide that the marriage is valid, it will be entered in the register.

In the United Kingdom, for English courts to recognise a marriage that has taken place in a foreign jurisdiction, the formal rules are those of the country where the marriage is performed, whereas the substantive rules are those of the spouses' country of habitual residence. England and Wales would not recognise a marriage if one of the parties to a marriage abroad lived in England or Wales at the time of the marriage and there was a lawful impediment in English law, in other words one party was under the age of 16 or the parties were related within the prohibited degrees.

Once a marriage that took place abroad is recognised in an EU Member State, a court could still annul it. Thus, it is important to review which rules apply in Member States for the annulment of a marriage contracted abroad. In France¹⁰¹ if one spouse in a recognised marriage contracted abroad requests an annulment for lack of consent, the rules concerning consent are those of the nationality of each spouse. Thus, the judge must determine if the rule of the nationality of each spouse requires consent. If it does, the judge can annul the

99 Sweden, Act on Certain International Legal Relationships Relating to Marriage and Guardianship (*Lag om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*), Chapter 1, Section 8, point 1, Amendment (2004:144).

100 Sweden, Act on Certain International Legal Relationships Relating to Marriage and Guardianship (*Lag om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*), Chapter 1, Section 8, point 2, Amendment (2004:144).

101 France, Civil Code, Art. 202-1, www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000027416549&cidTexte=LEGITEX000006070721&dateTexte=20130525&oldAction=rechCodeArticle.

marriage. If not, in France the judge must refuse to apply these rules, which are incompatible with French public policy. In addition, in case of marriage where an intermediary (*tuteur matrimonial interposé*) was involved, the national judge could annul the marriages where the consent of the intermediary replaced that of the spouses. In the Netherlands, for marriages contracted abroad, the law of the country where the marriage took place and not Dutch law govern who can apply for an annulment and on what grounds. This suggests that annulment of forced marriage contracted abroad is possible in the Netherlands only when possible according to the law of the country where the marriage took place. A good practice was identified in the United Kingdom: when one or both spouses are domiciled there, no matter where the marriage was contracted, the rules for nullity are those established in the United Kingdom.

Non-recognition of forced marriage contracted abroad may raise challenges. Where provisions of a foreign legal system may be applicable, courts may need to resort to general concepts, such as public order to justify rejecting a law or custom that conflicts with the protection of human rights and fundamental freedoms.

2.4. Migration law and its links with forced marriage

This section illustrates how migration law can impact on the protection of victims and briefly examines whether it can be used to prevent forced marriage, through specific rules governing family reunification. Whereas the previous sections primarily dealt with matters outside EU competence, parts of this section relate to Union law on free movement and on family reunification.

Combating forced marriage through family reunification procedures

EU Member States may exercise their discretion on the issue of entry permits to block opportunities for forced marriage. They have adjusted their policies on family reunification to discourage forced marriage as well as sham marriages. Many perceive misuse of the right to family reunification through marriages of convenience as widespread, but it is not yet possible to compare their incidence accurately across all Member States.¹⁰²

¹⁰² European Migration Network (2012). The aim of the report was to identify the scale and scope of two instances of misuse, namely marriages of convenience and false declarations of parenthood. The study also summarises Member States' current practices in the detection and prevention of these types of misuse, which is a concern for all Member States.

EU law regulates family reunification of lawfully residing third-country nationals with their third-country national family members in the Family Reunification Directive.¹⁰³ In the Free Movement Directive,¹⁰⁴ it also regulates the right of EU nationals to bring their families (of whatever nationality) when they avail themselves of free movement rights and establish themselves in another EU Member State. In contrast, family reunification for EU nationals who have been living in their own country and thus have not made use of free movement rights remains entirely within Member State competence and is more restrictive in some Member States. Conditions and requirements for family reunification depend, therefore, to a considerable extent on the status of the person who wishes to bring or regularise his/her family members.

One step taken by Member States to address forced marriage in the context of family reunification procedures is the **prohibition of family reunification if there are indications of forced marriage**. Rules to that effect exist in Germany and France and are being introduced in the Netherlands.¹⁰⁵

In Germany, Article 27 of the General Administrative Regulation¹⁰⁶ stipulates that family reunification is not permitted if there are concrete indications that one of the spouses has been forced into marriage. Implementing regulations clarify how to apply this provision in practice. Applicants should be interviewed separately, without the presence of family members in order to avoid the person being put under pressure. An indication of forced marriage can be if the person gives contradictory answers to the question whether (s)he was forced into this marriage. A mere suspicion, however, is not sufficient to deny residence. The regulation cautions against treating arranged marriages and forced marriages equally. In France, a permit for a spouse will be granted only when the marriage is recorded in French consular records and is thus recognised as valid and enforceable in France.¹⁰⁷ This procedure permits the verification of the consent of the spouses. If detected, a forced marriage will not be accepted.

Such rules can help in identifying instances of forced marriage. They can also indirectly contribute to its prevention, at least for individuals who plan to move and

¹⁰³ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

¹⁰⁴ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

¹⁰⁵ The Netherlands, House of Representatives (*Tweede Kamer der Staten Generaal*) (2013).

¹⁰⁶ Germany, *Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz*, Art. 27, www.verwaltungsvorschriften-im-internet.de/pdf/BMI-MI3-20091026-SF-A001.pdf.

¹⁰⁷ France, CESEDA (Code of Entry and Residence of Aliens and the Right to Asylum), Art. L211-2-1.

settle in the EU. Prohibiting family reunification, however, does little to protect victims of forced marriages.

A second possible step which has been considered by some EU Member States is **raising the age for family reunification**. The EU Family Reunification Directive, which regulates family reunification of third-country nationals (it does not apply to Denmark, Ireland and the United Kingdom), allows EU Member States to require the third-country national sponsor and his/her spouse to be of a minimum age (subject to a maximum of 21 years) before they can exercise the right to family reunification. The European Commission clarified that minimum age “may not be used as an overall threshold below which all applications will be systematically refused, irrespective of an actual examination of the situation of each applicant.”¹⁰⁸ Furthermore, the directive has to be applied with due regard to the best interests of the child (Article 5 (5)).

The Free Movement Directive does not allow Member States to establish minimum age requirements for spouses of EU nationals who exercise free movement rights.

Some Member States have raised the age of a spouse in the context of family reunification procedures initiated by third-country nationals as a way of preventing forced marriage. In 2004, the Netherlands raised the age limit for bringing a spouse for family reunification purposes to 21 from 18 years, for both the sponsor and the spouse¹⁰⁹ – compared with 18 for those marrying in the Netherlands. In 2008, the government of the United Kingdom also increased the age limit for reunification with a spouse or fiancé(e) to 21 years from 18, for both the sponsor and the spouse¹¹⁰ – compared with 16 as a minimum age requirement for marriage in the United Kingdom. Following a 2011 Supreme Court decision¹¹¹ which found that the age limit violated Article 8 of the ECHR, the limit was returned to 18 years of age,¹¹² still higher than the United Kingdom’s minimum marriagable age of 16 years. The reasoning behind raising the age limit, for both the Netherlands and the United Kingdom, was that slightly older people would be better able to resist a forced marriage because they would have greater maturity, access to education and financial

independence.¹¹³ The Netherlands published an official evaluation of the change of the law increasing the minimum age for family reunification in 2009.¹¹⁴ It was inconclusive as to whether the higher age limit had helped to combat forced marriages or not.

In Germany¹¹⁵ and Sweden,¹¹⁶ the minimum age for family reunification with a spouse is 18 years for both the sponsor and the spouse, which is also the minimum age for marriages which are performed in the territory of these countries. In France, there is no minimum age for family reunification. Since the marriage has to be registered in France, however, the marriage must respect French private international law. Provisions regarding the minimum age are those of the law of the nationality of each spouse. Thus, if the law of the country of which they are nationals allows marriage under 18, it will, in principle, be considered legal. If the spouse is under 16, however, it could be considered as contrary to French public order. These principles are the same whether the marriage concerns a French national, an EU national or a third-country national.

There is no evidence available to FRA that raising the minimum age for family reunification is an effective tool to combat forced marriage. As noted by Advocate General Paolo Mengozzi in C-338/13 (*Marjan Noorzia* – a case concerning family reunification of third-country nationals) it may, however, have the effect of preventing the reunification of genuine relationships, if applied indiscriminately without an examination of the individual circumstances. Given that family reunification procedures may last for several months, raising the minimum age may also result in delays in reunification. As recommended by the European Commission in its April 2014 guidance on the application of directive 2003/86/EC on the right to family reunification, it should be possible to submit family reunification requests and have these examined before the person reaches the necessary age.

108 European Commission, Communication on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014) 2010 final, 3 April 2014 at point 2.3. See also the Advocate General Opinion in CJEU, C-338/13, *Marjan Noorzia*, 30 April 2004.

109 See Aliens Decree 2000, Section 3.14 and 3.15.

110 United Kingdom, Border Agency (2008) Statement of Changes to Parliament, Immigration Rule Paragraph 277, p. 21, <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc1113-4-november-2008>.

111 United Kingdom, *R (Quila and another) v. Sec of State for the Home Dept* [2011] UKSC 45, www.supremecourt.uk/decided-cases/docs/UKSC_2011_0022_PressSummary.pdf.

112 United Kingdom, Home Office, Border Agency, <https://www.gov.uk/government/publications/immigration-rules-part-8>.

113 United Kingdom, Border Agency (2008), p. 53; The Netherlands, Decree of 29 September 2004 amending the Aliens Decree 2000 relating to the implementation of Directive 2003/86/EG (*Besluit van 29 september 2004 tot wijziging van het Vreemdelingenbesluit 2000 in verband met de implementatie van de Richtlijn 2003/86/EG van de Raad*), <https://zoek.officielebekendmakingen.nl/stb-2004-496.html>.

114 Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum*, WODC) and Indiac (2009).

115 Germany, German Residence Act (*Aufenthaltsgesetz*, AufenthG), Art. 30, www.gesetze-im-internet.de/aufenthg_2004/__30.html.

116 In Sweden, if either of the spouses or cohabiting partners is less than 18 years of age a residence permit may be refused. When assessing whether or not a residence permit should be refused, account must be taken of the alien’s other personal circumstances and family situation (Aliens Act, Chapter 5 Section 17 a, second paragraph, point 3 and third paragraph, amendments made through 2006:220).

Right to independent resident permit

For third-country nationals who are victims of forced marriage the question arises as to what happens with their residence permit if the marriage is annulled, ends in divorce or the marital cohabitation ends. Third-country nationals who join their spouses in the EU may be required to remain married or in a relationship for a number of years before they are granted an autonomous residence status. Where this is the case, victims of domestic violence, including of forced marriage, whose residence status is dependent on that of the perpetrator are de facto forced to stay in abusive relationships for long periods of time¹¹⁷

According to Article 59 (1) of the Istanbul Convention victims of all forms of violence covered by the convention (therefore including forced marriage) have to be granted autonomous residence permits following the dissolution of the marriage or the relationship in case of particularly difficult circumstances. The victim's expulsion is to be suspended to enable them to apply for an autonomous permit (Article 59 (2)). A renewable residence permit must be issued where the competent authorities consider the victim's stay necessary owing to his or her personal situation and when it is required for cooperation with the investigation and criminal proceedings (Article 59 (3)).

The right to an autonomous residence permit is also envisaged for certain persons under EU law. Third-country national victims of domestic violence who are family members of EU nationals who have made use of free movement rights, are entitled under Article 13 (2) (c) of the Free Movement Directive to an autonomous residence permit in case of divorce or termination of the registered partnership.¹¹⁸ For family members of third-country national sponsors, according to Article 15 (3) of the Family Reunification Directive,¹¹⁹ "Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances" following divorce or separation. In its guidelines on the implementation of the Family Reunification Directive, the Commission noted

that such "difficult circumstances" would, for instance, include forced marriage.¹²⁰

The review of the legislation in the five EU Member States under study shows that, unless another type of residence permit is granted (e.g. for work or study) a third-country national who came through family reunification is normally entitled to have a residence permit as long as the marriage or the relationship is not dissolved. National law may provide for a probationary period before a permanent and/or autonomous residence permit is granted to the spouse, during which their rights are limited (for example, in the United Kingdom during the 24-30 months of probationary period, spouses do not have recourse to public funds, although a special programme has been set up to support victims of domestic abuse¹²¹). After five years of continuous residence the spouse should be granted a permanent residence permit, when the conditions set out in the Long-Term Residents Directive are fulfilled (Directive 2003/109/EC, not applicable to the United Kingdom).

When the spouse is a victim of domestic violence, access to an autonomous residence permit may be easier. In France, when the cause of the separation is domestic violence (and there is considerable discretion in assessing this),¹²² the authorities cannot withdraw the residence permit and if the third-country national has been awarded a protection order they have the duty to award him/her a residence permit.¹²³ In Germany, the spouse's residence permit is extended for one year after termination of marital cohabitation if marital cohabitation lawfully existed for at least three years (two years for Turkish nationals). In cases of 'particular hardship', including when the spouse is a victim of domestic violence, the requirement of three years can be waived.¹²⁴

In the Netherlands and the United Kingdom, victims of domestic violence can obtain an autonomous residence permit without having to fulfil minimum waiting periods

117 See Council of Europe (2011b), p. 45.

118 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30 April 2004, pp. 77-123, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0038:en:NOT>.

119 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3 October 2003, pp. 12-18, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:NOT>.

120 European Commission, Communication on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014) 2010 final, 3 April 2014 at point 5.3.

121 See the Destitute Domestic Violence Concession on the United Kingdom Border Agency website: [www.ukba.homeoffice.gov.uk/visas-immigration/settlement/applicationtypes/applicationformset\(dv\)/](http://www.ukba.homeoffice.gov.uk/visas-immigration/settlement/applicationtypes/applicationformset(dv)/).

122 France, Ministry of Interior, Instruction regarding the right of residence of victims of domestic violence (*Instruction NOR IOCL1124524C relative au droit au séjour des personnes victimes de violences conjugales et à la mise en oeuvre des articles L.313-12, L.316-3 et L.431-2 du CESEDA*), 9 September 2011, www.gisti.org/IMG/pdf/noriocl1124524c.pdf, p. 2.

123 *Ibid.*, p. 3.

124 Germany, German Residence Act (*Aufenthaltsgesetz*, AufenthG), Art. 31 (2), www.gesetze-im-internet.de/aufenthg_2004/__31.html.

or other requirements.¹²⁵ In Sweden, certain conditions for an autonomous residence permit can be waived if a foreigner or his/her children have been exposed to violence or another serious violation.¹²⁶

In conclusion, a residence permit which is not dependent on the perpetrator would be required to promote access to justice for third-country nationals who are victims of forced marriages. It would allow victims to approach the authorities without fearing that the perpetrator will retaliate by withdrawing or threatening to withdraw residence benefits under the perpetrator's control.

The right to return for victims of forced marriage taken abroad

Forced marriage often has an international dimension. Whereas some persons are forced to enter into a marriage in the country in which they live, others are first taken to another country, often outside the EU, where they are forced to marry.¹²⁷

In its Article 59 (4), the Istanbul Convention addresses residence permits for forced marriage victims, entitling them to regain residence status if they have lost it as a result of having been brought into another country for the purposes of forced marriage.

In the EU Member States reviewed, the right to a return permit depends on a number of factors including the time spent in the EU Member State, the age of the applicant and her/his prospects for integration in the Member State. Some of these conditions can be waived if the applicant is a victim of domestic violence, including forced marriage.

The situation in Germany is described as an illustrative example. Normally, a residence permit expires if the third-country national leaves the territory for reasons which are not temporary or if the person leaves Germany and does not re-enter German territory within six months (or a longer period set by the immigration

authority).¹²⁸ The right to return generally applies to foreigners whose ordinary residence as a minor was in Germany, who resided in Germany for eight years prior to their departure and attended school in Germany for six years, and who can assure their livelihood either by their own economic activity or through maintenance guarantees by relatives.¹²⁹ According to Article 51 (4) of the Residence Act, a deviation from these prerequisites is possible if the foreigner has been unlawfully forced into marriage by means of violence or threat of serious harm and has been prevented from returning to Germany and is assessed as having positive integration prospects in Germany. The application for the permit must be filed within three months after the coercive situation has ended and at the latest within 10 years after departure.¹³⁰

Overall, the right to re-enter appears to be subject to a varying degree of pre-conditions, which, depending on the individual case, may be difficult to fulfil.

2.5. The right to asylum for victims of forced marriage

The risk of forced marriage may drive persons to flee their homelands in pursuit of international protection. The 1951 Convention relating to the Status of Refugees requires the existence of a "well-founded fear of persecution" to qualify for refugee status. Article 9 (2) of the EU Qualification Directive (2011/95/EU) lists "acts of a gender-specific or child-specific nature" among possible acts of persecution. Article 60 of the Istanbul Convention reiterates the duty of state parties to ensure that gender-based violence may be recognised as a form of persecution. The UN High Commissioner for Refugees (UNHCR) guidelines on gender-related persecution,¹³¹ which provide guidance to states on how to interpret the term 'persecution' in the context of gender-related claims, note that "female and male applicants [...] may [...] face forms of persecution specific to their sex". Forced marriage is listed as one such possible form of persecution in paragraph 36 (vii). The guidelines also suggest a number of procedural safeguards for the examination of gender-based claims.

¹²⁵ The Netherlands, Amendment of Book 1 and Book 10 of the Civil Code concerning the marriage age, the impediments to marriage, the annulment of marriage and the recognition of marriages entered into abroad (Act on the prevention of forced marriage) (*Wijziging van Boek 1 en Boek 10 van het Burgerlijk Wetboek betreffende de huwelijksleeftijd, de huwelijksbeletsen, de nietigverklaring van een huwelijk en de erkenning van in het buitenland gesloten huwelijken (Wet tegengaan huwelijksdwang)*), Parliamentary documents 33488 No. 68, July 2013, www.eerstekamer.nl/behandeling/20130705/nota_naar_aanleiding_van_het_3/document3/f=vjbbck3koex9.pdf.
United Kingdom, Border Agency (2013a).

¹²⁶ Swedish Government, *Women and Children in the Borderlands of Jurisdiction (Kvinnor och barn i rättens gränsland)*, www.regeringen.se/content/1/c6/19/58/65/538ce845.pdf, p. 30.

¹²⁷ See Council of Europe (2011b).

¹²⁸ Germany, German Residence Act (*Aufenthaltsgesetz, AufenthG*), Art. 51 (4) No. 6/7, www.gesetze-im-internet.de/aufenthg_2004/_51.html.

¹²⁹ *Ibid.*, Art. 37 (1), www.gesetze-im-internet.de/aufenthg_2004/_37.html.

¹³⁰ *Ibid.*, Art. 37 (2a), www.gesetze-im-internet.de/aufenthg_2004/_37.html.

¹³¹ UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002.

In addition, to qualify for refugee status, persecution must be based on one of the five grounds listed in Article 1 of the 1951 Convention: race, religion, nationality, membership of a particular social group or political opinion. Gender-related forms of persecution have often been analysed under the ground of “membership of a particular social group”. At EU level, Article 10 of the Qualification Directive requires that “gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group” (Article 10). Similarly, Article 60 of the Istanbul Convention calls for a gender-sensitive interpretation of each of the five grounds listed in the 1951 Convention. In sum, persons at risk of forced marriage as well as victims of forced marriage may qualify for refugee status.

An analysis of refugee decisions involving a claim for forced marriage conducted in Australia, Canada, the United Kingdom¹³² and the United States¹³³ show that the prospect of being forcibly married rarely triggers protection under refugee law. Adjudicators often grant or deny the claim based on whether other related harms such as rape, physical beatings or female genital mutilation are also present.

In all five EU Member States reviewed by FRA, persons at risk of forced marriage or victims of forced marriage may, under certain circumstances, be entitled to refugee status, although case law shows that often they qualify for only subsidiary protection.¹³⁴ When refugee status is granted, the victim is usually considered to have a well-founded fear of persecution due to her membership of a particular social group, often defined as a specific subgroup of women.¹³⁵ Sometimes, forced marriage is experienced together with other types of gender-based violence, as the following example from France illustrates: a Nigerian national who feared genital mutilation and forced marriage in her home village applied for asylum in France. The French National Court of Asylum Law considered that she feared persecu-

tion on the ground of membership of a particular social group. She could not find any alternative protection in another part of Nigeria because there was no possibility of a normal life without the consent of her parents to marry someone.¹³⁶

Addressing forced marriage in asylum procedures would benefit if clear guidance is given to eligibility officers. Only in the Netherlands did FRA find some advice on this issue, but it was not issued by the asylum authority. The Dutch Advisory Committee for Foreign Affairs, an independent advisory body established by the Immigration Act 2000 to advise the Minister of Justice and the parliament on immigration policies, published a report advising that under certain circumstances forced marriage, including a threat of forced marriage, should be regarded as a ground for asylum.¹³⁷ It must be shown in such claims that the country of origin does not offer safe places for the claimant to stay and that all efforts have been made by the claimant to obtain protection against being forcibly married.

The increasing ratification of the Istanbul Convention and the implementation of its Article 60 may offer a new opportunity for Member States to review the way they handle claims for gender-based persecution in general and forced marriage claims in particular. Existing procedural safeguards to examine gender-based claims as well as substantial questions concerning the interpretation of the refugee definition could be revisited making full use of the above-mentioned guidance developed by UNHCR and of the support the European Asylum Support Office (EASO) may provide. In this regard, EASO is currently working on the development of a training module for asylum case officers on Gender, Gender Identity and Sexual Orientation, which will include specific reference to the concept, causes and consequences of this serious human rights violation. In this context, attention should be paid that children who are considered to be emancipated as a result of forced marriage are not deprived of the special protection they require during the asylum procedure.

¹³² Dauvergne and Millbank (2011).

¹³³ Seelinger (2010).

¹³⁴ See, for example, France, National Court of Asylum Law (*Cour Nationale du Droit d'Asile*), 24 January 2013, n. 12018468; Germany, Administrative Court Trier, decision of 31 October 2012 – 5 K 1448/11.TR and Administrative Court Lüneburg, decision of 27 November 2012, 3 A 113/11.

¹³⁵ For example, women who *refuse to be subject to forced marriage* (France, *Cour Nationale du Droit d'Asile* decision of 11 December 2012, No. 12003324), women who originate from an *archaic and patriarchal society*, characterised by a *traditional understanding of what amounts to respectable behaviour* for a woman (Germany, Administrative Court Darmstadt, decision of 18 June 2012, 2 K 161/11.DA.A), *divorced women* (Germany, Administrative Court Stuttgart, decision of 14 June 2012, A 11 K 4461/11), girls considered to be of the *ideal marriageable age* (e.g. 16 years old or younger) in Afghanistan (Germany, Administrative Court Cologne, decision of 5 October 2010, 14 K 7186/09.A).

¹³⁶ National Court of Asylum Law (*Cour Nationale du Droit d'Asile*), Decision No. 574495, 23 April 2008.

¹³⁷ Advisory Committee on Aliens Affairs (*Adviescommissie Vreemdelingenzaken*) (2005).

3

Promising practices in preventing forced marriage



This chapter describes promising practices in preventing forced marriage. Three general criteria were adopted to select a practice or initiative as promising: (i) consensus in the secondary data and/or among the national experts on a specific practice as being 'promising'; (ii) existence of external evaluation which has assessed the effectiveness of the practice; and (iii) relevance and transferability to other settings and EU Member States.

Sections 3.1–3.5 use research and information collected in five EU Member States to indicate how the provisions on prevention contained in the Istanbul Convention can be put to use in practice. The comparative research conducted so far,¹³⁸ together with evidence collected in the five Member States for this report, suggests a number of particularly effective prevention practices including: raising awareness about forced marriage; training professionals who might be in contact with potential victims; implementing prevention interventions in school settings; and direct and anonymous assistance such as 24-hour helplines and anonymous online counselling.

Prevention of forced marriage is crucial if the human rights of women and men are to be protected and their human dignity preserved. Specifically, prevention means sparing potential victims the trauma of forced marriage. Considering that victims' families often perpetrate this crime, prevention can also ensure that victims do not experience physical or emotional alienation from their families, something which compounds the trauma experienced. Importantly, prevention also gives otherwise vulnerable persons the chance to retain their physical integrity, dignity and individual freedom and autonomy by giving them the chance to make their own decisions for their life and future.

Article 12 of the Istanbul Convention¹³⁹ specifically prescribes that state parties must "take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention" and that "culture, custom, religion, tradition or so-called "honour" shall not be considered as justification for any acts of violence" covered by the convention. The Convention provides a number of concrete obligations for the prevention of violence against women, which are also relevant to prevent forced marriage. These are:

- awareness raising at all levels, including with the public at large – Article 13;
- the inclusion of teaching materials to prevent violence against women in education curricula – Article 14;
- training for relevant professionals – Article 15;
- preventive intervention and treatment programmes – Article 16;
- participation of the private sector and the media – Article 17.

It is crucial to educate (potential) perpetrators. Research conducted on forced marriage suggests that the problem is particularly linked to traditional power relationships based on hierarchy, patriarchy and 'honour'.¹⁴⁰ These are, in turn, intimately linked and ultimately dependent on socially constructed roles that a given society assigns to men and women or parents and children. These roles and the expectations thereby generated also legitimise the practice of forced marriage. Consequently, the per-

¹³⁸ Flying Team against Violence (2012).

¹³⁹ Council of Europe (2011b).

¹⁴⁰ European Parliament (2008), p. 37.

perpetrators may not regard their actions as illegitimate. Education is thus one of the most important elements of prevention.¹⁴¹

In addition, educational institutions which foster a supportive environment are in an ideal position to encourage potential victims of forced marriage, especially girls and women, to speak out.¹⁴² Staying in school and achieving a higher level of education, such as secondary rather than primary, is strongly associated with later marriage.¹⁴³

Some EU Member States have developed or are developing national plans which address gender-based violence and/or forced marriage. Germany, for example, adopted a national integration plan in 2007¹⁴⁴ in which

the federal government itself made several commitments and also recommended steps for the federal states to take to combat forced marriage. The government's commitments included, among others, improving the empirical knowledge of forced marriage prevalence rates. Such information helps prevent forced marriage, albeit indirectly, because the lack of data often prevents action. Germany also committed to: ensuring a sufficient number of shelters and counselling services for victims of forced marriage; improving easily accessible support for persons affected/threatened by forced marriage; and conducting information and awareness-raising campaigns. Sweden¹⁴⁵ and the United Kingdom¹⁴⁶ also have national action plans that aim at eliminating forced marriage. The Dutch national plan is described as a promising practice.

Promising practice

Joining up policies and practices

Dutch parliament adopted a national policy plan in June 2013 that aims to combat forced marriages, honour-related violence and marital abandonment as part of a government-wide approach to violence in dependency relationships. 'Marital abandonment' is when a husband abandons his wife and/or their children in their country of origin to marry someone else.¹⁴⁷

The policy plan focuses specifically on prevention, early detection, stopping the pressure (to marry), reducing personal injury, detecting offenders and penalising them. Municipalities implement a joined-up governance approach in cooperation with different actors, such as police, public prosecutors, youth care, social work, health services, educational institutions, agencies supporting victims of domestic violence, and women's shelters. The target groups are the (potential) victims of forced marriages (with special focus on the young), their families and the perpetrators. Although in its early stages, the policy plan's comprehensiveness suggests that it is a promising practice.

Under the national plan several projects have been initiated, including:

- **Information and education:** a multi-media campaign oriented towards youth raises awareness about their human rights and the freedom to choose a partner.
- **School and youth agency:** this project focuses on education and training activities for professionals working with young people, such as teachers, mentors, school attendance officers and school nurses to ensure early identification of young people at risk of forced marriage. Schools will also be prompted to include the subject of self-determination and other relevant topics in their curriculum.
- **Involvement of affected communities:** prevention and early detection is facilitated through discussion among communities potentially affected by forced marriage. This aims to change the mindset within those communities. The government has made a commitment to facilitate discussion on the topics of forced marriage, marital captivity and abandonment.
- **National cooperation and coordination mechanism:** the government is planning to develop a cooperation protocol between care sector professionals, the police and the prosecutors of forced marriage and abandonment. Furthermore, in the interest of increasing knowledge and expertise about forced marriage among professionals, a national coordination mechanism will be created, similar to the United Kingdom's Forced Marriage Unit. This body will also facilitate the repatriation of victims: it will be the contact point for the Ministry of Foreign Affairs and will arrange for escort throughout the journey, as well as providing assistance, protection and reception in the Netherlands.

141 *Ibid.*

142 Refugee (2010), p. 20.

143 UN, UNFPA (2012), p. 51.

144 Germany, Federal Government (*Bundesregierung*) (2007).

145 Sweden, Ministry of Education (2009).

146 United Kingdom, Home Office (2011).

147 The Netherlands, Immigration and Naturalisation Service (*Immigratie en Naturalisatiedienst*) (2013).

- **Police and other law enforcement measures:** the role of criminal law is important to prevention, as it sends a signal to (potential) perpetrators about what is and is not acceptable.

Source: Minister of Social Affairs and Employment (Minister van Sociale Zaken en Werkgelegenheid) (2013), Letter sent to House of Representatives (Tweede Kamer der Staten-Generaal), 6 June 2013, www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2013/06/07/kamerbrief-aanpak-huwelijksdwang-en-achterlating/kamerbrief-aanpak-huwelijksdwang-en-achterlating.pdf

Some EU Member States have adopted national plans which also cover the fight against forced marriage. The more promising prevention programmes are all-encompassing. That is, they address the issue of forced marriage from multiple directions at once. One and the same programme may offer education campaigns and anonymous counselling, for example, as well as taking action at schools to prevent forced marriage. Integrated programmes exert a stronger effect by addressing multiple contributing factors at once. As the capacity to operate on multiple levels at once requires considerable funds, such programmes are often wholly or partially state-funded.

3.1. Raising awareness about forced marriage

Awareness-raising activities include media campaigns and education activities. They can take a range of forms, from comprehensive to one-time events. Such programmes are a powerful tool to educate (potential) perpetrators, victims and communities about the illegal status of forced marriage and the negative consequences for victims as well as perpetrators. In accordance with Article 12 (6) of the Istanbul Convention,¹⁴⁸ these programmes also contribute to the fight against forced marriage by empowering (potential) victims, as they inform them of their rights and encourage them to report forced marriage. This is especially relevant for young people, who have been shown to be more vulnerable to this form of violence. Awareness raising can help prevent forced marriage by informing potential victims what constitutes forced marriage, that it is illegal and that duress can take not only physical but also emotional and financial forms. It can also teach them about their individual right to say no. Potential victims will ideally also be taught to look out for the warning signs of forced marriage, such as the confiscation of their mobile phones and the monitoring of their movements.¹⁴⁹

Awareness-raising programmes initiated by public institutions such as the Swedish police website (see Promising practice 3.1) express the state's stance towards forced marriage. They make it explicit to citizens that the practice is illegal.

¹⁴⁸ Council of Europe (2011b), Art. 12.

¹⁴⁹ Refuge (2010), p. 19.

Promising practice

Using a police website to address forced marriage

The website of the Swedish police contributes to raising awareness on forced marriage by:

- **making a public commitment.** It states clearly that domestic violence – a broad category under which it also lists psychological duress and forced marriage – is unacceptable, illegal and something that the Swedish police takes very seriously;
- **encouraging victims and third parties** to report. It offers support and protection for those who are afraid to do so or are currently under psychological or physical threat to their wellbeing;
- **offering comprehensive information.** It clarifies what constitutes domestic violence and forced marriage and how to recognise it. It explains that forced marriage is not limited to girls and women but also affects boys and men, especially in the context of honour culture;
- **providing extensive referrals to relevant professionals as well as a FAQ.** The FAQ guides potential victims, for example, on what to do to prevent the crime before it happens if they suspect that a planned family vacation is going to result in abandonment/forced marriage.

Source: Swedish Police, http://polisen.se/Page/Files/340173/Kom_till_oss_EN_130611.pdf

3.2. Training of professionals

Article 25 of the EU Victims' Directive requires Member States to ensure that officials likely to come into contact with victims, such as police officers and court staff, receive general as well as specialist training. According to Article 15 of the Istanbul Convention, state parties are obliged to provide or indeed strengthen appropriate training for relevant professionals to help prevent and detect forced marriage.¹⁵⁰ Training programmes are particularly important for professionals who come in contact or are directly involved with (potential) victims, such as legal counsellors, social workers, teachers, school nurses, school counsellors, doctors, police officers, registrars and prosecutors. Such programmes

¹⁵⁰ Council of Europe (2011b), Art. 15.

not only help these professionals to identify potential victims of forced marriage, but assist in ensuring that they can collaborate and be part of an effective referral system. Crucially, the ability to identify potential victims and to ensure that a network of relevant actors can offer timely support may not only prevent violence from occurring in the first place but also stop the abuse when a person has already been victimised.

Promising practice

Training on forced marriage

The e-Module *forced marriage* is a free, online training course designed to help professionals identify early signs to prevent forced marriage and teach them how to act in cases of suspected forced marriage. The module, available since the summer of 2013, is meant for social workers, teachers, police officers, public prosecutors, workers at healthcare institutions and youth workers. The module deals with issues such as when and how 'honour' is involved in forced marriage; what signals are an indication of a (forthcoming) forced marriage; how a professional such as a social worker or teacher can handle these signals; and how professionals can learn from one another (interactive learning).

The module, commissioned by the Ministry of Social Affairs and Employment, is part of the Dutch government's recently intensified drive to combat forced marriages. The Next Page, an e-academy, and Fier Fryslân, a specialised centre for honour-related violence and forced marriage, created it jointly. Professionals who have completed the course are awarded accreditation points that count towards the annual total needed for in-service training, making it more attractive than competing training options that do not offer such points. Participant evaluations of the training course have been very positive so far.

Source: www.thenextpage.nl/index.aspx?chapterid=65&contentid=547&id=103&cookiesallowed=true

3.3. Implementing prevention interventions in school settings

Young persons are the most vulnerable and likely victims of forced marriage, so programmes in educational settings are a unique prevention tool. Programmes in secondary school settings, for example, aim to educate and empower not only (potential) victims, but also their peers, teachers and mentors, who are in close contact with (potential) victims and would be in a position to identify warning signs if they knew how to. Prevention programmes implemented in schools

have the added value of reaching the most vulnerable in a safe setting. Such promising practices have been identified in Germany (see Promising practice 3.3), the Netherlands¹⁵¹ and Sweden.¹⁵²

Promising practice

Transforming young men's attitudes

Some German secondary schools use a prevention programme that targets one of the main triggers of forced marriage: the culture of honour. As most perpetrators are male, the main objective of the 'Heroes' project is to encourage young men with an immigrant background to question traditional views of gender inequality in order to prevent honour-based violence. The main idea behind this programme is that young men may be more receptive to alternative perspectives and can exert a positive influence on their peers.

The target group is young men with an immigrant background. The young men participate in weekly in-school workshops for about nine months. The main topics of the workshops are gender equality, the concept of honour and human rights. During the workshops, the young men are encouraged to discuss views and stereotypes and to develop individual stances on the questions of manhood and the treatment and rights of women.

Once trained, the Heroes visit schools, aiming to change traditional views on gender inequality and to prevent honour-based violence. Central to the project is the idea of peer education; the Heroes have similar backgrounds to those of the young people with whom they carry out the workshops.

Founded in 2007 in Berlin, where it is run by a specialised centre for the prevention of sexual abuse of girls and boys (*Strohalm e.V. Fachstelle für Prävention von sexuellem Missbrauch von Mädchen und Jungen*), the project has since expanded to other German cities – Augsburg, Cologne, Duisburg and Munich. For the first three years, the project was funded by the Childhood Foundation. Currently it is financed by donations and seminars; however at the time of writing, the financial resources were almost exhausted and the future of the project uncertain.

In the city of Berlin alone, 5,200 pupils have already been reached by young Heroes. The Heroes project regularly organises information evenings for parents to make the work transparent and reduce mistrust.

Source: www.heroes-net.de

¹⁵¹ MOETD (2012, 2013).

¹⁵² Swedish Police (*Polisen*) (2012).

3.4. Direct and anonymous assistance

Where such services are available, potential victims can turn for assistance to 24-hour helplines, contact points and online counselling if they suspect they might fall victim to forced marriage. This might occur when, for example, they realise that a planned family vacation to the country of origin disguises an attempt to force them into marriage. Such assistance points can guide the victim in taking the relevant steps to avoid

being forcibly married, as well as to provide referrals to shelters where refuge can be sought. Furthermore, assistance points which provide legal information can clarify the rights states afford to (potential) victims. This is particularly relevant for individuals with an immigrant background, as they may find themselves confused by the number of different legal systems that could apply (e.g. that of the EU Member State, that of the country of origin). Besides their prevention function, such resources also play a vital role in supporting victims (see Chapter 4).

4

Victims' support services: promising initiatives



Victims of forced marriage often do not know to whom to turn and where to find help. Besides feelings of shame and fear of stigmatisation, victims also often avoid speaking up because they are unaware of their rights and of available protection and support measures.¹⁵³

The EU Victims' Directive¹⁵⁴ obliges EU Member States to ensure that victims of crime receive appropriate information, support and protection. The directive applies to all victims of crime.

The EU Victims' Directive does not define support services but lists what victims support services should comprise. This may include, for example, information and support on the rights of victims of crime, referral to specialist support services; emotional support; advice relating to financial and practical issues arising from the crime; advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation; safe shelters and targeted 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 (Article 9). Specialist support services should be based on an integrated and targeted approach (Recital 38).

Article 22 of the directive requires a timely individual risk assessment to determine if the victim requires special measures, which may in particular be the case for victims of gender-based violence (Recitals 17 and 18). In this regard, particular attention must be paid to victims whose relationship to and dependence on the offender

make them particularly vulnerable (as would be the case for forced marriage victims). Article 8 of the directive obliges states to provide confidential specialist support services.

Until recently, specialised support for victims of forced marriage has generally been scarce and provided exclusively by women's NGOs and the voluntary sector. NGOs and feminist research have diagnosed and frequently criticised this shortage for failing to meet the needs of women exposed to different types of violence.¹⁵⁵ Often specialised support services suffer from underfunding. Sustainable funding – particularly for specialised services or organisations for women and their children – is essential to making such services widely accessible (free of charge, geographically distributed, multilingual and disability friendly), as the European Institute for Gender Equality (EIGE) points out.¹⁵⁶ Accessibility is important to ensure full victim support.¹⁵⁷ Although there are EU Member States that fund some of the specialised services for victims of forced marriage, this generally covers just part of their funding needs and most of the service providers need to raise additional funds to cover costs.¹⁵⁸

This chapter identifies promising practices in the provision of specialised support by different policy actors, NGOs and other agencies. Based on the examination of existing research and the information collected in the five EU Member States under review promising practices 4.1–4.4 describe initiatives based on wide-ranging strategies that recognise the need for a holistic

¹⁵³ European Parliament (2008).

¹⁵⁴ 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, and replacing Council Framework Decision 2001/220/JHA.

¹⁵⁵ See, for example Gill and Anitha (2011), p. 137.

¹⁵⁶ European Institute for Gender Equality (EIGE) (2013).

¹⁵⁷ EIGE (2013), pp. 32–33.

¹⁵⁸ This is also true of specialised support services tackling intimate partner violence. For details, see EIGE (2013), p. 33.

response both to support victims and to tackle and prevent forced marriage.

To identify a practice as ‘promising’, in this chapter, in addition to the criteria listed in the introduction of this paper, FRA drew inspiration from the EU Victims’ Directive and Chapter IV of the Istanbul Convention. In addition, the report on *Combating violence against women: Minimum standards for support services* published for the Council of Europe¹⁵⁹ and the recommendations made by EIGE in its 2013 review of support services for victims of intimate partner violence¹⁶⁰ provided further ideas as did findings from the FRA research on victim support services.

FRA ACTIVITY

Analysing EU victim support services

FRA initiated the first independent overview of victim support services in the EU in November 2011, at the request of the European Commission. The project provides Member States with concrete examples of different Member State practices in the area of victim support. It reviews current practices and gaps at the national and regional level and provides an overview of different models of victim support, from which ‘promising practices’ can be highlighted. These serve as a basis to further develop and enhance victim support. Another of the project’s central objectives is to give an overview of how current victim support service provision works in practice across the 28 EU Member States, compared with the objectives and goals for victim support set out by the EU Victims’ Directive.

The key to effectively tackling and preventing forced marriage is to integrate a diverse range of activities and measures, such as support services, awareness raising, educational initiatives, training and campaigning. Prevention activities should address the different needs of victims in an accessible manner. They should take an inclusive approach to gender-based violence. Inter-agency cooperation is required to establish and operationalise referral mechanisms and processes. Finally, funding must be sustainable.

4.1. Shelter/refuge with an integrated approach

Provision of specialised shelters for girls and women and their children in need of a safe place is a duty under

¹⁵⁹ Kelly and Duboi, Council of Europe (2008). For entire list of minimum standards, see pp. 37–58.

¹⁶⁰ European Institute for Gender Equality (EIGE) (2013).

Article 23 of the Istanbul Convention as well as under Article 9 of the EU Victims’ Directive.

In addition to providing a safe place, shelters should be available free of charge and be accessible for women and girls with different needs and backgrounds, including persons with disabilities or women in an irregular situation. The accommodation of young female victims of forced marriage (aged from 15 to 18) in general youth crisis centres raises challenges, since most general youth crisis centres do not have specialised care or do not address the special needs of young victims of forced marriage (such as language support or specially trained personnel providing multilingual counselling). Centres should provide a variable combination of additional services, such as outreach, advocacy, advice, counselling, self-help support and other services which promote the empowerment of victims. Specially trained staff should provide child support services, and a mechanism needs to be in place to ensure they attend school.

Shelters with a similar holistic approach were identified in other EU Member States. These include a recently established crisis shelter in Austria, its first and only anonymous crisis shelter for young women victims of forced marriage, operated by the NGO Orient Express (www.orientexpress-wien.com/en/orientexpress_en/). The Swedish Sisters’ Shelter Somaya¹⁶¹ caters for girls and women who may experience honour-related violence and forced marriages. It has also trained the National Board of Health and Welfare, schools, police and NGOs on how to facilitate reporting. In the United Kingdom, the NGO Ashiana (www.ashiana.org.uk/) runs two specialist refuges for female victims of forced marriage. These refuges provide intensive support including counselling, advocacy, outreach work, legal advice, and access to education and health services. Ashiana has won several awards for innovative and specialist provision of culturally specific refuge accommodation and support to women at risk of forced marriage. A number of NGOs across the United Kingdom specifically target the needs of men who are victims of forced marriage. These include the Palm Cove Society,¹⁶² the Gemini Project,¹⁶³ Men’s Advice Line¹⁶⁴ and Men’s Aid.¹⁶⁵

¹⁶¹ Sweden, Sisters’ Shelter Somaya (2012), p. 9.

¹⁶² Palm Cove Society (2013).

¹⁶³ The project is implemented in South Gloucestershire; see <http://www.southglos.gov.uk/community-and-living/community-safety/domestic-abuse-violence/specialist-domestic-abuse-services/>.

¹⁶⁴ Men’s Advice Line (2013).

¹⁶⁵ Men’s Aid (2013).

Promising practice

Integrating the approach of a shelter or refuge

Papatya (*Anonyme Kriseneinrichtung für Mädchen und junge Frauen mit Migrationshintergrund*), an NGO founded in Berlin in 1986, is the first organisation in Germany to provide specialised support on forced marriage. Papatya operates an anonymous crisis and transitional centre that provides accommodation at a secret address for girls and young women with an immigrant background aged 13 to 21. In its work, Papatya draws on established minimum standards for specialised crisis centres (www.papatya.org/pdf/Standards-Kriseneinrichtungen-2009.pdf).

Since Papatya was established, more than 1,500 girls and young women have found protection at the crisis centre.

Protection, accommodation and care:

The crisis shelter provides eight places in a family atmosphere (in bedrooms for one, two or three girls) and, when necessary, can take in girls from other federal states. The girls may live in the shelter for a transitional period of up to two months, longer in exceptional cases. The multicultural team comprises female social workers and one psychologist who offer confidential support in Kurdish and Turkish as well as in English, French and German. It operates free of charge 24 hours a day, seven days a week.

Assisting victims:

Papatya supports girls and young women by providing counselling and assistance through individualised help and advice. This may include assistance relating to residence law issues, transfer to other specialised counselling centres, support regarding schooling or vocational training, or help in finding appropriate, long-term and – if necessary – anonymous accommodation.

Outreach through online counselling:

To reach service users who would otherwise have difficulty in accessing any support (such as women with disabilities or young women and girls in rural areas), Papatya has operated an online counselling service since 2007, Sibel (www.sibel-papatya.org/index.htm). Sibel offers advice and support to persons affected by domestic/family violence, honour-based violence and forced marriage. Additionally, information and advice are provided to professionals working in this field as well as to people the affected person trusts in Kurdish and Turkish as well as in English, French and German. The online counselling service is also accessible from abroad. Posts will usually be answered within 72 hours. In addition to online counselling, Sibel also offers telephone counselling if requested.

An evaluation report¹⁶⁶ concludes that its frequent use – with more than 1,000 online consultations between June 2007 and June 2010 – shows that the internet-based support is a successful approach that reaches young migrants. Sibel was planned as one of the measures against forced marriage in the National Integration Plan as well as the Second Federal Action Plan for combating violence against women.¹⁶⁷

Inter-agency coordination and cooperation:

Papatya cooperates nationwide with youth welfare institutions, women's shelters, pedagogically supervised accommodation projects for underage girls and young women, crisis shelters and specialised telephone help lines to help girls who are at risk of forced marriage and violence in the name of honour.

It participates in the Federal Specialist Conference against Forced Marriage (*Bundesfachkonferenz gegen Zwangsverheiratung*, BuKo) and is a co-founder of the Berlin Working Group against Forced Marriage (*Berliner Arbeitskreis gegen Zwangsverheiratung*). The working group also publishes the informational brochure *Forced marriage (Zwangsverheiratung)*. Papatya cooperates with other NGOs across the EU and has conducted a number of EU DAPHNE projects with a specific focus on improving the protection of girls and women with an immigrant background from domestic violence, forced marriage and honour-related violence in Europe (such as *Sheroes*, *Flying Team against Violence* and '3Ps: prevention, protection, persecution').

Funding:

Papatya is primarily funded by Berlin Senate's Department for Education, Science and Research, and to a lesser extent by donations. Covering a number of German federal states, Sibel is currently financed by Berlin, Baden-Württemberg, Rhineland-Palatinate and Brandenburg. Nevertheless, Sibel is suffering from a financial shortfall and needs additional support from donations.

Source: www.papatya.org/en/index-en.html

¹⁶⁶ Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*, BMFSFJ) (2010).

¹⁶⁷ Germany, BMFSFJ (2007), pp. 25 ff.

4.2. Hotlines/helplines

Many women and young girls (especially in rural areas), but also young boys and LGBT persons, are hesitant to seek help because they are ashamed, anxious or afraid of stigmatisation. Helplines are low-threshold outreach services of high priority. They are very often the first step towards other services. Minimum standards for helplines include availability, confidentiality, information and referral.¹⁶⁸ EIGE recommends the following criteria as particularly important for helplines for women who are victims of violence.¹⁶⁹

- **At least one national helpline exists, providing specialised support, advice and counselling** in relation to forced marriage.
- **Accessibility:** it is available 24/7 and free of charge.
- **Outreach and specific needs:** it provides **multilingual** support.
- It **collects data** on the number of calls (answered and unanswered) and the number of women callers.
- It **continuously communicates the helpline number to the public.**
- The service is **funded by the state**, and the funding is **mandated by law** in a sustainable, sufficient and publicly visible fashion.

Germany's Violence against women support hotline is a central 24-hour hotline to provide victims of violence support anonymously, free of charge and regardless of disability. It also directs those who call to the appropriate local agencies. It aims to fill the gap in the existing support network by providing confidential counselling by female counsellors and targeted referrals with high security standards, barrier free, in 15 languages. It covers all forms of gender-based violence, including female genital mutilation (FGM) and forced marriage. It works with immigrants, women with disabilities, older women and victims of human trafficking (www.hilfetelefon.de/en/startseite/). The Federal Office for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) created it in March 2013.

In Sweden, there is one 24/7 women's helpline that is free of charge and assists women survivors of all forms of violence by providing multilingual support.

The United Kingdom has one national women's helpline, the 24-hour National Domestic Violence Free Phone helpline, which is free of charge and provides gender-specific multilingual (over 150 languages) support to survivors of domestic violence. The United Kingdom also has other helplines offering support for specific forms of violence and to specific groups of victims. Examples are the Honour Network Helpline for survivors of 'crimes of honour' and forced marriage across the United Kingdom, and Broken Rainbow UK for LGBT people experiencing domestic violence¹⁷⁰ (see also Promising practice 4.3).

Promising practice

Offering support by phone and email

The Lower Saxony Crisis Hotline against Forced Marriage (*Niedersächsisches Krisentelefon gegen Zwangsheirat*) assists and advises girls and women threatened by or living in forced marriage. Additionally, the hotline is open to friends, teachers and employees of concerned authorities or counselling centres. It is not limited to residents of Lower Saxony but can be called nationwide or from abroad.

Based in Hannover, Germany, the hotline is free of charge and is open from Monday to Thursday. It can provide support in German and Turkish and, if needed, also in Arabic, Kurdish and Persian. Most counselling takes place by phone or email; however, personal counselling is available if necessary.

The hotline is funded by the Lower Saxony's Ministry for Social Affairs, Women, Family, Health and Integration. It is operated by an NGO for intercultural communication, refugee and migration work, called kargah.

Besides assisting victims, the hotline team offers training and seminars on forced marriages and domestic violence to police, school social workers, health system staff, foreign authorities, employment agencies, women's shelters and other counselling centres.

Since its launch in 2006, the hotline has registered approximately 150 cases each year; in 2012, 162 cases were recorded.

Source: www.kargah.de/index.php/en/forced-marriage

¹⁶⁸ Kelly and Duboi, Council of Europe (2008), p. 20.

¹⁶⁹ EIGE (2013), p. 20.

¹⁷⁰ WAVE (2013), p. 284.

Promising practice

Supporting victims, counselling, guiding and reaching out

The Forced Marriage Unit was set up in 2005 and is dedicated both to preventing British nationals from being forced into marriage overseas and to assisting anyone in the United Kingdom, regardless of nationality, who is faced with the prospect of being forced into marriage.

Assisting victims:

The Forced Marriage Unit uses various methods to provide direct confidential advice and support to female, male, LGBT and young victims and to victims with learning disabilities.

- **A survivor's handbook:** this includes sections on safety, education and work, benefits and finance, health, legal advice, refuges and housing, childcare, getting a divorce and withdrawing sponsorship for a spouse's visa (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/149854/FM_Survivors6.pdf).
- **Helplines:** the Forced Marriage Unit has a national helpline open 9.00–17.00, Monday–Friday (out-of-hours callers are transferred to the Foreign Office's Global Response Centre). It works closely with the United Kingdom-based charities: Freedom Charity (www.freedomcharity.org.uk/) and Karma Nirvana's Honour Network (www.karmanirvana.org.uk/), both of which provide 24-hour helpline support for victims of forced marriage and honour-based violence.
- **Free app:** The Forced Marriage Unit co-funded the Freedom Charity mobile phone app, launched in 2013, for (potential) victims, those at risk, friends, family and relevant professionals. The app, which was developed in conjunction with the London's Metropolitan Police, provides information about forced marriage, with links to where potential victims can get help, as well as information on warning signs. It is designed like a game to avoid the perpetrator recognising it as something that might bring law enforcement into his/her house.
- **Overseas activities:** the Forced Marriage Unit provides consular assistance to British victims before and/or after forced marriage to secure their return to the United Kingdom.

Children:

Since about a third of the cases handled by the Forced Marriage Unit involve children under 18, it is vital that educational institutions be alert to the need to protect children at risk of forced marriage. When invited to speak at schools and other educational institutions, the Forced Marriage Unit does not just seek to highlight how it can assist victims. It focuses on educating both potential victims and school staff about the warning signs and how to access its services. The forced marriage survivors' handbook provides the free, 24/7 telephone number and a link to ChildLine, a private and confidential service for children and young people.

Victims with learning disabilities:

The Forced Marriage Unit has developed multi-agency guidelines on the best ways for professionals to handle cases of forced marriage where the victims also have learning disabilities.

Outreach activities:

The Forced Marriage Unit undertakes a full programme of public speaking and outreach activities, addressing practitioners and communities. It aims to ensure that professionals working with victims of forced marriage understand current best practice and existing legislation. It has produced multi-agency guidelines for the police, children's and adults' social care, health, housing and education professionals. It has started an awareness-raising programme for registrars. Moreover, the Forced Marriage Unit has designed an **e-learning training package** (<https://www.fmelearning.co.uk/login/index.php>) to support professionals, including education, social and healthcare professionals, police officers, housing officers, the voluntary sector and others dealing with forced marriage in their work. Using real-life case studies, the package gives professionals a basic understanding of the main issues surrounding forced marriage, how cases can manifest and how to respond appropriately. This tool complements the multi-agency practice guidelines for professionals.

Source: <https://www.gov.uk/forced-marriage#forced-marriage-unit> and <https://www.gov.uk/stop-forced-marriage>

In contrast, the Netherlands does not have a helpline specifically for women, only a general gender-neutral helpline for victims of domestic violence. It is open 24/7, but it is not free of charge.¹⁷¹ In France, there is no helpline that operates 24/7, is free of charge and is open to women victims of all forms of violence.¹⁷²

4.3. Holistic services

Holistic services work across forms of violence and support needs. These can be delivered through a 'one-stop shop', multidisciplinary teams or a 'one-stop person' (advocates who ensure rights are realised). Two initiatives from the United Kingdom are illustrated to describe how this can work.

Promising practice

Tackling violence against black and minority ethnic women and girls

Southall Black Sisters (SBS) **provides holistic information, advice, advocacy, support and counselling services** for victims of forced marriage and other types of violence.

It also **prepares expert reports for legal cases**, and undertakes **test cases and third-party interventions**, including obtaining forced marriage protection orders.

Southall Black Sisters, founded in 1979, runs support groups and performs educational work in schools and colleges with black and ethnic minority women and girls, raising awareness and campaigning on forced marriage and other forms of violence against women, including domestic violence and 'honour' crimes (www.southallblacksisters.org.uk/campaigns/forced-marriage-campaign/).

Southall Black Sisters raises the issue in the media; provides training for health, social service and criminal justice professionals; contributes to local, national and international policy meetings and inquiries (e.g. the Home Affairs Select Committee, the Council of Europe and the Committee on the Elimination of Discrimination Against Women); and organises and takes part in local and national campaigns.

In partnership with the Home Office, Southall Black Sisters produced a **step-by-step guide about forced marriage for victims** in 2012: *Three Steps to Escaping Violence Against Women and Girls*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97923/english-3-steps.pdf. The guide is for minority ethnic women and children, providing information and advice on escaping domestic violence. It contains information on what constitutes abuse, including sexual violence from a spouse, forced marriage, dowry abuse, female genital mutilation and honour-based violence. It provides advice on how to report domestic violence and includes a list of agencies that are able to provide further help and information.

The organisation operates a **helpline** (9.00–17.00 Monday–Friday), and also deals with cases out of hours.

The Forced Marriage Unit provides funding to aid Southall Black Sisters' work to **protect, support and re-settle repatriated victims of forced marriage**.

Southall Black Sisters is currently preparing an evaluation report on a pilot project at two local schools that examined different methods for preventing and challenging violence against black and minority ethnic women and girls.

Source: www.southallblacksisters.org.uk/ and <http://www.southallblacksisters.org.uk/campaigns/forced-marriage-campaign/>

¹⁷¹ WAVE (2013), p. 201.

¹⁷² WAVE (2013), p. 106.



4.4. Interinstitutional cooperation

In each of the five EU Member States reviewed, several authorities and institutions deal with, or are confronted with, forced marriage: specialised counselling services, youth welfare offices, social security offices, schools, police and other public authorities such as immigration authorities, employment agencies and registry offices. Interinstitutional collaboration is crucial to successfully fight forced marriage. Although multi-agency initiatives are seen as relatively recent developments,¹⁷³ including with regard to coordinated targeted policies and

measures on national, regional and local levels, examples of concerted action exist, as the following paragraphs describing German initiatives illustrate.

The German Federal Conference of Specialised Centres against Forced Marriage, founded in 2006, consists of NGOs and meets annually for information exchange and strategic planning. It also publishes position papers.¹⁷⁴ In Germany, most federal states have regional roundtables or working groups on forced marriage or deal with the issue within the framework of a wider setting. The federal state governments cooperate with each other.

Promising practice

Coordinating action

An interconference ad hoc working group against forced marriage was established following a resolution by the Integration Ministers' Conference in June 2009. The working group included members of the Gender Equality and Women's Ministers' Conference (*Gleichstellungs- und Frauenministerkonferenz*), the Integration Ministers' Conference (*Integrationsministerkonferenz*), the Interior Ministers' Conference (*Innenministerkonferenz*) and the Youth and Family Ministers' Conference (*Jugend- und Familienministerkonferenz*). The ad hoc working group published a draft concept for intervention in cases of forced marriage, which can be used in all federal states. The Gender Equality and Women's Ministers' Conference took note of it in 2012 and recommended that it be distributed and made known to all institutions and agencies involved in youth and family welfare. The intention of the working group was to describe the current situation, show areas in need of further development and make recommendations. It consulted experts from women's counselling services and shelters, child and youth shelters, police, family courts and youth welfare offices, considering their views when evaluating the current situation. It developed the following recommendations:

- **Counselling:** counselling services must be expanded and their services further developed. Accessibility, intercultural working methods and target group orientation need to be improved and a wider range of languages offered.
- **Youth welfare:** more training is required for youth welfare office staff. The current problems concerning financial support for young adults need to be resolved. Recommendations for youth welfare offices applicable to all federal states are needed.
- **Shelters:** more safe accommodation for victims of forced marriage is needed.
- **Police:** the police should designate experts who can serve as liaisons with other stakeholders.
- **Residence law:** the effect of the new Act to combat forced marriage needs to be evaluated regarding residence issues. Very often, persons who have been taken abroad to be married escape marriage only if they have secure prospects, especially the possibility of returning to Germany. Proving continuing residence rights might be difficult and the duration of visa application processes could pose a problem when trying to return to Germany.
- **Prevention:** all parties concerned need to step up their efforts to prevent forced marriage.

Sources: Fourth Integration Ministers' Conference (*Integrationsministerkonferenz*) (2009), Decision Protocol Top 4 and Gender Equality and Women's Ministers' Conference (*Gleichstellungs- und Frauenministerkonferenz*), 30 May/1 June 2012, www.jfmk.de/pub2012/TOP_5.3_Zwangsverheiratung.pdf

173 Kelly and Duboi, Council of Europe (2008), p. 24.

174 Current BuKo position paper, www.imma.de/news/news-home-detail/article/bundesfachkonferenz-zwangsheirat-2013.html.

Conclusions

There is no official, internationally agreed definition of forced marriage. It can be described as a marriage concluded without the consent of one or both partners, and therefore against the will of at least one of them. It is a grave violation of human rights. Forced marriage disproportionately affects women and girls and has therefore been recognised as a form of violence against children and against women.

Preventing and combating forced marriage is at first glance a task that falls primarily outside EU competence. Nevertheless, there are several aspects relating to forced marriage which are covered by EU law. This is first and foremost the protection and support to be afforded to victims of forced marriage, but also issues relating to asylum and immigration law, free movement (in particular as regards the residence permits for third-country national family members of EU citizens) as well as legislation relating to protection orders, mutual recognition and data protection.

The main European instrument addressing forced marriage is the Istanbul Convention. Article 75 of the Istanbul Convention envisages the possibility of the EU accession.

The EU has taken a strong stand in combatting forced marriage internationally. The General Affairs Council of

8 December 2008 adopted EU guidelines on violence against women and girls and combating all forms of discrimination against them. These guidelines, which also cover forced marriage, set out the operational objectives and intervention tools for its external action on combating violence against women and girls. They represent a political and long-term commitment to prevent violence, protect and support victims and prosecute perpetrators.

Given the strong stand that the EU has taken for external action and the grave consequences of forced marriage on victims, the question emerges whether the EU should accede to the Istanbul Convention, even if only part of the issues regulated therein are within EU competence. Such a step would not only ensure coherence between the EU's external and internal actions, but would also promote through the work of the European Commission (and ultimately the Court of Justice of the EU) a harmonised interpretation of those convention norms which are covered by EU law. FRA suggests therefore that the EU should consider acceding to the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

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Annex: National law provisions expressly criminalising forced marriage

EU Member State	Specific crime of forced marriage?	Legal reference
AT	Yes	Criminal Code (<i>Strafgesetzbuch</i>): Section 106 (1) 3 StGB as amended in 2006
BE	Yes	Criminal Code, Article 391 <i>sexies</i> as amended by Law of 25 April 2007
BG	No	
CY	Yes	Criminal Law, Article 150 addresses forced marriage as a <i>misdemeanour</i> , a term used in common law to classify criminal offences which are less serious)
CZ	No	
DE	Yes	Criminal code (<i>Strafgesetzbuch</i>), Section 240 (4) as amended in 2005 and Section 237 StGB as amended in 2011
DK	Yes	Criminal Code (<i>Straffeloven</i>) Section 260, part 2 as amended in 2008
EE	No	
EL	No	
ES	No	
FI	No	
FR	No	Forcing a person to marry abroad is a crime under Article 222-14-4 of the Criminal Code introduced in 2013. In addition, Law No. 2010-769 of 9 July 2010 on violence against women introduced forced marriage as an aggravating circumstance of other crimes
HR	Yes	Criminal Code (<i>Kazneni zakon</i>), Article 169 which entered into force in 2013
HU	No	
IE	No	
IT	No	
LT	No	
LU	No/bill	The introduction of a crime of forced marriage is proposed by Article 389 of draft law No. 5908 filed on 28 July 2008, Luxembourg, <i>Projet de loi N. 5908 ayant pour objet de lutter contre les mariages et partenariats forcés ou de complaisance ainsi que de modifier et compléter certaines dispositions du Code civil, du Nouveau Code de procédure civile, du Code pénal</i>
LV	No	
MT	No/bill	The introduction of a crime of forced marriage is proposed by Article 251G of draft law 27 of 2013 – Criminal Code (Amendment No. 6) Act, 2013 published in the Government Gazette of Malta on 8 November 2013
NL	No	Forced marriage is punishable as coercion in Section 284 of the Criminal Code; in 2013 the maximum sentence was raised and other measures taken to facilitate prosecution (Sections 5 and 71 of the Criminal Code)
PL	No	
PT	No	
RO	No	
SE	No	
SI	No	
SK	No	
UK	Yes	The crime of forced marriage was introduced in June 2014 by Section 121 (England and Wales) and Section 122 (Scotland) of the Anti-social Behaviour, Crime and Policing Act 2014

Note: Other criminal offences which could also cover forced marriage, depending on the circumstances, such as sexual violence, marital rape, coercion or abduction for the purpose of marriage, are not included in this table.

Source: FRA, 2014

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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Forced marriage is marriage without consent. It is a form of domestic violence. It violates the right to freely decide whether, when and whom to marry. Most of the victims are women but it can be imposed on men, too. Children and those with learning disabilities are particularly vulnerable. With this paper the European Union Agency for Fundamental Rights (FRA) encourages European Union institutions to look at the issue of forced marriage in a comprehensive manner. It suggests that the EU should consider acceding to the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), given that the convention envisages this possibility.



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