International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

STUDY

2016
Abstract

The study was requested by the European Parliament’s Committee on Women’s Rights and Gender Equality and commissioned, overseen and published by the Policy Department for Citizen’s Rights and Constitutional Affairs. This Study analyses the socio-legal status of the Mail-Order Bride industry in the EU, in terms of regulation, protection of rights, and the consequences of Mail-Order Bride relationships for women, men and children involved. It focuses on the United Kingdom, Germany, the Netherlands and Ireland; defines the Mail-Order Bride (MOB) phenomenon. The report uses a combination of sociological and legal research methods including desk research, expert interviews and a mapping of International Marriage Broker (IMB) websites. It finds that it is difficult to distinguish between MOB and other groups of female marriage migrants. The report identifies three main legal gaps, namely the lack of regulation of IMB activities, the lack of a harmonized regime for family reunification, and the lack of harmonized protective measures for women in case of relationship break up. There is a need for additional prevention and protection measures, since female marriage migrants are considered particularly vulnerable to domestic violence.
ABOUT THE PUBLICATION

This research paper was requested by the European Parliament's Committee on Women's Rights and Gender Equality and commissioned, overseen and published by the Policy Department for Citizen's Rights and Constitutional Affairs.

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### CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIST OF ABBREVIATIONS</td>
<td>6</td>
</tr>
<tr>
<td>LIST OF TABLES</td>
<td>8</td>
</tr>
<tr>
<td>LIST OF FIGURES</td>
<td>8</td>
</tr>
<tr>
<td>EXECUTIVE SUMMARY</td>
<td>10</td>
</tr>
<tr>
<td>1. INTRODUCTION</td>
<td>13</td>
</tr>
<tr>
<td>1.1. Problem Statement, Research Questions, Objectives and Definitions</td>
<td>13</td>
</tr>
<tr>
<td>1.1.1. Objectives</td>
<td>14</td>
</tr>
<tr>
<td>1.1.2. Definitions</td>
<td>15</td>
</tr>
<tr>
<td>1.2. Context and Background Mail-Order Brides</td>
<td>16</td>
</tr>
<tr>
<td>1.3. Methodological Framework of the Study</td>
<td>20</td>
</tr>
<tr>
<td>1.4. Structure of the Study</td>
<td>22</td>
</tr>
<tr>
<td>2. MAPPING OF INTERNATIONAL MARRIAGE BROKERS’ WEBSITES</td>
<td>23</td>
</tr>
<tr>
<td>2.1. Origin Country Background Information</td>
<td>23</td>
</tr>
<tr>
<td>2.1.1. The Development of the MOB Industry in Russia</td>
<td>23</td>
</tr>
<tr>
<td>2.1.2. The Development of the MOB Industry in the Philippines</td>
<td>25</td>
</tr>
<tr>
<td>2.1.3. Concluding Remarks</td>
<td>28</td>
</tr>
<tr>
<td>2.2. Current Situation</td>
<td>28</td>
</tr>
<tr>
<td>2.2.1. General Overview Websites</td>
<td>29</td>
</tr>
<tr>
<td>2.2.2. Credit System versus Membership Upgrades</td>
<td>31</td>
</tr>
<tr>
<td>2.2.3. Services and Information Provided</td>
<td>32</td>
</tr>
<tr>
<td>2.2.4. LGBT</td>
<td>36</td>
</tr>
<tr>
<td>2.3. Rights and Obligations of International Marriage Brokers</td>
<td>36</td>
</tr>
<tr>
<td>2.4. Analysis of Hotspots of Trafficking through International Marriage Brokers</td>
<td>37</td>
</tr>
<tr>
<td>2.5. Concluding Observations</td>
<td>42</td>
</tr>
</tbody>
</table>
3. CURRENT LEGAL SITUATION

3.1. International and Council of Europe Frameworks
   3.1.1. UN Framework
   3.1.2. Council of Europe Framework
   3.1.3. Concluding Remarks

3.2. European Union Framework
   3.2.1. The ‘family’ under Eu Law
   3.2.2. Migration Aspects of the MOB Phenomenon: a Mosaic of National, EU free Movement and EU Migration Law.
   3.2.3. Protective Measures

3.3. Country Specific Frameworks
   3.3.1. Germany
   3.3.2. The Netherlands
   3.3.3. Ireland
   3.3.4. United Kingdom

4. ASSESSMENT OF CURRENT PROBLEMS AND LEGAL GAPS IN RESPECT TO THE MAIL-ORDER BRIDE INDUSTRY IN THE EU AND THE RESEARCHED MEMBER STATES

4.1. Gaps in Current Legal Frameworks
   4.1.1. Lack of Regulation of the Activities of IMBs
   4.1.2. Lack of a Harmonised Regime for Family Reunification
   4.1.3. Lack of Harmonised Protective Measures

4.2. Social Consequences and Possible Forms of Violence Resulting from Legal Gaps
   4.2.1. Women
   4.2.2. Bridegrooms
   4.2.3. Children

4.3. Concluding Observations

5. PROTECTION OF MAIL-ORDER BRIDES, THEIR SPOUSES, AND CHILDREN

5.1. Overall Outcomes of the Interviews
   5.1.1. Experts
   5.1.2. Representatives of the Marriage and Dating Industry
   5.1.3. Ksenia Droben
   5.1.4. Joseph O’Connor
   5.1.5. Personal Experiences
   5.1.6. Women
   5.1.7. Men
## LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
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<tr>
<td>CEDAW</td>
<td>Committee on the Elimination of Discrimination Against Woman</td>
</tr>
<tr>
<td>CESCR</td>
<td>Committee on Social and Cultural Rights</td>
</tr>
<tr>
<td>CFO</td>
<td>Commission for Filipinos Overseas</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organizations</td>
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<td>DEVAW</td>
<td>Declaration of the Elimination of Violence Against Woman</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights and Fundamental Freedoms</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>ENFiD</td>
<td>European Network Of Filipino Diaspora</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>FWO</td>
<td>Filipino Worker Overseas</td>
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<tr>
<td>GR</td>
<td>General Recommendation</td>
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<tr>
<td>GREVIO</td>
<td>Group of Experts on Action Against Violence Against Woman and Domestic Violence</td>
</tr>
<tr>
<td>HRC</td>
<td>Human Rights Committee</td>
</tr>
<tr>
<td>IAF</td>
<td>International Accreditation Forum</td>
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<tr>
<td>IND</td>
<td>Immigration and Naturalisation Department</td>
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<tr>
<td>ICCPR</td>
<td>Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>IMB</td>
<td>International Marriage Broker</td>
</tr>
<tr>
<td>IMBRA</td>
<td>International Marriage Broker Regulation Act</td>
</tr>
<tr>
<td>INIS</td>
<td>Irish Naturalisation and Immigration Services</td>
</tr>
<tr>
<td>LGBT</td>
<td>Lesbian, gay, bisexual or transgender</td>
</tr>
<tr>
<td>MEP</td>
<td>Member of the European Parliament</td>
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<tr>
<td>MOB</td>
<td>Mail-Order Bride</td>
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<tr>
<td>MOS</td>
<td>Mail-Order Sponsor</td>
</tr>
<tr>
<td>MoA</td>
<td>Memorandum of Agreement</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
</tr>
</tbody>
</table>
International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

MS  Member States
NGO  Non-governmental Organisation
OFW  Overseas Filipino Workers
TCN  Third Country National
TFEU Treaty on the Functioning of the European Union
TIP  Trafficking in Persons
UDHR Universal Declaration of Human Rights
UK  United Kingdom
UN  United Nations
US  United States
VAWA Violence Against Women Act of 1994
VIS  Visa Information System
LIST OF TABLES

Table 1:
Legal and Sociological Sub-Questions 13

Table 2:
Citizenship of non-EU trafficking victims between 2010 and 2012 39

Table 3:
Tier placements given by the US Trafficking in Persons Reports 2012 and 2016 40

Table 4:
List of Interviewed Experts 82

Table 5:
List of Interviewed Representatives of the Marriage and Dating Industry 85

LIST OF FIGURES

Figure 1:
Outcomes Mapping : Women Origin Countries Search Terms 29

Figure 2:
Outcomes Mapping: Most Frequent Visitors of MOB Websites per EU Country 30

Figure 3:
Outcomes Mapping: Address of IMB Offices as Found on their Websites 30

Figure 4:
Print Screen 1 - Specific Requirements for Women on IMB website filipinokisses.com 32

Figure 5:
Outcomes Mapping: IMBs Payment Methods 32

Figure 6:
Mapping Outcomes: IMBs Refunding Promise 33

Figure 7:
Mapping Outcomes: IMB Websites Mention Risks 34

Figure 8:
Print Screen 2 - Example of Scam Dating Websites, Swindlers and Scammers (dating-world.net) 34

Figure 9:
Mapping Outcomes: IMBs Mention to Comply with IMBRA 35

Figure 10:
Mapping Outcomes: IMBs Offer Migration Support 35
Figure 11:  
Mapping Outcomes: Possibility of Gender Selection on IMB Websites  

Figure 12:  
Print Screen 3 - Example of the Distribution of a Picture of a Ukrainian Woman Without Consent  

Figure 13:  
Trafficking Hotspots in Europe  

Figure 14:  
Graph Indicating the Contact Countries of the Mapped MOB Websites  

Figure 15:  
Print Screen 4 Ksenia Droben’s Call for Support of the Current Research Project
EXECUTIVE SUMMARY

Background

1. The purpose of this report is to better understand the socio-legal status of the Mail-Order Bride (MOB) industry in the European Union (EU), in terms of regulation, protection of rights, and the consequences of engaging in MOB relationships for the individuals involved. The contribution of this report to studies on the MOB industry is threefold. First, it updates existing knowledge on this topic, which is incomplete and often contradicting. Second, this research analyses the overall European context, looking particularly into cases of the UK, Germany, the Netherlands and Ireland. To this date studies mainly focussed on the US context. Third, the report provides a clear definition of the MOB phenomenon. For the purpose of this report, the MOB phenomenon is defined as follows: A man (the ‘Mail-Order Sponsor’) pays an international marriage agency — usually operating a website — to find a bride/wife across borders (the ‘Mail-Order Bride’), from a less developed country outside the EU. The intent is that she subsequently joins him in his country of residence (migration). The international marriage agency profits from bringing potential partners in contact with each other and facilitating the marriage.

2. A combination of sociological and legal research methods were used, including desk research, expert interviews (with authorities, academics, representatives of dating and marriage industry and NGOs) and a mapping of International Marriage Broker (IMB) websites. This research aimed to also include first-hand experiences from MOBs and MOSs. Due to time constraints, however, this was not possible and experiences were based on second-hand stories provided by the expert interviews.

3. Analysing the socioeconomic context of prominent origin countries of MOBs in Eastern Europe and Southeast Asia, leads to basic understanding of problems related to the MOB industry. However, concrete data is missing. Personal reasons why women would sign up for an IMB website seem not only to be based on economic but also on social reasons, such as the pressure to get married.

4. The mapping of the IMB websites results in several interesting outcomes. There is an imbalance in registration requirements between men and women, mainly serving as a trigger for the men to use additional services offers and to pay additional costs. These additional costs are often not transparent, which might lead to high costs for the male customers of the IMB websites, making them vulnerable to scamming practices. A rather unexpected finding is that, according to their websites, most of the IMB websites are registered in the EU. Additionally, only very few IMB websites target homosexuals in Russia and Ukraine, meaning that IMB services are almost exclusively offered to heterosexuals, excluding the LGBT community.

5. EU Member States (MS) already have commitments to protect women against gender based violence, as they are parties to international human rights treaties and the Council of Europe Convention on Human Rights and Fundamental Freedoms. Further, from the Women’s Convention and the two main Human Rights Covenants MS have legal obligations to confront stereotypes and general discrimination against women.

6. Whether there is a link between the entrapments of women in sex industries via the MOB industry, and human trafficking, is still insufficiently supported by data. In case
MOBs would find themselves trapped in an abusive relationship they could be considered as victims of servitude of slavery-like practices.

7. For all the country case studies, Germany, the Netherlands, Ireland and the UK, MOBs are not considered as a debatable policy topic, resulting that no specific legislation is in place for them. MOB need to follow the general rules of marriage migrants. Also, MOBs who experience domestic violence can independently apply for a residence permit.

8. No regulations, neither at national nor at the supranational level, specifically targeting the MOB industry could be identified. Three main legal gaps are found in this report, namely the lack of regulation of IMB activities, the lack of a harmonised regime for family reunification, and the lack of harmonised protective measures for women in case of relationship break up. Several risks could be defined for MOBs, MOSs and children growing up in MOB relationships. It is important to mention that not all individuals experience them to the same extent.

**High risks for MOBs:**

- Combination of the pre-defined legal gaps and additional risks related to a MOB relationship, such as language barriers, cultural difficulties, economic, and social dependency on the husband can possibly result in higher risk for MOBs to be trapped in a vicious circle of dependency, isolation, and violence that is difficult for the women to escape.

**High risks for MOSs:**

- Men in MOB relationships can become victims of internet fraud often due to scamming on IMB websites. Furthermore, men frequently underestimate the expected financial support to their wife’s family living abroad.

**High risks for children growing up in MOB relationships:**

- Children growing up in a MOB relationship can experience various risks, such as being abandoned, bullied and facing identity issues.

9. A recurrent comment from the interviewees is that the term “Mail-Order Bride” is outdated and related with negative stereotypes. In addition, this topic it should be defined very carefully taking into consideration the current situation and the implications of modern technologies, which complicate distinguishing between MOBs and other female marriage migrants from third countries. Furthermore, regulations other than prohibition of the IMB industry have been almost unanimously advised: most experts recommend prevention and protection measures. In general there seems to be a higher risk for female marriage migrants including MOBs to become victims of domestic violence. Interviewees stress the importance to inform the women about their rights and possible risks such a relationship might hold as well as to reduce the women’s dependency on the men.

10. Several best practices regulating IMBs have been identified, such as the US International Marriage Broker Regulation Act (IMBRA), the Commission of Filipinos Overseas’ orientation courses for marriage migrants, integration courses for migrants in destination countries, the organisation of networks and communities in the destination country, and the Love Abroad project offering information regarding marriage migration online.

11. Comparing the results of this research to earlier studies, risks and recommendations for the protection of MOBs largely remain the same. Considering technological
advancements and the rise of the internet, mobile phones and social media, it is ever more challenging to differentiate between MOBs and other female marriage migrants.

12. From the Council of Europe perspective, the Istanbul Convention is an extremely valuable framework to protect all women, including MOBs, from gender-based violence. However, it has not yet been ratified by all MS. Until this is not ratified by all MS it does not seem opportune to advice additional conventions to specifically target the protection of MOBs. Alternatively, an international conference to clarify and debate the current situation of MOBs in Europe, organised by the Council of Europe, would be more sensible.

13. The EU can regulate issues related to the MOBs’ migration status and legislation by developing a common immigration policy as well as for combating trafficking in persons. Furthermore, the EU needs to regulate IMB activities to protecting their consumers, both the MOSs and MOBs.
1. INTRODUCTION

1.1. Problem Statement, Research Questions, Objectives and Definitions

The Mail-Order Bride (MOB) phenomenon is often associated with various potential problems for individuals subscribing to international marriage broker (IMB) websites and engaging in MOB relationships. The possible problems are multifaceted and often related to human rights aspects. Despite the long history of the phenomenon, research on the status of the MOB industry in the European Union (EU) is limited, and its impact on the rights of women, men, and children involved is unclear.

Since it is assumed that a growing number of MOBs are arriving in the EU from third countries, this study aims to produce an overview of existing legislation and map the main problems. The main research question this report aims to answer is: What is the status of the MOB industry in the EU, in terms of regulation, protection of rights, and the consequences of MOB relationships for the individuals involved? Nine sub-questions, presented in Table 1, have been formulated to be able to answer the main research question in detail on a legal and sociological level.

Table 1: Legal and Sociological Sub-Questions

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<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1:</td>
<td>Which EU legal frameworks are currently available for the regulation of the Mail-Order Bride industry, in terms of protection of both the third country women and the EU bridegrooms? Area</td>
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<tr>
<td>2:</td>
<td>How is the available EU legal framework currently implemented in relation to the Mail-Order Bride industry, including sexual and digital trafficking?</td>
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<tr>
<td>3:</td>
<td>Which additional EU legislation should be developed in order to regulate the Mail-Order Bride industry, in terms of protection of both the third country women and the EU bridegrooms?</td>
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<td>4:</td>
<td>Are there national laws available which specifically focus on the regulation of the marriage agency industry? If so, are they effective?; and if not, would such legislation or regulation be needed?</td>
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<tr>
<td>5:</td>
<td>Are third country women particularly vulnerable to domestic violence and abuse due to their Mail-Order Bride relationship?</td>
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<tr>
<td>6:</td>
<td>Do women from third countries encounter problems regarding matters related to migration and family law (e.g. residence permit), in particular their legal rights and responsibilities in relation to their status as a Mail-Order Bride?</td>
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<td>7:</td>
<td>To what extent are both third country women and (male) EU citizens informed about the potential risks of a MOB relationship?</td>
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<tr>
<td>8:</td>
<td>Do third country women have access to social benefits and support schemes, and can they return to their countries of origin in case of a relationship break-up?</td>
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<tr>
<td>9:</td>
<td>Are there childcare and family support care issues that arise when a Mail-Order Bride relationship breaks up?</td>
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</table>
1.1.1. Objectives

The objectives of this report are divided into nine main objectives and twelve specific objectives listed below.

Main Objectives
1. To seek cooperation between sending and receiving States in order to gain insight into the dissemination of information in the countries of origin and map out the scope and extent of the problems of MOBs.
2. To assess the impact of the MOB business on the human rights of the women involved.
3. To investigate how best to protect MOBs against domestic violence and sexual exploitation.
4. To explore the susceptibility to abuse of the male EU citizens who engage in ordering a bride from a third country and to assess the percentage of men who are victims of MOB practices.
5. To examine the situation after divorce and how women and children can access welfare and support schemes.
6. To investigate the possibility towards developing regulations and monitoring mechanisms to control the international marriage broker business.
7. To ascertain the best way to exchange information on sex offenders among European law enforcement authorities and agencies.
8. To examine the adequacy of using existing international and European rules and regulations to offer protection to MOBs in the receiving States.
9. To explore the possibilities towards developing specific European rules and regulations that would strengthen the position of MOBs, both legally and economically.

Specific Objectives
1. To provide a workable definition of MOBs in order to make it possible to investigate the scope and extent of the problem and gain a clear idea of how countries of origin and receiving States could cooperate and exchange information to curb the influx of MOBs who come into the EU under false perceptions and expectations.
2. To draw up guidelines on how to disseminate information on MOBs in countries of origin in order to inform potential MOBs of the dangers involved and the difficulties that may be encountered in order to guarantee that these women can make an informed choice.
3. To draw up guidelines on how to disseminate information on MOBs in receiving states so that potential male customers are made aware of the intricacies of the MOB business and realize that the myths and stereotypes concerning women from third countries are not a reflection of reality.
4. To map out the possible consequences of the MOB business on the human rights of the MOBs with a focus on their rights to equality, non-discrimination, and physical integrity.
5. To analyse the legally and economically dependent position of MOBs due to immigration laws that deny these women independent residence permits and work permits.

6. To examine the situation of victims of domestic violence or sexual exploitation with a view towards assessing how rules and policies could be changed so that these victims are treated differently from other legal immigrants with the specific aim to provide them with access to safe houses, legal counselling, welfare, support, and the possibility to remain in the receiving state after divorce, particularly when children are involved.

7. To explore the situation of children who are born out of such relationships in order to guarantee that they are entitled to support and adequate housing after the marriage breaks up.

8. To investigate the possible cooperation with sending States with the aim of exploring the societal reintegration of divorced MOBs that wish to return to their country of origin.

9. To assess the impact and adequacy of the existing international and European rules and regulations, particularly the three most relevant EU Directives in order to ascertain possible gaps in legislation.

10. Based on the assessment of existing legislation, to explore the possibility towards developing new rules and regulations for the protection of MOB. To determine what kinds of legislation would offer the best solution and how this should be implemented in the EU Member States in order to have the desired impact.

11. As a total ban on the MOB business would inevitably be counterproductive and might result in underground operations that would make the women concerned even more vulnerable, to investigate the possibility of controlling the international marriage agencies by European criminal law rules and monitoring mechanisms that would also include regular check-ups and investigations of the websites of such agencies on which information about MOBs is made available.

12. In order to curb the possibility of known sex offenders to access MOBs, to create new ways to disseminate information on such offenders amongst European law enforcement authorities and agencies and to flag these names when they present themselves as potential customers for MOBs.

1.1.2. Definitions
For the purpose of this report, the MOB phenomenon is defined as follows: A man (the ‘Mail-Order Sponsor’) pays an international marriage agency — usually operating a website — to find a bride/wife across borders (the ‘Mail-Order Bride’), from a less developed country outside the EU. The intent is that she subsequently joins him in his country of residence (migration). The international marriage agency profits from bringing potential partners in contact with each other and facilitating the marriage.

In contrast to traditional dating websites, MOB websites have the stated purpose of facilitating marriage between spouses from different countries. This first implies that the desired outcome of signing up on a MOB website is marriage, whereas the desired outcome of signing up on a traditional dating website is more ambiguous, including various forms of
relationships. Second, MOB websites include an element of migration: the MOB leaves her country of origin to join the Mail-Order Sponsor (MOS). In contrast, dating websites often aim at matching individuals living relatively close to each other. Finally, the context of MOB websites is a fundamentally different one: IMBs capitalise on the inability of their male clients to find suitable partners in their own society, whereas many of the women sign up wishing to escape poverty and the lack of prospects in their home countries.

For the purpose of this study, this definition of the MOB phenomenon concretely means marriages between Western European men — particularly Irishmen, Britons, Germans, and Dutchmen — and female third country nationals (TCNs) from Russia, Ukraine, Thailand, or the Philippines who subsequently migrate to an EU Member State (MS).

There are also other forms of the MOB phenomenon, such as Western men paying an international agency for their services to find a bride from a Western country; Western women paying in order to find a bridegroom; and men and women requiring the agencies’ services in order to find same-sex spouses. Analysing these MOB phenomena in detail is beyond the scope of this study. However, as they cannot be ignored completely, LGBT (lesbian, gay, bisexual or transgender) has been included in the mapping exercise of this report and will be briefly discussed in Chapter 2.

1.2. Context and Background Mail-Order Brides

After having defined the purpose of this study, it is important to review the literature on the MOB phenomenon to arrive at a better understanding of its context and background. Today's MOBs are the consequence of a highly complex combination of demographic, political, cultural, technological, and economic shifts that have been taking place over the last decades.\(^1\) Notwithstanding, the MOB phenomenon can be traced back to the early 1600s in the United States (US) after the establishment of the British and French colonies.\(^2\) Migration to the US was highly commended by both countries as it was deemed necessary for successful colonial development. This led to the establishment of the first International Marriage Brokers (IMBs) in the 1700s and 1800s, helping European women to cross the ocean to the US, Australia, and New Zealand.\(^3\) Rather than being questioned for potential risks, international marriages were viewed as the ideal solution to reduce the gap in the marriage market.\(^4\) In some cases, women were even regarded as saviours since their sacrifice would restore the balance in America.\(^5\)

However, despite the historical pedigree of international marriages, a fear of exploitation and other forms of abuse has in recent times risen to the surface. Contributing significantly to the proliferation of cross-border relationships, the IMB industry is the reflection of a modern globalizing world.\(^6\) Mail order catalogues have long since been replaced by the Internet. As the emergence of new advanced technologies has led to a significant increase of international marriages, the topic has been repeatedly subject to new studies in various fields. One can argue that the IMB industry’s rapid evolvement and susceptibility to fraud,

\(^3\) Lawton & Callister, 'Mail-order brides: are we seeing this phenomenon in New Zealand?, "Missing Men" Background Paper', *Institute of Policy Studies*, 2011
\(^5\) Kelly, 2001
abuse, and various forms of exploitation raises a need to examine the contemporary policies and regulations upheld by national and supranational authorities.7

Another phenomenon contributing to the increasing demand of MOBs in Western countries is the liberation of women on the labour market, which was initiated during the upsurge of postmodern feminist movements.8 This emergence led to a new allocation of gender roles, enabling women to become less dependent on men. Such financial independence gradually elicited a decreasing urge for women to marry purely for survival.9 It is therefore not surprising that some scholars argue that the current demand for MOBs is based on the aversion of feminist women.10 Simultaneously, increasing divorce rates in the US and Western Europe — often paired with difficult experiences — have created great uncertainty for numerous men to date Western women, inducing these men to seek foreign spouses.11 IMBs fulfill this increasing demand of Western men by portraying the image of beautiful, exotic, and submissive women, coming from less-wealthy regions in Southeast Asia, Eastern Europe, Latin America, and Africa, who are willing to marry at a given price.12

Despite the numerous attempts to discard the designation “Mail-Order Bride” by scholars and academics, its use is still prevalent in contemporary society and is accompanied by a perceived negative connotation.13 From a feminist point of view, the term evokes the image of Western men purchasing women and thus reflects the basic gender inequality underlying the patriarchal system.14 Other authors reject the designation, not because of its disparaging connotation, but rather because of its inaccuracy.15 Although it is often argued that, indeed, many would-be MOBs have economic considerations, the phenomenon of mail-order marriage extends beyond the scope of merely limited economic prosperity in the bride’s origin country. Moreover, in many developing regions such as Eastern Europe, Southeast Asia, Africa, and Latin America, women perceive the socio-cultural norms and values in their country as outdated. The typical allocation of traditional gender roles in these regions often keeps women from pursuing their professional ambitions, indirectly compelling them to seek their career opportunities elsewhere.16

The issue of transnational marriages also reaches the political spectrum, posing new challenges to governments concerning the transparency of legislation and accountability of international perpetrators. For instance, some countries are more prone to criminal
activities, such as human trafficking, as their institutions allow for a higher degree of corruption. This form of legal neglect could directly or indirectly facilitate the illicit traffic of women through the mail-order industry. Such is the case in Russia, which has experienced a rising trend in organized crime and corruption since the fall of the Soviet Union.\(^\text{17}\) Although very little research has been conducted on the correlation between human trafficking and the MOB industry, some researchers have argued that the two are interlinked for two reasons: first, pressure tactics, such as bribery and extortion of government officials, lawyers, diplomats, and law enforcement, are often used by traffickers to transport women illegally for sexual exploitation.\(^\text{18}\) The most convenient manner to expedite this process is through the legitimate channels of the MOB industry. Second, a majority of the scholars agree that Russians for example are aware of the high degree of human trafficking for sexual exploitation in their country and that they perceive even the most general public services as corrupt.\(^\text{19}\) Such feelings of powerlessness could incentivize women to look for a better life across the borders of their homeland, as the lack of effective law enforcement continues to prevail.\(^\text{20}\)

In addition, the increasing use of modern technology has an influence on the MOB industry.\(^\text{21}\) The enhanced accessibility to new communication technologies and international travel has contributed significantly to the global phenomenon of MOBs.\(^\text{22}\) The process of globalisation goes hand in hand with increased transnational interactions in which women have gradually turned into hot commodities.\(^\text{23}\) Although sexual exploitation and other forms of sexual abuse already existed before the digital age, their geographical scope has significantly changed and expanded.\(^\text{24}\) Furthermore, the magnitude of sexual abuse does not only extend geographical borders, but it also involves more actors due to the higher technological independency.\(^\text{25}\) There is no question that technology has penetrated the physical boundaries of modern society and that, in doing so, it has permanently changed the contemporary perception of privacy.\(^\text{26}\) This emergence raises new questions concerning the legitimacy of the mail-order industry and the extent to which it can be controlled.

One of the main reasons why men choose MOBs is because of the women’s traditional family values and often more submissive nature.\(^\text{27}\) Studies revealed that many of these men have suffered traumatic experiences such as harsh divorces and breakups, increasing the likelihood of social alienation.\(^\text{28}\) The idea of a submissive MOB from an exotic country is therefore often perceived as reassuring. An alternative reason why men desire an international marriage is to increase the likelihood of being able to found a family. Generally, men looking for MOBs seem to experience a quantitative and qualitative

\(^\text{18}\) Venard, 2009
\(^\text{21}\) Belleau, 2003
\(^\text{22}\) Belleau, 2003
\(^\text{24}\) Sarker et al., 2013
\(^\text{25}\) Sarker et al., 2013
\(^\text{26}\) Sarker et al., 2013
mismatch on the marriage market; there are not enough partners with the desired physical, emotional, and intellectual attributes. IMBs and online dating sites adapt to such preferences for the “exotic” and subsequently play a discernible role in convincing men to select a particular broker agency.

Most common IMBs seem to supply mainly Philippine, Thai, Ukrainian, and Russian women as well as women from Latin America. Although very little literature has been written on nationalities and migration trends of MOBs to Europe, a majority of the popular websites clearly display women with the previously mentioned backgrounds. Based on stereotypes of cultural traditions as well as physical and behavioural characteristics, men are able to choose between a wide variety of broker agencies. For instance, Latin American women are perceived as sensual and outgoing, whereas Thai women are seen as slender, affectionate, and caring and Eastern-European women as strong, independent, as well as domestic. Women who subscribe on IMB websites often have an idealised picture of the West and romanticised ideas about Western men based on Hollywood movies. Due to economic circumstances in their home country, a substantial number of women are willing to marry abroad for a better future. Additionally, cultural pressures of marriage and gender imbalances in the country of origin are further incentives to subscribe to IMB services. For various reasons, many of these women seem to experience a lack of available and suitable men in their home country, amplifying their interest for a marriage outside their national borders. This is often the case in Latin America where the ideology of Machismo is still strongly embedded in the culture. The dominant behaviour of Latin men is widely interpreted as extremely prevalent, leaving women with a general feeling of powerlessness. This goes especially for highly educated women, whose hope it is to find a man that — unlike the men in their country of origin — allows them to further develop and educate themselves. Another reason women consider an international marriage is because family members in the country of origin are often economically reliant on them. MOBs thus consider the option of a better future for their family and potential children as a valid solution to the lack of social, cultural, and economic welfare. However, economic dependency increases socio-cultural pressures, often depriving women from their self-determination.

The combination of economic, legal, and cultural imbalances between future husbands and fiancées, along with stereotypical ideas and expectations on both sides, can create an unbalanced base for a marriage, often disadvantaging the women involved. However, the libertarian approach to IMB practices does not consider women to be exploited but rather to benefit from the services they provide, under the assumption that women are aware of both the consequences and advantages of such services. They are arguably willing to marry Western men taking certain risks and envisioning their advantages in the long-term.

29 Zug, 2012
30 Narayan, 1995; Sterckx et al., Huwelijksmigratie in Nederland: Achtergronden en leefgesituation van huwelijksmigranten, Sociaal en Cultureel Planbureau, Den Haag, 2014
31 Villapando, 2000
32 Sterckx et al., 2014
33 Chun, 1996
34 Chun, 1996; Merriman, 2012
35 Rushchenko, 2016
36 Sterckx et al., 2014
37 Rushchenko, 2016; Kelly, 2001
38 Rushchenko, 2016; Kelly, 2001
39 Rushchenko, 2016
According to this libertarian approach, these women are oppressed in their origin country and therefore move to a free country, where they can benefit from social security and economic prosperity giving their (future) children everything they never had.\(^{41}\)

In sum, the MOB phenomenon is by no means a new one. Globalisation, growing emancipation, and the rise of feminism *inter alia* contribute to the evolution of the modern IMB industry, facilitating the search for a suitable spouse across borders. The industry continues to exist as perceived benefits outweigh the risks of using IMB services and engaging in MOB relationships. Motivations to look for a spouse abroad are numerous and differ between men and women. International marriages are seen as a means to overcome possible social, economic, cultural, and political restrictions in the home country.

### 1.3. Methodological Framework of the Study

In order to answer the main research question and sub-questions, the methodological approach is divided into a legal and a sociological approach. Previous studies on the MOB industry approached this subject by analysing IMB websites as well as conducting literature reviews and interviews with experts, law enforcement officials, and NGOs.\(^{42}\) This study adopts a similar approach by combining legal and sociological methods, namely doing desk research, conducting interviews with experts (authorities, academics, NGOs, representatives of dating and marriage industry) as well as mapping IMB websites. Additionally, this research aimed to include personal experiences with the MOB industry by conducting interviews with MOBs and bridegrooms. Unfortunately it was not possible to conduct first-hand experience interviews with MOBs and MOSs due to time constraints and lack of trust to get people involved in interviews, therefore personal experiences of individuals involved with the MOB industry, including brides and bridegrooms, were learned about second-hand through the conducted expert interviews.

Documents reviewed as part of the desk research include legal and policy documents, existing academic articles, case studies, and newspaper articles. One should note, however, that the majority of the existing literature on the MOB industry focusses on the US context and that there is a lack of European studies. MOBs living in the US and the EU are expected to share similar experiences, consequences, and problems of being involved in the MOB industry since the legal and social environment of the US and EU member states can be characterised as similar.

Furthermore, relevant IMB websites are mapped to find out what services and information they provide and to whom. The mapping of IMB websites forms an important part of this report. Due to advances in modern technology including enhanced accessibility to new communication technologies, IMB websites are very accessible to the general public. Furthermore, borders between IMB websites, premium internet dating, traditional online dating, and social media are blurred. The following approach has been applied to narrow the mapping of IMB websites. The search has been limited to the results of the first ten pages of Google search results for the terms “Russian brides,” “Ukrainian brides,” “Thai brides,” and “Philippine brides” and the respective German and Dutch translations (German: “Russische Bräute,” “Ukrainische Bräute,” “Thailändische Bräute,” and “Philippinische Bräute”; Dutch: “Russische bruiden,” “Oekraïense bruiden,” “Thaise

\(^{41}\) Merriman, 2012

bruiden,” and “Filipijnse bruiden”). These keywords have been chosen deliberately based on the scope of this report and the applied definition of the MOB phenomenon. The search has been limited to “brides” as the stated purpose of signing up for an IMB website is marriage. Moreover, the search focused on brides from Russia, Ukraine, Thailand, and the Philippines as this report focusses on these MOB origin countries. The search covers the official languages of the UK, Ireland, Germany, and the Netherlands as prominent European destinations for MOBs. Annex 1 provides an overview of the identified MOB websites per keyword used.

As a second step, the most popular websites among visitors from EU Member States are identified with the website Alexa, which provides a tool to estimate traffic ranks based on the browsing behaviour of a sample of internet users “in Alexa’s global data panel over a rolling 3 month period,” which are updated on a daily basis. This is only possible if website metrics are certified. Otherwise, the ranks are estimated based on Alexa’s data panel including “traffic patterns across the web as a whole […] using data normalization to correct for biases.” It should be noted that the accuracy of the ranks decreases with lower traffic.

The third step of the mapping includes extracting detailed information from the identified websites, including the contact details of the IMB, the country of establishment, services provided, costs for services and membership fees, country of origin of the women, information on risks involved when engaging in a MOB relationship, conditions for men and women to sign up for the website, language and gender options, and whether or not the IMB complies with the US International Marriage Broker Regulation Act (IMBRA) of 2005. In some cases, it was necessary to register on the website to extract all the required information. For that purpose, fake male and female email accounts were used. The findings were compared where possible with the results of an in-depth report on the MOB industry produced for the Council of Europe in 2001 as well as with the 2003 project “Marriage Migration as Immigration Gate: The Situation of Female Marriage Migrants from Third Countries in the EU Member States” (acronym: HeiRat I) and the 2004 “Protection and Aid Measures for Female Marriage Migrants from Third Countries in the Member States of the European Union” project (acronym: HeiRat II).

Besides the detailed mapping of the MOB websites, several websites facilitating marriages for the LGBT community have been identified to find out if there is an industry for this. As results were very few and LGBT marriages are much more complicated in legal terms, these websites have not been analysed in detail.

To complement the desk research and mapping activities and to arrive at a better understanding of how the MOB industry and (non-)existing legislation impact women’s rights in the EU context, semi-structured interviews with experts, including representatives of authorities and NGOs as well as academics were conducted. Interview partners are those dealing with the MOB industry or closely related fields such as women’s rights, human rights, human trafficking, crime, Private International Law, migration, migration and development and migration policies in the EU and third countries. They were selected based on the desk research, the research team’s networks, and snowball sampling.

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44 Hughes, 2001
Moreover, this research aimed at interviewing individuals directly involved in the MOB industry like brides, bridegrooms and service providers who were interviewed to receive a more thorough understanding of their experiences, as well as problems and challenges related to being involved in the industry. A call for women and men who have experience in searching a partner via IMB websites was spread by Ksenia Droben, a German-Russian marriage broker supporting this research, via her websites and in closed social media groups for clients.

Twenty five expert interviews and two interviews with representatives of the dating and marriage industry have been conducted. Due to time limitations, most interviews were conducted remotely, using Skype or telephone. It is beyond the scope of this study to conduct an extensive qualitative study on women’s and men’s experiences with the MOB business.

This study contributes to studies on the MOB industry by a) updating existing knowledge and b) tailoring it to a European-specific context. The research activities analyse the overall European context, looking particularly into four case studies, namely the UK, Germany, the Netherlands and Ireland, where the legal and policy initiatives related to this topic will be mapped. The countries are chosen as they are among the most prominent European destinations for MOBs and based on their assumed high numbers of cases of human trafficking in relation to marriage, previous research on MOBs migrating to Europe, specific interest of the EP Members in this topic, and feasibility (language, proximity, and available networks). We base our choice of EU countries on an assumption because there is no data on how many MOBs actually live in each of the EU countries. It is beyond the scope of this report to look at all 28 Member States of the Union.

1.4. Structure of the Study

In Chapter 2, the outcomes of the mapping of the IMB websites are discussed. The current legal frameworks on a UN, Council of Europe, EU, and country-case level are reviewed in Chapter 3. Chapter 4 assesses the current problems MOB spouses encounter, gaps in the current legal frameworks, and the related social consequences for the spouses and children. The gaps and problems described in Chapter 4 will be used as input for Chapter 5 where the protection of MOB spouses and children is analysed and best practices are examined. Chapter 6 concludes the study by providing policy options and recommendations for the EU and other relevant authorities in addressing the protection of MOB spouses and children involved, with special attention to the role and potential input by the European Parliament in this context.

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2. MAPPING OF INTERNATIONAL MARRIAGE BROKER S’ WEBSITES

2.1. Origin Country Background Information

Before coming to the analysis of the IMB websites identified during the mapping process, it is important to provide some background information to better understand the development of the MOB industry. The following sections give a brief overview about demographic, economic, legal, and political aspects contributing to the development of the MOB industry in the CIS (Commonwealth of Independent States) region and Southeast Asia. Since developments in the respective regions are similar, the sections focus on Russia as an example for the CIS region and the Philippines for Southeast Asia. Another reason why the sections focus on these countries in particular is that information on other countries in the region (including Ukraine and Thailand) is scarce.

2.1.1. The Development of the MOB Industry in Russia

The exploitation of the Russian market by IMB agencies occurred comparatively late in 1992, but Russia then quickly developed to become one of the most predominant origin countries of MOBs globally. This rise can be attributed to the breakdown of the economy in the former states of the Soviet Union and the coincidental rise of the Internet in the same decade. Many Russian women faced challenging economic and social conditions as a consequence of the economic depression and perceived offers by IMBs as a unique opportunity to leave the country. In 2001, a study of the US MOB market found that approximately 500 marriage agency websites were advertising 62,000 women from Russia. In the same year, a study of the Council of Europe found that a total of 120,000 women from the former Soviet Union were being advertised as MOBs.

Regarding the structure of the Russian IMB industry, multiple reports point towards a significant involvement of criminal organisations in the market, as well as the use of MOB schemes to cover human trafficking and prostitution operations.

Demography and background of MOBs in Russia

An analysis of the average profile of Russian MOBs demonstrates that potential MOBs mostly live in urban or tourist areas where they have been exposed to Western culture.

47 Countries included in CIS are Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.
48 Chun, 1996, p. 1173
50 Clark, “Mail-order Brides: Exploited Dreams,” US Senate Committee on Foreign Relations, 2004
51 Hughes, 2001
Furthermore, IMBs appear to prefer Russian women that are Caucasian and, therefore, look more European.\textsuperscript{55} Although of significant contextual relevance, it is generally observed that the individual economic situation does not provide sufficient motivation for women to marry a foreigner.\textsuperscript{56} In this context, the common expectation in many Russian regions that women should marry at a young age has led older Russian women, for example university graduates aged 23 or older, to register with IMBs.\textsuperscript{57} Another contributing factor to the perceived attractiveness of IMBs for Russian women is the 3.3 million excess women aged 15-64 compared to the male demographic\textsuperscript{58} and the disproportionately large number of divorced and widowed women.\textsuperscript{59} When engaging in the search for a partner, Russian women as MOBs are observed to be selective and not "desperate," while willing to make compromises in terms of their own selection criteria (usually this means accepting a large age difference).\textsuperscript{60} Russian women often believe that Western men will be in principle less drunk and/or abusive, but more faithful and respectful compared to Russian men.\textsuperscript{61}

**Legislation and policies**

Section 39 of the Foreign Policy Concept of the Federation of Russia indirectly provides for the only official guideline of the government regarding MOBs: 'As a country committed to universal democratic values, including human rights and freedoms, Russia views its objectives as:

"[...] protecting rights and legitimate interests of compatriots living abroad on the basis of international law and treaties concluded by the Russian Federation [...]." \textsuperscript{62} Aside from this over-inclusive policy guidance, Russia has until now refrained from regulating the national IMB industry.\textsuperscript{63} Instead, Russia has committed itself to engaging in public awareness campaigns in general and cooperates with NGOs active in the field.\textsuperscript{64} While there is no official reason stated by the Russian government, scholars have linked the lack of legislation in the field to a prevalence of domestic abuse, limited support for female victims, and ineffective law enforcement in Russia.\textsuperscript{65}

**Impact and enforcement**

Russia’s policy to choose a non-regulatory approach to the MOB industry may be the most promising solution in a comparative analysis with the policies of other countries.\textsuperscript{66} Since MOBs are not the result of a defect in laws, IMBs will persist to exist and circumvent regulations as long as the social situations are not addressed. Consequently, Russia's

\textsuperscript{54} Clark, 2004; Sims, "A Comparison of Laws in the Philippines, the U.S.A., Taiwan, and Belarus to Regulate the Mail-Order Bride Industry," *Akron Law Review*, 42(2), 2009, p. 606-638

\textsuperscript{55} Sims, 2009; Constable, 2003, p. 97, 224

\textsuperscript{56} Constable 2003, p. 84

\textsuperscript{57} Johnson, *Dreaming of a Mail-Order Husband*, Duke University Press, Durham, 2007, p. 8

\textsuperscript{58} The Russian Federation, *Census*, 2002; Lawton & Callister, 2011


\textsuperscript{60} Johnson 2007, p. 17; Lawton & Callister 2011, p. 12

\textsuperscript{61} Mobydeen, "Something old, something new, something borrowed, something mail-ordered? The mail-order industry and immigration law." *Wayne Law Review*, 4, 2004, p. 939


\textsuperscript{63} Morgan, 2007

\textsuperscript{64} US Department of State, *Trafficking in Persons Report*, 2003 , p. 128


\textsuperscript{66} Morgan, 2007
utilisation of NGOs is uniquely suited to confront the problems and risks faced by potential MOBs. This laudation of Russia’s non-regulatory approach ignores, however, the opportunity of legislative safeguards instead of full bans of MOBs. Furthermore, the persistent reports of criminal organisations being involved in the Russian IMB industry and its cover up of human trafficking activities contradict this.67

Comparison with regional countries

The neighbouring countries and former MS of the Soviet Union are equally associated with the MOB phenomenon.68 The development of the MOB industry to a large extent shares the same characteristic with Russia.69 Hughes found in 2004 that Ukraine (32,000 MOBs offered online) and Belarus (13,000 MOBs offered online) comprised the prevalent countries of origin in addition to Russia.70 A significant amount of MOBs from Kazakhstan (3,037), Kyrgyzstan (4,190), Latvia (1,760), and Uzbekistan (1,139) were also offered online.71 Similar to Russia, the study observed that recruitment by IMBs was not conducted uniformly across the mentioned countries but focused on urban and tourist area, where women have had more interaction with the Western culture.72 In recent media reports, the war in Ukraine was reported as having newly increased the amount of MOBs leaving the country.73 Most countries have followed Russia’s choice to not regulate IMBs in their country by means of legislation.74 Latvia, Estonia, and Lithuania are currently engaged in a research, training, and prevention project, funded by the EU, for the prevention of human trafficking and sham marriages.75 Belarus, however, chose to regulate the industry to some extent by primary and secondary legislation adopted in 2005, which requires all agencies that send Belarus citizens abroad for commercial purposes to be licensed by the Ministry of Internal Affairs.76 Although initially ignored by the domestic IMBs, the Belarus law enforcement agencies increasingly investigated and subsequently prosecuted commercial agencies for human trafficking.77

2.1.2. The Development of the MOB Industry in the Philippines

The rise of MOBs leaving the Philippines began in the 1970s with increased marriage migration to Japan78 and was already at that time embedded into an extensive migration culture of the country.79 Unlike in Russia, there is no single geopolitical event linked to the rise of the MOB industry in the Philippines.80 The generally unfavourable economic conditions, high unemployment, and frequent phases of political instability motivated a large number of Filipinas to seek employment and/or marriage abroad, also to support their families back home.81 Although official statistics only provide partial answers, scholars

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67 cf. Miller, 2000; Caldwell, 1997; Jackson, 2002; Richard, 1999, p. 27; Hughes, 2002, p. 25; Clark, 2004
68 Morgan, 2007; Chun, 1996
70 Ibid.
71 Ibid.
72 Ibid.
73 The Guardian, 2014; Ukraine Today, 2015
74 Hughes, 2004
75 European Commission, 2015
76 Sims, 2009, p. 628
77 Ibid., p. 629
78 Jackson, 2002
80 cf. Sims, 2009; Morgan, 2007
estimate the Philippines to be the largest exporter of MOBs worldwide. In 2002, the Philippines was amongst the countries with the highest number of marriage immigrants to the United States. The Commission for Filipinos Overseas (CFO) lists 436,854 Filipinas to have left the country as marriage migrants between 1989 and 2014. Since 2011, the annual amount of registered female marriage migrants has been stable between 20,000 and 22,000. These statistics are, however, not indicative for the number of MOBs since other types of marriages are also included. One CFO statistic suggests the annual percentage of foreign marriages in the Philippines that are connected with marriage bureaus to be 0.32 per cent of the total amount of marriages with foreigners. Since marriage bureaus are outlawed in the Philippines, it is questionable whether this statistic can be seen to be representative at all.

Demography and background of MOBs in the Philippines

It is observed that the Filipinas who choose to emigrate to developed nations in general and in particular advertise themselves to foreign spouses are usually motivated by economic incentives and the promise of a better life abroad. However, poverty and financial insecurity do not exclusively explain the popularity of the MOB phenomenon in the Philippines. The expectations that daughters will financially support their families in spite of a preferential treatment of males in terms of inheritance together with the social pressure to marry are observed as contributing factors in their decision to marry a foreigner. Furthermore, the success of the MOB industry in the Philippines also links to the country’s military occupation by the US from 1898 to 1946, resulting in widespread, temporary or permanent, partnerships between US military personnel and Filipinas. Foreign military bases and flourishing sex tourism continued to contribute to a national acceptance and positive perception of marriage to foreigners also after the gaining of independence. The 2014 migration statistics of Filipinas leaving the country to marry foreign men (n.b. these numbers are not limited to MOBs specifically) show that 55 per cent are between 20 and 29 years old. Thirty-one per cent are college graduates, 19 per cent have had vocational training, and another 19 per cent have a high school degree.

Legislation and policies in the Philippines

The governmental promotion of overseas migration for the purpose of mitigating the effects of unemployment and generating foreign exchange began in 1974 with the adoption of the Philippine Labour Code and the introduction of the Overseas Employment Program. The

83 Miller, Human Trafficking: Mail Order Bride Abuses Hearing Before the Subcommittee on East Asian and Pacific Affairs and the Senate Committee on Foreign Relations, 2004
84 Commission for Filipinos Overseas, 2016
85 Ibid.
86 Mobydeen, 2004; Miller, 2004
88 Ibid.
89 Lawton & Callister, 2011; Constable, 2003
91 Lee, 1998
92 Commission for Filipinos Overseas, 2016
93 Ibid.
MOB phenomenon, however, was rejected and labelled by President Corazon Aquino as “pernicious trade” and perceived as an “insult to national pride.” 95 The concerns of sexual and economical exploitation, also linked by scholars to a patriarchal culture in the Philippines which viewed the marriage of Filipinas with foreign spouses critically, lead to the ban of the MOB industry in 1990.97 Republic Act Number 6955 outlawed the solicitation, advertisement, and operation of marriage-matching Filipinas with foreign nationals for profit. The legal sanctions for violating the ban include six to eight years of imprisonment, a fine between eight to twenty thousand pesos, and deportation and ban from the country for any foreigner violating the law.98 The enactment of the Anti-Trafficking Act in 2003 further supplemented the 1990 ban by including the operation of MOB businesses as a human trafficking offence.100 Neither piece of legislation criminalizes the act of the woman who offers herself as a MOB, nor do they pay consideration to the consent of the latter when prosecuting IMBs.102 In today’s practice, Filipinas who wish to migrate for the purposes of marrying a foreign spouse are obliged to attend a country-specific guidance and counselling session concerning intermarriage and migration issues. Like Overseas Filipino Workers (OFW), they can only leave the country upon presentation of a certificate of attendance and a corresponding CFO sticker in their passport.103

Impact and enforcement

While the efforts of the Philippines government have been lauded, the impact and enforcement of the Republic Act Number 6955 have largely been viewed critically.104 Reports have described the outlaw of IMBs to be largely ineffective, as foreign-based agencies have undermined the national ban.105 Furthermore, it has been observed that the Filipino population has demonstrated reluctance to report MOB businesses to authorities.106 Regarding the mandatory CFO interviews, there remains a concern that interviewees may conceal information related to the character of their relationship to the foreign spouse. This applies in particular to the 75 per cent of female migrants who are already married at the time of the interview.107 To this end, the CFO reported that many women tend to forget the surnames, ages, and birthdays of their (future) husbands, which leads to the assumption that the relationship may so far have only been of superficial nature.108 In conclusion, it appears that although well-intended, the 1990 ban on IMBs has driven the industry into the difficult to monitor dark figures, instead of effectively combating the phenomenon.109

95 Zug, 2012, p. 174
96 Zug, 2012, p. 174
97 Sims, 2009
98 § 2-5 Republic Act No. 6955
99 Republic Act No. 9208
102 § 17 Republic Act No. 9208
103 Commission of Filipinos Overseas, 2013
106 Perez, 2003
107 Paredes-Maceda, “Filipino Women and Intermarriages,” Asian Migrant, 8(4), 1995, p. 110
108 Ibid.
Comparison with regional countries

In the east of Asia, migration flows of MOBs have been found to exist in Cambodia, China, Japan, Korea, Laos, Malaysia, Singapore, Taiwan, Thailand, and Vietnam. In none of these countries have the numbers of MOBs reached the scale of the Philippines. Japan, Korea, Singapore, China, and Malaysia are predominantly receiving countries or countries with domestically operating MOB businesses, where women from poorer regions within the country are linked to men located in other provinces. China regulated the trade of Chinese MOBs by virtue of Article 3 of the Chinese Marriage Law, prohibiting any marriage arranged by a third party. Cambodia instituted several bans over the past decades, sometimes focusing specifically on marriages with older foreign men or Korean men. Most recently, the government adopted a ban on all foreign marriages in 2008. Similarly, Vietnam issued a decree invalidating marriages mediated by commercial matchmaking agencies in 2003. Finally, a very interesting approach is observed in the bilateral cooperation between South Korea, a main recipient country of MOBs, and the Philippines. The countries have signed a separate memorandum of understanding (MoU). The MoU covers the better information provision for newly arriving migrants, including possible MOBs, and different programs for policy dialogue as well as welfare and protection projects to be key aspects of the bilateral partnership.

2.1.3. Concluding Remarks

In summary, the Russian MOB industry emerged relatively late compared to the Filipino industry which has its origins in the 1970s. In both countries, the MOB industry is associated problematic outcomes, however, concrete data on the MOBs with Russian or Filipino origin is not available. Similarly, concrete numbers are lacking for those MOBs who have been trafficked or abused. In both origin countries, reasons for signing up for IMB services are not only economic but furthermore include the social pressure to get married. While in the Philippines the MOB industry has been prohibited since 1990 and female marriage migrants are obliged to follow a seminar before leaving the country, there are no such regulations in Russia despite awareness raising campaigns. Both approaches have been criticised for not addressing the issue sufficiently. Both Russia and the Philippines are exemplary cases for the status of the MOB industry in the respective regions and neighbouring countries, where the situations are rather similar.

2.2. Current Situation

Using the methodology described earlier, 58 IMB websites have been mapped based on certain search terms and limited to the first ten results pages of Google. It is by no means possible to estimate the exact number of IMBs operating worldwide based on this mapping. It is safe to assume, however, that the websites included in our mapping represent the most important ones visited by Europeans in general, specifically Germans, Dutchmen, Irishmen and UK citizens. This chapter provides an overview of the most important results of the mapping.

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110 Mobydeen, 2004; Morgan, 2007; Kim, 2010
111 Kuah, Chinese Women and the Cyberspace, Amsterdam University Press, Amsterdam, 2008, p. 241
112 Zug, 2012, p. 174
113 Ibid, p. 174-175
115 MOGED & Commission for Filipinos Overseas, 2012
2.2.1. General Overview Websites

A majority of the websites identified during the mapping offer women from various origin countries. Figure 1 presents the share of websites identified per search term, resulting in Russian, Ukrainian, Philippine, Thai, or combinations of origin countries. The largest groups of women are the Russian/Ukrainian (N=28, 48.28%) and Russian (N=14, 24.14%) women covering more than 70 per cent of the mapped websites, followed by Thai (N=6, 10.34%) and Philippine (N=4, 6.90%) women. In addition, only one website was found for each of the following three combinations: Thai/Philippine, Russian/Philippine/Thai, and Russian/Ukrainian/Thai.

Figure 1: Outcomes Mapping: Women Origin Countries Search Terms

As discussed in the methodology section, based on the information provided from the Alexa webpage, it is possible to trace from which EU country the IMB website is visited most frequently. Figure 2 shows that the websites considered are visited most frequently from Germany and the UK (both N=20; 34.48% each), followed by other EU countries such as Italy, the Netherlands and Spain (N=18; 31.04%).

Source: Panteia
To check where IMBs are established, the contact details of the websites were mapped. More than half of the cases in which the contact details were provided on the website have their headquarters within the EU, such as the UK and Germany (53.45%; see figure 3). Almost one third of the websites are located outside the EU mostly in countries such as Australia, the Seychelles, and Russia (31.03%). For 15.52 per cent of the websites, no information on a location was found on the websites. These sites mostly worked with an online chat service or a direct e-mail correspondence system. During the mapping, it was observed that three businesses located in London, UK (27.59%), Gold Coast, Australia (6.90%), and Berlin, Germany (5.17%) operated multiple IMB websites.
2.2.2. Credit System versus Membership Upgrades

For men, the threshold to enter IMB websites is mostly very low. Most of the websites considered (77.59%) offer free registration whereby the men only need to provide basic information such as their name, e-mail address, age, country, and city of residence. It is important to mention that for women this registration process can be just as easy, but it can often include more questions and the obligation to provide a valid phone number. In some cases (see Print Screen 1), the website obliges only the women to provide a scan of their passport or identification card, a webcam picture, and a picture of the woman holding her handwritten e-mail address, while none of these requirements were asked of the men. The remaining 22.41 per cent of the mapped IMB websites require a fee to sign up, ranging from €29 to €850, or mention that costs are defined on a case-by-case basis. The majority of the websites use the free sign up as a trigger to receive more money from subscribers who receive numerous messages and so-called "smiles" or "kisses" from available ladies in a short period of time. Responding to the ladies requires either a higher membership level (40%; ranging from $9.99 - $39.99/month for a basic upgrade) or the purchase of credits (39.66%). The purchase of credits as such is mostly transparent. However, the use of credits and costs for services are often complicated which is why these systems are perceived as not transparent.
2.2.3. Services and Information Provided

The main service provided on the mapped IMB websites is correspondence between the men and the women on the websites via e-mail, chat, telephone, or Skype calls (often with an interpreter). However, some websites offer the possibility to purchase flowers or gifts for the women, including pictures of the delivery of the gift at the ladies’ place. Less frequent...
but also offered are background checks, dates, holidays and immigration advice. From the services provided, 51.72 per cent of the websites claim to refund the money in case the client is not satisfied. This refund policy often entails many limitations though and is not very transparent.

**Figure 6: Mapping Outcomes: IMBs Refunding Promise**

![IMBs Refunding Promise](image)

**Source:** Panteia

Most IMB websites provide information on the risks that are involved in using IMB websites or online dating. These risks mainly focus on online risks, such as scamming, and not on the actual relationship difficulties. When the websites provide information about possible risks involved in online dating, this prevention information is mostly tailored only to men (51.72%) considering scamming risks. One should note, however, that in some cases, information on risks for women is provided on separate websites in the women’s native language. Some websites also offer a “trust rate” for the available women, which is a special calculation of the woman’s trustworthiness from the IMB based on several characteristics of the woman. However, these characteristics are not known due to privacy reasons. One noteworthy example of protecting men and women from scammers comes from Dating World (see Print Screen 2). On this website, several websites as well as men and women are described in detail to inform their visitors of these risks.

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116 The term scamming is used frequently in the context Internet fraud and can be defined as the non-delivery of merchandise (Federal Bureau of Investigation, n.d.). In the context of MOB websites, scamming often refers to men sending money to women to finance their trip to the men’s home countries, but the women never arrive.
Furthermore, as another means of protection, the IMBRA was implemented in 2005 to prevent risks related to marriages arranged by IMBs. From the mapped websites, 43.10 percent claim to comply with this regulation. In many cases, the compliance with the IMBRA law is explained in detail on the website. It is important to stress that this study focusses on IMB websites most frequently visited by European customers, which might have influenced this outcome. Furthermore, another interesting observation is that IMBs often provide legal information on their news or FAQ pages. The latest news update in this regard, which appeared on numerous websites, is that the EU has offered visa liberalization for Ukraine since April 26, 2016. Only 24.14% of the IMB websites were observed to actively offer migration support to enable the migration process of the MOB to the country.
of her future husband. The most observed offered migration support on the IMB websites was legal assistance with support of a lawyer with expertise in family reunification.

**Figure 9:** Mapping Outcomes: IMBs Mention to Comply with IMBRA

![IMBs Mention to Comply with IMBRA](source: Panteia)

**Figure 10:** Mapping Outcomes: IMBs Offer Migration Support

![IMBs Offer Migration Support](source: Panteia)
2.2.4. LGBT

The mapping of lesbian, gay, bisexual or transgender MOB websites led to almost no results. The majority of the websites can be categorized as casual dating websites instead of IMBs. Nonetheless, a few real IMBs have been found for Ukrainian and Russian gay men, such as Golden Boys and Gay Fiancés. It seems they operate more traditionally with offices located in Ukraine and the organization of romance tours. The option for “ladyboys” to search for a partner via regular MOB websites is sometimes offered as well (8.62%, N=5).

![Figure 11: Mapping Outcomes: Possibility of Gender Selection on IMB Websites](image)

2.3. Rights and Obligations of International Marriage Brokers

IMBs who have settled in the EU have rights and obligations as set out in the legislation of the relevant EU MS on whose territory they have registered, including relevant EU law. For such agencies, it might be possible to devise legislation to regulate their behaviour for the protection of the MOBs and MOSs similar to the 2005 IMBRA adopted by the US.

It is far more difficult to impose obligations on IMBs that have been established outside of the EU. Private businesses which have settled outside of the EU are legal subjects in the state in which they have registered, but they are not considered subjects of international law. This means that, under international law, such a company will not have rights or obligations, which makes it difficult to protect women from possible harmful practices of such agencies that operate in EU territory by way of Internet sites. There is some scope, however, for the extraterritorial application of legislation leveraging the fact that IMB activities are contingent on successful migration of the MOB to the country of residence of the MOS.

Three questions are important in this regard: 1) To what extent is it possible to ban the websites of IMBs that do not conform to the principles of equality and non-discrimination that have been acknowledged under EU law or that implicitly condone gender-based violence (for instance, by not checking or caring that some of their male clients may be known sex-offenders who have harmed women in the past)? 2) Are such agencies willing to voluntarily bind themselves to guidelines which have been created to protect MOBs? 3)  

How can (mostly) female IMB customers be protected from digital trafficking of explicit pictures or videos after the contract with the IMB has ended?

This also begs the question whether European MS have the obligation to monitor the ways in which IMBs conduct their businesses or whether IMBs can be obliged to monitor the result of the relationships that have been made possible because of their intermediary actions. It may be expected from _bona fide_ IMBs that they have a follow-up procedure and can produce data regarding the success rate of relationships that became possible because of their mediation. Other questions to consider include: Do IMBs offer any support to female clients who are victims of abuse and therefore want to terminate their marriage? What do they do about male clients who have abused their partners? Are these men banned from future services and are they put on a blacklist that is also available to other IMBs?

### 2.4. Analysis of Hotspots of Trafficking through International Marriage Brokers

Since the woman usually migrates to the man’s country, IMBs often offer services to support this migration.\(^ {118} \) The services offered by MOB agencies usually come at a high cost for the men. This might allow the men to feel as though they have “purchased” their wives and that they have an entitlement to and domination over them.\(^ {119} \) Further, the marketing offered by MOB agencies in many cases commodifies these women and shapes them as being obedient to their future husbands. The projected image of these women might lead to an imbalance of power that is created through the MOB relationship. Rather than positioning them as wives or spouses, MOB agencies project these women as servants or domestic workers.\(^ {120} \)

Women might be “sold as commodities in transactions that are legitimized through the recognition of the legal binding of marriage [...]. However, the [MOB] industry [can be seen as] a unique form of exploitation because it attempts to legitimize human trafficking through the respectable guise of marriage”.\(^ {121} \) In a worst case scenario, trafficking can also be a consequence of trying to engage in a MOB relationship. Women might arrive to Europe under false pretences and might be deceived when the MOSs present themselves inaccurately, lying about their housing or financial situation.\(^ {122} \) There are even cases in which men are guaranteed a trial period by the IMB, in which the man is able to return or switch out the MOB for any reason (German: _Umtauschrecht_). The woman, on the other hand, is obligated to accept the man.\(^ {123} \) If the potential couples never get married, women might become stuck in Europe with huge debts for signing up to the IMB, making them even more vulnerable.\(^ {124} \) Since the MOB industry is hardly regulated, IMBs are arguably able to provide a good cover for trafficking operations.\(^ {125} \)

Arriving in the destination countries, women might not only be vulnerable due to their MOB status but also because of their variable immigration status, isolation due to the language

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\(^ {118} \) Sims, 2009; Burner, 2014

\(^ {119} \) Stepnitz, 2009

\(^ {120} \) Jackson, 2007;

\(^ {121} \) Sico, “In the Name of ‘Love’: Mail Order Brides-The Dangerous Legitimization of Sex, Human and Labor Trafficking,” Public Interest Law Reporter, 18(3), 2013, p. 199-206

\(^ {122} \) Interview with Rohlee de Guzman, 2016


\(^ {124} \) Interviews with Lea Ackermann, Aleksandra Jolkina, Melita Maria-Thomeczek, 2016

\(^ {125} \) Interview with Kenneth Franzblau, 2016
barrier, and low earning power that results from difficulty in finding a job.\textsuperscript{126} Still, it is critical to note that not all MOBs are necessarily victims of trafficking. In a recent interview conducted for the present project, Rohlee de Guzman (2016) suggests that the MOB industry is a grey area and may be characterized as a lessened form of trafficking. Yuliya Zabyelina (2016) similarly argues that the line between human trafficking and the MOB industry is blurred, but that one should not conflate the two.

In addition, more and more recent research finds a link between IMBs and the trafficking of women in conjunction with organised crimes, such as sexual exploitation, sex trafficking, prostitution, and involuntary servitude.\textsuperscript{127} IMBs might also be linked to cyber trafficking, which involves the distribution of pictures and videos from the MOB to clients, even after the contract between the women and the IMBs has ended. During the mapping, the case of a woman whose picture was still used without her consent has been identified (see Print Screen 3). The provision of this sensitive information and these images can put women in a vulnerable position where they can easily be exploited.\textsuperscript{128}

\textbf{Figure 12: Print Screen 3 - Example of the Distribution of a Picture of a Ukrainian Woman Without Consent}

According to the European Commission’s 2016 Report on the Progress Made in the Fight Against Trafficking in Human Beings, there were 30,146 registered trafficking victims between 2010 and 2012 and 15,846 registered trafficking victims between 2013 and 2014. Of these, the majority were women registered in the sex industry and victims of other types of exploitation, such as forced marriages and domestic servitude.\textsuperscript{129} Due to their status, MOBs might be vulnerable to domestic trafficking, forced marriages, and sexual

\textsuperscript{126} Jackson, 2007  
\textsuperscript{127} Stepnitz, 2009; Hughes, 2001  
\textsuperscript{128} Ibid.  
exploitation specifically. For this reason, the connection between trafficking and MOB agencies is explored here. Cases of marriages that covered human trafficking have been specifically identified in Germany and Norway, among other countries.130

**Table 2: Citizenship of non-EU trafficking victims between 2010 and 2012**

| Country of Origin | BE | BG | CZ | DK | DE | EE | EL | ES | FR | HR | IT | CY | LV | LT | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UK |
|-------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| Russia            | 7  |    |    |    | 23 |    |    | 26 | 105 | 40 |    |    | 10 |    | 7  |    |    |    | 7  |    |    |    | 7  |    | 0  |    | 0  |    |
| Ukraine           |    |    |    | 33 |    | 11 |    |    |    |    | 7  |    |    | 6  |    |    |    | 15 |    | 11 | 35 | 5  |    |    | 50 |    |    |    |
| Philippines       |    |    |    |    | 22 |    |    |    |    |    |    | 7  |    |    |    |    |    |    |    |    |    |    |    | 5  | 37 |    |    |    |
| Total             | 7  | 0  | 23 | 24 | 0  | 0  | 29 | 5  | 7  | 7  | 26 | 17 |    | 7  |    |    | 7  | 7  | 15 |    | 11 | 35 | 5  | 50 | 5  | 37 | 20 | 20 | 26 |

*Source:* Eurostat, 2015

Table 2 was adapted from data in the 2015 Eurostat Trafficking in Human Beings Report, focusing specifically on the countries of interest in this study: Russia, Ukraine, Philippines, and Thailand.131 The report provided information from EU countries about the citizenship and registration country of both EU and non-EU trafficking victims and traffickers between the years 2010 and 2012. This specific table shows the number of victims registered by EU country based on the four countries of origin investigated in this study. Based on the total number of non-EU trafficking victims registered in these countries, Poland, Spain, and the UK can be considered trafficking hotspots for the purpose of this comparison. While these numbers would not affect the ranking of the trafficking hotspots, it is important to note that the category “1-4 victims” could not be included in the total sum because the exact values were not provided by the 2015 Eurostat report. Based on the extracted data, the top trafficking hotspot for Russian victims is Spain, for Ukrainian victims is Poland, and for victims from the Philippines and Thailand is the United Kingdom (Figure 5).

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130 Jackson, 2007
131 Most frequently victims of trafficking come from Nigeria, Brazil and China. The numbers of victims from those countries exceed the numbers of Russian, Ukrainian, Filipino and Thai victims by far (Eurostat, 2015).
Figure 13: Trafficking Hotspots in Europe

Source: Generated via ArcGIS

Based on the US Trafficking in Persons (TIP) Reports for the years 2012 and 2016, the tier placements for each of the considered countries are as follows:

Table 3: Tier placements given by the US Trafficking in Persons Reports 2012 and 2016

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<td>Russia</td>
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<td>3</td>
<td>Spain</td>
<td>1</td>
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<tr>
<td>Ukraine</td>
<td>2</td>
<td>2 Watch List</td>
<td>Poland</td>
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<tr>
<td>Philippines</td>
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<td>UK</td>
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<td>Thailand</td>
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The 2012 tier placement for each country corresponds to the time period of the data provided in Table 2, but especially for origin countries, the tier placements changed between 2012 and 2016. This suggests that it is possible that the data in Table 2 will have fluctuated between 2012 and 2016. The 2016 US TIP Report provides a brief overview on the placement of each country: While the government of the Philippines currently meets the standards for the elimination of trafficking, it is still a major source country for
trafficking victims. On the other hand, Thailand, Ukraine, and Russia are considered source, destination, and transit countries of trafficking victims. As of 2016, Thailand and Ukraine are not fully compliant with the standards to eliminate trafficking despite efforts to do so and Russia is not at all compliant with minimum standards. Based on the same report, Spain, Poland, and the UK are all compliant with the minimum standards required for the elimination of trafficking and are each categorized as being source, transit, and destination countries for women subjected to labour and sex trafficking.132

As literature is missing on the connection between different forms of human trafficking and mail-order marriages, the comparison was approached by more closely investigating the potential link between the location of trafficking hotspots and the locations of IMBs. When examining the locations of IMBs based on a mapping of the MOB websites, there are various agencies worldwide based on the addresses listed. Yet, in Europe, the majority of the IMBs are located in Germany and the United Kingdom. Of the 58 websites mapped, 29.3 per cent are located in the United Kingdom, 19 per cent are located in Germany, and 6.9 per cent are located outside the EU, namely in Australia. Nine of the websites (15.5%) have no locations listed at all. The rest of the websites are located in countries inside and outside of the EU.

Figure 14: Graph Indicating the Contact Countries of the Mapped MOB Websites

When analysing both data sets together, there is especially an overlap with the UK. The UK could be considered a trafficking hotspot for the Philippines and Thailand based on the numbers of registered trafficking victims, and it also has a high numbers of MOB agencies located within its borders. At least within the UK, there seems to be a correlation between the location of IMBs and the number of trafficking victims. On the other hand, this pattern does not necessarily hold for Poland and Spain, which can be considered trafficking hotspots for victims from Ukraine and Russia, respectively, yet do not appear to have the same prevalence of MOB agencies. The trafficking hotspots — Spain, Poland, and the UK — are transit countries for migrants, something which might predispose them to being trafficking hotspots, yet it can be seen that this does not necessarily correspond to having high numbers of IMBs. In addition, Germany, which has a high prevalence of MOB

agencies, does not appear to be a trafficking hotspot for victims from Ukraine, Russia, Thailand, or the Philippines. At the same time, when considering other origin countries outside of these four, Germany still has a relatively high amount of trafficking victims.\(^{133}\)

However, despite the possible connections that are seen here, it is important to recognize the limitations of this comparison before making any assumptions and coming to concrete conclusions regarding the relationships between trafficking and MOB marriages. The mapping considers the top 58 MOB websites, yet it does not include websites that are present on the dark web. It also only identified IMBs using English, Dutch, and German language as these were the case studies. The number of IMBs found and the overlaps seen with the trafficking hotspots would likely be different had IMBs in Polish or Spanish language also been considered. Further, it is not known whether the number of trafficking victims reported in the 2015 Eurostat report also include MOBs and the ways in which they got trafficked, for example, domestic trafficking, forced marriage, and sexual exploitation. It is also difficult to determine the exact routes that these victims took before and after being registered as trafficking victims within the Schengen zone. The registration numbers of trafficking victims in each country is also likely highly dependent on the legislation and regulations in place in these countries as well as how effectively they are followed, something which might skew the country’s position as a “trafficking hotspot.”

### 2.5. Concluding Observations

In conclusion, the limited mapping of 58 websites is assumed to provide a respectable overview of MOB websites visited most frequently by European MOSs, but it does not provide a complete picture. A majority of websites have their headquarters in the EU and advertise women of various origins. In most cases, registration for men is relatively easy compared to the registration of women, representing a significant asymmetry. The easy and oftentimes free registration for male customers serves as a trigger to pay higher costs for services provided by the agency such as correspondence and sending gifts. Some agencies also offer organising dates and romance tours as well as support regarding the migration process of the MOB. Further, a majority of websites apply a refund policy if the MOS is not satisfied with the services. Both costs for services and conditions for refunding are in many cases non-transparent. Information on possible risks of signing up for IMB services mostly includes scamming and targets the male customer. In addition, it is noteworthy that services are almost exclusively offered to heterosexual couples. Rights and obligations of IMBs depend on the country in which the agency’s headquarters are registered and raise many questions. Furthermore, one can establish a link between the MOB industry and human trafficking but should not conflate the two. This study shows that there is a particular overlap between the number of MOB agencies registered and the official numbers of Thai female victims of human trafficking in the UK.

\(^{133}\) Eurostat, *Trafficking in humans beings Report*, 2015
3. CURRENT LEGAL SITUATION

3.1. International and Council of Europe Frameworks

The MS of the EU have already taken several obligations upon themselves to protect women against gender-based violence, such as domestic violence and trafficking for the purpose of sexual exploitation, by becoming parties to international (human rights) treaties and treaties under the Council of Europe. These have to be taken into account when considering any new EU legislation or policy regulations to protect MOBs. In this section, only treaties that have been ratified by MS of the EU will be discussed. If one or more of the MS is not party to a specific treaty, this will be explicitly mentioned.

3.1.1. UN Framework

There are some general and some specific international treaties which offer protection to all women who enter EU territory.

**International Human Rights treaties**

General instruments include the International Bill of Human Rights. The Bill consists of the Universal Declaration of Human Rights (UDHR), the Covenant on Economic, Social and Cultural Rights (ICESCR), and the Covenant on Civil and Political Rights (ICCPR). Although the UDHR has no binding force, it serves as an important guideline that lays the foundation for the international human rights treaties. The UDHR is based on the ideas that men and women are equal and that discrimination based on sex is not allowed. However, protection against gender-based violence was not an issue that was considered at the time that the Declaration was adopted.

In a similar vein, that the two main Human Rights Covenants offer protection in a very general sense because of the contents of Common Article 3 stipulating that men and women are equally entitled to the enjoyment of the rights contained in the respective treaties, but they lack a specific provision entitling women to protection in case of gender-based violence.

**Protection against abuse, especially domestic violence**

The Convention on the Elimination of All Forms of Discrimination Against Women (Women’s Convention) goes a step further, however. It explicitly protects women against trafficking and forced prostitution in article 6, and through the interpretative work of its monitoring body the Committee on the Elimination of Discrimination Against Women (CEDAW), the

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137 Universal Declaration of Human Rights, article 2.
138 Article 3 ICCPR and ICESCR reads: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of 1) all civil and political rights 2) all economic, social and cultural rights set forth in the present Covenant.
140 Article 6 reads: 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'.
Convention has also gained relevance in other cases of violence against women. In the course of its existence, CEDAW gradually became more and more engaged with issues of violence against women. The first step that was taken to explain to the States Parties their obligation to offer more protection to victims was the adoption of General Recommendation (GR) No. 12. This rather short and vague GR was succeeded by the seminal GR No. 19 on Violence Against Women. This recommendation links the issue of gender-based violence to the rights of equality and non-discrimination by claiming that violence against women is a serious form of discrimination against women as defined in article 1 of the Convention. Although strictly speaking GR No. 19 is not legally binding, it has a huge impact on States parties, and thus on the EU MS, because it obliges them to report on the issue of violence against women under article 1 of the Convention. This entails that, on a regular basis, the national legislation and policies have to be assessed and possibly adapted in order to guarantee compliance with the obligations under the Women’s Convention. If MOBs run a higher risk of abuse — for instance in respect of domestic violence or sexual exploitation — this would entail the States’ obligation to take adequate measures to protect the victims in addition to the protection that is already available for victims of these crimes. States parties that fail to provide adequate protection may be held co-responsible for the crimes next to the actual perpetrator.

Obligations concerning eliminating stereotypes

States parties are recommended to give specific training to teachers, the judiciary, the police, and local authorities including traditional or religious community leaders. States may also be advised to conduct such programmes in collaboration with Civil Society Organizations (CSOs). Sometimes, the state party is urged to revise the contents of textbooks for school children with the purpose of eradicating traditional role patterns and stereotypical images. Much emphasis is put on the role of the media. States parties are

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141 CEDAW is a body of independent experts monitoring compliance with the obligations ensuing from the Women’s Convention. See article 17 Women’s Convention.
142 CEDAW is authorized to adopt General Recommendations under article 21 of the Women’s Convention. These Recommendations are authoritative interpretations of the Convention that have to be taken into account by the States parties in their periodic reports which they are required to submit under article 18 of the Convention. CEDAW GR No. 12. Violence Against Women (8th session, 1989) merely requests States to report on gender-based violence and the measures they have taken.
143 CEDAW GR No. 19 Violence Against Women (11th session, 1992). Of particular importance in this context is para. 11 addressing the obligations under articles 2(f), 5 and 10(c) and which reads in part: 'Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women.'
144 CEDAW GR No. 19, para. 7.
145 Idem, para. 24(t) (v).
146 The protection that has to be offered consists among other measures of Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials
147 This has become clear of CEDAW’s jurisprudence. For instance, communications 4 and 5 against Austria where the failure of respectively the police and the public prosecutor to undertake adequate measures to protect the victims made Austria responsible for their deaths in the view of the Committee.
148 E.g.: UN doc. CEDAW/C/ALB/CO/3, Concluding Observations, Albania, 16 September 2010, para. 25; UN doc. CEDAW/C/KEN/CO/7, Concluding Observation, Kenya, 5 April 2011, para. 18(a); UN doc. CEDAW/C/MWI/CO/6, Concluding Observations, Malawi, 5 February 2010, para. 2; UN doc. CEDAW/C/PNG/CO/3, Concluding Observations, Papua New Guinea, 30 July 2010, para. 24; UN doc. CEDAW/C/RWA/CO/6*, Concluding Observations, Rwanda, 8 September 2009, para. 22.
149 E.g. in the case of Albania, Botswana, Egypt, Fiji, Liechtenstein, Papua New Guinea, Russian Federation, South Africa, Sri Lanka, Turkey, and Uganda.
150 E.g.: UN doc. CEDAW/C/CHN/CO/6, Concluding Comments, China, 25 August 2006, para. 18; UN doc. CEDAW/C/ISR/CO/5, Concluding Observations Israel, 5 April 2011, para. 34; UN doc. CEDAW/C/UKR/CO/7, Concluding Observations, Ukraine, 28 January 2010, para. 24.
That eradicating stereotypes and harmful traditional patterns which impede the achievement of women’s equality in practice is indeed a legal obligation is also the view of the Human Rights Committee (HRC) monitoring compliance with the ICCPR\textsuperscript{155} and the Committee on Economic, Social and Cultural Rights (CESCR), the monitoring body for the ICESCR.\textsuperscript{156} Although such an obligation is not explicitly included in the two Covenants, according to the two monitoring bodies, this obligation is implicitly included in common article 3. The legal obligation to influence stereotypes and traditional roles in society that perpetuate unequal socio-economic positions between men and women is a key issue here since the MOB business heeds to the European male clients’ wishes to marry a “traditional” wife who is economically dependent on them and who is willing to play the role of homemaker and mother.\textsuperscript{157} According to the literature\textsuperscript{158} and the research done by the UN Special Rapporteur on Violence Against Women,\textsuperscript{159} inequality between the marriage partners and particularly the weak and dependent socio-economic position of the wife may be risk factors for domestic violence. The subordinate position of the MOBs may in addition be exacerbated because of their legal dependency on their husbands which makes leaving an abusive relationship rather problematic. The explicit legal obligation contained in article 5 of the Women’s Convention prescribes that States parties take “all appropriate measures” to modify the harmful patterns which are based on stereotypes and prejudices that form the basis for the systemic discrimination against women in practice. CEDAW has not yet adopted a specific GR on article 5, but discrimination based on gender, i.e. the cultural understanding of women’s role in society based on stereotypes with its corollary negative impact on women’s equality, is explained and rejected by the Committee in its GR Nos. 25

\footnotesize
\begin{itemize}
\item \textsuperscript{151} E.g. UN doc. CEDAW/C/BGD/CO/7, Concluding Observations, Bangladesh, 22 March 2011, para. 18(b); UN doc. CEDAW/C/BLR/CO/7, Concluding Observations, Belarus, 6 April 2011, para. 18; UN doc. CEDAW/C/BOT/CO/3, Concluding Observations, Botswana, 26 March 2010, para. 24; UN doc. CEDAW/C/EGY/CO/7, Concluding Observations, Egypt, 5 February 2010, para. 22; UN doc. CEDAW/C/FJI/CO/4, Concluding Observations, Fiji, 16 September 2010, para. 21; UN doc. CEDAW/C/KEN/CO/7, Concluding Observation, Kenya, 5 April 2011, para. 18(c); UN doc. CEDAW/C/LIE/CO/4, Concluding Observations, Liechtenstein, 5 April 2011, para. 19(b).
\item \textsuperscript{152} For instance in the case of Albania: While respecting the independence of the media and the right to freedom of expression, the media should be encouraged to project positive non-stereotypes images of women and of their equal status and role in the private and public spheres. UN doc. CEDAW/C/ALB/CO/3, Concluding Observations, Albania, 16 September 2010, para. 25; Or with regard to Sweden: The Committee calls upon the State party to strengthen its strategies to combat sexualization of the public sphere and to take proactive measures to ensure that media production and coverage are non-discriminatory and increase awareness of these issues among media proprietors and other relevant actors in the industry. UN doc. CEDAW/C/SWE/CO/7, Concluding Observations, Sweden, 8 April 2008, para. 23.
\item \textsuperscript{153} E.g.: UN doc. CEDAW/C/CHN/CO/6, Concluding Comments, China, 25 August 2006, para. 18; UN doc. CEDAW/C/CUB/CO/6, Concluding Comments, Cuba, 25 August 2006, para. 18.\textsuperscript{154} E.g.: UN doc. CEDAW/C/BOT/CO/3, Concluding Observations, Botswana, 26 March 2010, para. 24; UN doc. CEDAW/C/KEN/CO/7, Concluding Observation, Kenya, 5 April 2011, para. 18(c); UN doc. CEDAW/C/PNG/CO/3, Concluding Observations, Papua New Guinea, 30 July 2010, para. 26; UN doc. CEDAW/C/USR/CO/7, Concluding Observations, Russian Federation, 16 August 2010, para. 21; UN doc. CEDAW/C/ZAF/CO/4, Concluding Observations, South Africa, 5 April 2011, para. 21.
\item \textsuperscript{155} See CESCR General Comment No. 16, 13 May 2005.
\item \textsuperscript{156} It seems that IMBs respond to their clients’ wishes for a ‘traditional’ wife by advertising the brides in accordance with stereotypes and traditional patterns as regards the role that men and women are supposed in the family and in society. This was also observed during the mapping of the IMB websites, such as ‘Single Baltic Lady’ (\texttt{http://www.single-baltic-lady.com/}).\textsuperscript{157} For example, Coomaraswamy & Kois, ‘Violence Against Women’, in Kelly D. Askin and Dorean M. Koenig eds., \textit{Women and International Human Rights Law}, vol. 1, Transnational Publishers, Ardsley, New York, 1999, p. 179.\textsuperscript{158} According to Radhika Coomaraswamy, the first UN Special Rapporteur on Violence Against Women, the main cause of gender-based violence is the unequal power relation between men and women. UN doc. E/CN.4/1995/42, Preliminary report by the Special Rapporteur on violence against women, its causes and consequences, 22 November 1994, paras 49-57.
\end{itemize}
and 28. Furthermore, CEDAW points out the importance of and the obligations under article 5 on a regular basis to States parties in its concluding observations. Finally, article 5 plays an important role in the Committee’s jurisprudence both in cases of gender-based violence and in cases of discrimination based on gender.

The extra-legal obligations that States have in this regard include education (both formal and informal) and public information (including media campaigns) with the purpose of bringing about a change in mentality by creating awareness of, and developing understanding for, the equality between women and men and the need to eradicate gender stereotypes. In some cases, the necessity to communicate their interpretation of this article to the States parties has induced the two Committees to adopt General Comments in which they explain to what extent States parties are obliged to abolish or modify stereotypes and traditional practices. The HRC is the more explicit of the two by stating that States parties are obliged to ensure that attitudes that are rooted in culture, religion and tradition are not to be used as justifications to maintain inequality between men and women.

Obligations towards married women

Women’s legal status may change when they marry and the family is not always a place where all members are treated with respect and dignity or where all resources are equally and fairly divided among the family members. Gendered labour division within the family may affect women’s economic well-being and the breakdown of the family may hit women harder than men. The Women’s Convention pays specific attention to the position of married women in the family in article 16. The specific entitlements of women and the corollary obligations that States parties have in this regard have been worked out in detail in GRs No. 21 and 29. The obligations contained in these Recommendations may prove to be of importance to MOBs who are trapped in a traditional relationship and who want to break free or develop their own capacities. According to CEDAW, the obligations under article 16 include that States parties provide for equal access by both spouses to the marital property and equal legal capacity to manage it. They should ensure that the right of women to own, acquire, manage, administer and enjoy separate or non-marital property is equal to that of men. In case of divorce, legal provisions should ensure that husbands cannot shirk their financial obligations towards their wives.

Modern form of servitude

Although the term servitude is hardly ever used, one may wonder whether the situation of some MOBs may not be a modern form of servitude. These women have left their own country, culture, and social network behind in order to marry an EU citizen. If subsequently

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160 CEDAW GR No 25 on Temporary Special Measures (2004) and CEDAW GR No 28 on the core obligations of States parties under article 2 of the Convention (2010).
161 Concern that patriarchal attitudes and deep-rooted stereotypes form a root cause for the persistence of violence against women in general and domestic violence in particular is for instance expressed by CEDAW in its Concluding Observations on Cuba, Egypt, Fiji, Kenya, Malawi, Mexico, Russian Federation, and Uzbekistan.
162 E.g. Cases of A.S. v Hungary, Şahide Goekce v Austria, Fatma Yilderim v Austria, Karen Vertido v The Philippines.
163 GC No. 28, para. 5.
164 CEDAW GR No. 21, Equality in marriage and family relations, 13th session 1994; CEDAW GR No. 29, Economic consequences of marriage, family relations and their dissolution, 30th October 2013
165 Marital property is the property that has been accumulated during the marriage by the spouses.
166 CEDAW GR No. 29, para. 38
167 CEDAW GR No. 29, paras. 38 and 40
they are caught against their will in a traditional marriage with a dominant and abusive husband entailing that they are supposed to perform certain activities — doing the household tasks and performing sexual acts — for which they are not paid, without the possibility of becoming economically independent and without having a way out of such a relationship because of legal impediments.\footnote{Such an impediment could be that a migrant wife will not be entitled to an autonomous residence permit for the first few years of her marriage.} this is indeed a situation that is very similar to servitude. The servitude will last at least as long as the woman has no possibility to be legally and economically independent from her husband.

MOBs have to be protected against such a situation of servitude first of all by informing them of their rights and the possibility to get help in case of abuse when they enter the destination country. Such information may be provided by the authorities like the immigration and naturalisation services in the receiving State but also by civil servants working at the embassy in the country where they apply for their visa. If abuse happens, the obligation to protect may consist of providing safe houses, free legal aid when the women want a divorce and the possibility of independent permanent residency even before fulfilling the required legal term of marriage in order to gain autonomous residency.\footnote{This would be similar to the possibility of independent residency MOBs who are victims of domestic violence have in the USA under the VAWA (The Violence Against Women Act of 1994).}

**Protection of children**

Another human rights treaty that is relevant for the protection to any children born out of the MOB relationship or brought by the woman when she settled in the EU is the Convention on the Rights of the Child.\footnote{Convention on the Rights of the Child, GA Resolution 44/25, 20 November 1989, entered into force on 2 September 1990} This Convention gives priority to the best interest of the child and guarantees that a child shall not be separated from her or his parents against the child’s will.\footnote{Convention on the Rights of the Child, article 9} This entails that, after divorce, the mother will not have to leave the country and will be entitled to independent residency irrespective of how long she has been married.

In respect to MOB relationships, three different categories of children can be discerned. First are the children who are born during the marriage. In all EU countries, their rights are very strong. They get the (European) nationality of the father and they will enjoy all rights as European citizens. The second category concerns children who were brought by the mother into the relationship but who have been recognised or adopted by the husband. Their position is similar to children that are born out of the relationship. They enjoy the rights of European citizens and they can remain in Europe even when the marriage breaks down in an early stage. The third category of children has been brought to Europe by their mothers, but they have not been recognised or adopted by their mother’s husband. Their position is weak. They will not have a European nationality and they are dependent on the husband of their mother as their sponsor. If the marriage breaks down and the mother has to leave the country because she is not yet entitled to independent residency, these children will have to leave as well.\footnote{Interview with Prof. Gerard René de Groot, 2016}

**UN Treaties against trafficking**

Individuals who become victims of trafficking\footnote{According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, trafficking in persons is defined as: [...] the recruitment, transportation, transfer, harbouring or receipt of persons for the purposes of exploitation.} can make use of the protection offered by...

The Convention, which particularly views trafficking from a criminal law perspective and therefore focusses on the crime and the prosecution of the perpetrators, offers rather scant protection to the victims. Alien victims are entitled to be parties to any domestic proceedings in the same way as nationals, the States parties agree to encourage the rehabilitation and social adjustment of the victims of forced prostitution, and victims who are destitute — and therefore lack the financial means to return to their country of origin — are entitled to temporary care and maintenance while waiting for their repatriation. The receiving state shall pay for the cost of repatriation as far as the nearest frontier in the direction of their state of origin.\textsuperscript{176}

The Protocol pays a little more attention to the position of the victims of trafficking in persons. Chapter II mentions the assistance and protection of victims in article 6 including their physical and psychological recovery, although the actual regulation is left to the discretion of the States parties. Article 7 requests the receiving States to adopt legislation or other measures to permit victims of trafficking to remain on their territory, either temporarily or permanently depending on the circumstances of the case, while article 8 stipulates that the country of origin of the victims shall facilitate their repatriation.

All in all, that the protection offered by the UN system to MOBs who become victims of trafficking is rather weak because the international treaties first and foremost focus on the crime and the prosecution of the perpetrator instead of concentrating on the needs of and care for the victims of trafficking in persons.

\textit{Soft law}

In respect of violence against women including domestic violence, important guidelines are offered by the Declaration on the Elimination of Violence Against Women (DEVAW).\textsuperscript{177} DEVAW does not have binding legal authority; nevertheless, it is a strong statement of the international community on the duty to protect against violence against women. The most important aspect of the Declaration is that it mentions clear steps, such as the establishment of legal, political, and cultural awareness programmes and training programmes for law enforcement, to combat domestic violence. Furthermore, it urges the States’ authorities to research and collect data on domestic violence.\textsuperscript{178}

\textsuperscript{174} Only a limited number of EU MS have ratified this Convention. For instance, Germany, Ireland, the Netherlands, and the United Kingdom are not parties to this treaty.
\textsuperscript{175} All EU MS are parties to the Protocol.
\textsuperscript{176} Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), articles 5, 16 and 19 respectively.
\textsuperscript{177} UN General Assembly Resolution A/RES/48/104, Declaration on the Elimination of Violence against Women, 20 December 1993.
\textsuperscript{178} Ibid. article 4(k)
The Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women in 1995, also confirms that domestic violence is in itself a violation of the human rights of women.179

Some of the reports of the UN Special Rapporteur on Violence against Women also cover the causes and consequences of gender-based violence and specifically deal with violence in the family or domestic violence.180 The Special Rapporteur is an independent expert who has received her mandate from the UN Human Rights Council and who reports to the UN General Assembly. The strength of the Special Rapporteur is that her mandate covers the investigation of all situations of gender-based violence in all MS of the UN, irrespective of whether these are parties to human rights treaties. However, the Rapporteur cannot impose any legal obligations; she can only make recommendations. If States do not follow her recommendations, this will become known because she publishes all her findings in yearly reports and in specific reports on thematic or country situations.181

With regard to trafficking, the most important soft law instruments include the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN High Commissioner on Human Rights (2002) and reports by the UN Special Rapporteur on Violence Against Women. The Guidelines on Human Rights and Human Trafficking particularly focus on the protection and support for trafficked persons in Guideline 6.182 The Guideline calls upon States to provide safe and adequate shelter for the victims of trafficking in the receiving State, irrespective whether they want to give evidence in the criminal proceedings against the alleged perpetrators. If they do want to give evidence, they should receive legal and other assistance and be effectively protected from harm. If the victims wish to return to their country of origin, they must be helped with the resettlement in the form of assistance and support with their reintegration and they should be protected against re-trafficking.

In her report on trafficking in women and women’s migration,183 the Special Rapporteur gives her own definition of trafficking. The most important elements of this definition include 1) a lack of consent, 2) brokering of a human being, 3) transport, and 4) the exploitative or servile conditions of the work or relationship.184 Because of this new interpretation of trafficking, it will also include MOBs who end up in servitude- or slavery-like situations. The Special Rapporteur explicitly mentions organized marriages between developing countries and foreign nationals and warns that these women are especially vulnerable for violence and abuse.185 She particularly cautions States that the fact that the legal residence of MOBs is linked to the citizen husband’s continuing sponsorship means that women are put in a vulnerable position under the law which in turn makes them susceptible to domestic violence and servile domestic situations.186

180 Until now there have been four female Special Rapporteurs with a very broad mandate covering causes and consequences of violence against women.
181 All reports of the four Special Rapporteurs who have fulfilled the mandate until now can be found on the website of the UN under: http://www.ohchr.org/EN/Issues/Women/SPWomen/Pages/SPWomenIndex.aspx.
184 Ibid, para. 17.
185 Ibid, para. 29.
186 Ibid, para. 41.
3.1.2. Council of Europe Framework

All EU Member States are also members of the Council of Europe, founded in 1949 with the goal to promote human rights, democracy, and the rule of law in its MS. The most important body of the Council of Europe is the European Court of Human Rights (ECtHR), which enforces the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR).

The Council has developed multiple initiatives to protect women against gender-based violence. These initiatives have resulted in the adoption of a Recommendation of the Committee of Ministers in 2002. In the Recommendation Rec (2002)5 of the Committee of Ministers to Member States on the protection of women against violence domestic violence is defined as: 'any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life'.

Even though it seems clear that domestic violence violates several rights protected by the ECHR, it was not until 2007 that the ECtHR dealt substantively with a case on the subject.¹⁸⁷ Since then, the Court has, in all cases connected to violence against women, established that domestic violence constitutes a violation of the ECHR; a landmark case on the subject is Opuz v Turkey.¹⁸⁸ In this case, the applicant claimed that the Turkish authorities had failed to protect her and her family from serious domestic violence originating from her husband and resulting in her mother’s death. In its judgement, the Court found a violation of Article 2 ECHR due to the failure of the Turkish authorities to protect the right to life of the applicant’s mother. The Court also found a violation of Article 3 ECHR, which is the right to be free from torture and inhuman or degrading treatment. It considered the violence suffered by the applicant as sufficiently serious, and due to the failure of the authorities to provide sufficient national legislation, the applicant was not protected from such violence. The Court also recognized a breach of Article 14 ECHR, which prohibits discrimination.¹⁸⁹

Over the years, national reports, studies, and surveys outlined how much national responses to domestic violence differed across European States, revealing the extent of the problem in Europe. The need for legal standards to ensure better victims protection everywhere in Europe became apparent.

In April 2011, the Council of Europe adopted the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). Following its 10th ratification in April 2014, it entered into force four months later as Europe’s first legally binding treaty in the field of gender-based violence. The Istanbul Convention creates a comprehensive framework for preventing violence, protecting victims, and prosecuting perpetrators. In order to prevent violence from happening, the Convention places much emphasis on education and awareness campaigns.¹⁹⁰

It obliges States to take action in the form of training programmes for professionals who are in close contact with the victims, to develop education materials, to run awareness campaigns, and even to create certain treatment programmes for the perpetrators, such as

¹⁸⁸ Case of Opuz v. Turkey (Application no. 33401/02), judgment of 9 June 2009, final 09/09/2009. Other important cases on domestic violence are for example Bevacqua and S v. Bulgaria (Application no. 71127/01) or E.S. and Others v. Slovakia (Application no. 8227/04).
¹⁸⁹ Ibid. pp.51-52.
¹⁹⁰ Article 13 and Article 14 Istanbul Convention.
anger-management courses. With regard to protective measures, the Convention mainly focusses on removing obstacles which may hinder victims to report crimes to the official authorities. States shall grant the police the power to evict perpetrators from their homes and to put them in custody, and States shall further create support measures such as shelters, 24/7 telephone hotlines, crisis centres, and legal assistance centres. It further outlines that access to adequate information must be provided to victims, as it is not enough to simply set up protection structures. The third leg of the Convention is prosecution. It also defines and criminalizes various forms of gender-based violence including domestic violence.

States that are parties to the Istanbul Convention have to introduce several new offences into their national legal system should these not yet be included. In addition, the Convention is based on the idea that governments and agencies or institutions are required to work together. An effective response to violence requires that all institutions pull together and are on the same page. The Convention not only addresses governments, but it is also directed towards NGOs, local authorities, and society as a whole. Every man and every woman must learn that problems cannot be solved with violence. With regard to enforcing and monitoring the Convention, a group of independent experts, called GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence), was set up to ensure that the States parties are fulfilling their Convention obligations. States parties have to submit reports on a regular basis in order to provide GREVIO with the necessary information.

As becomes clear from the above, the Council of Europe has been quite active in its campaign against violence against women. As the case law shows, the ECtHR is certainly to be commended for its jurisprudence on domestic violence. However, there are also difficulties with the case law of the Court. Most cases only pay attention to the responses of the criminal justice systems of the State, such as the police, while social support measures that are of vital importance for the victims are often neglected. Up until now, the Court has not yet placed any positive obligation on a state regarding such measures.

The implementation of the very promising Istanbul Convention may be hindered by the fact that GREVIO’s only monitoring tool is the reporting procedure and the reports have been drafted by the States parties themselves. Another critique is that, although the Convention has entered into force with the required ten ratifications, until now only 22 Member States have ratified it. Germany, Ireland, and the UK have signed but not yet ratified the Convention.

The Istanbul Convention appears to only address domestic violence in rather general terms, not taking into account special vulnerabilities of certain groups. However, the situation of migrant women (including MOBs) is referred to in article 59, where it is stipulated that migrant women who are victims of domestic abuse and who want to leave their husband, are entitled to an autonomous right of residence, irrespective of the duration of the marriage or relationship.

191 Article 15 Istanbul Convention.
192 Articles 18-28 Istanbul Convention.
193 Articles 49-58 Istanbul Convention.
194 The Istanbul Convention has been ratified by: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Denmark, Finland, France, Italy, Malta, Monaco, Montenegro, the Netherlands, Poland, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Sweden and Turkey. See www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures last consulted on 19-08-2016.
195 Article 59(1) reads: Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances,
There is no provision obliging States parties to take special protection measures in regards to this vulnerable group of women. The fact that the Council is not specific enough on the different groups which shall be offered protection is surprising, since it already published a report in 2001 in which it clearly stated the need for protection of MOBs, as foreign women who marry Western partners through marriage agencies are at a higher risk of becoming victims of domestic violence. Furthermore, it was the first European organisation to recognise the need for regulation with regard to abused MOBs as seen by its 2004 Recommendation, which was exclusively devoted to servitude, exploited au pairs, and abused MOBs, under the umbrella term of domestic slavery.

According to this Recommendation, all three situations have to be understood as modern forms of domestic slavery. What women in these situations have in common is that they find it difficult to extract themselves from their situation. Being in a foreign country usually entails that the victims do not speak the language, let alone understand the laws and customs of the country. Many women do not know where to turn for help, as they do not dare to go to the police due to fear of deportation. Modern forms of slavery, just like old forms of slavery, should not be tolerated by the Council of Europe and its MS, just because they happen to take place in private situations. The Recommendation proposes that MOBs — in particular if they are victims of violence or other abuses — should be included in the scope of the draft for a trafficking definition, which is being drawn up to fight human trafficking. Connections between the MOB industry and human trafficking have been referenced by many academic scholars, governments, and newspaper agencies, noting that MOBs can fall victim to trafficking or that the industry can facilitate trafficking. The more interesting argument is, however, that the MOB industry inherently constitutes trafficking. This position has so far been the minority position. If the MOB industry could fall under the trafficking definition, it could be used as an indirect protection law for domestically abused MOBs, as the Council of Europe Convention on trafficking sets forth certain obligations with regard to victims’ protection and especially because the Convention has been recognized and ratified by 45 Member States of the Council.

The trafficking of women and the MOB industry seem to have several things in common, although it remains important to stress that data to support this link is still missing. Women in these marriages could suffer the same disadvantages as trafficked women for the purpose of, for example, sexual exploitation, leaving those specific MOBs as unidentified victims of trafficking. Due to these similarities, the industry might facilitate the trade of women. However, rather than just simply facilitating trafficking in women, the industry could also in itself constitute a form of trafficking. Although one can argue that it might be difficult to say that consensually-arranged marriages fall within the trafficking rubric, it is argued in this section that the MOB industry could in itself constitute human trafficking as it fulfils the criteria set forth by the Council of Europe Convention on Action against Human Trafficking. According to article 4(a) of the Convention, trafficking is defined as:

upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.

196 Hughes, 2001, p.3.
198 Ibid. para. 6.4.
199 Only two MS of the Council of Europe have not yet ratified this Convention. These States are the Czech Republic and Russia. Chart of signatures and ratifications of the Council of Europe Convention on Action against Trafficking in Human Beings. Retrieved via http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/signatures?p_auth=C8VCXT5f.
“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

The definition is divided into three parts or three elements: the action, the means, and the purpose. All three elements must be sufficiently satisfied for an activity to fall within the scope of the definition. The activity is, in this case, the mail-order industry, the business of bride trade or marriage matching, which in itself often treats women as a commodity to be sold to foreign men.

The act is the first element, performed through either the recruitment, transportation, transfer, harbouring, or receipt of persons, which is easily satisfied by the MOB industry. The recruitment could be done by the agencies who advertise their services in local newspapers. A transfer has taken place as well, since the brides leave their home countries to start a new life in the West. Also, one could say that the obtaining of a person has taken place through the husbands who receive the women. The means is the second element and follows from the action. It refers to the manner in which the act is carried out. Among other means, the definition lists coercion, fraud, and abuse of power or of a position of vulnerability. Coercion is a problematic element, because it is not clear what actually amounts to coercion. The literal interpretation of “to coerce” essentially means to persuade someone to do something against their will. As such, it is very hard and almost impossible to argue that any form of coercion has been used in the MOB situation, especially if it is assumed that the women willingly entered the marriage. However, since the definition does not clearly define what coercion means, there may be room for a broad interpretation of the term. Due to the wording “force or other form of coercion” in the definition, it is evident that physical force is not necessary and that psychological coercion, for example, could suffice as well.

Analysis has shown that the flow of MOBs mostly moves from poorer Eastern countries to well-developed Western countries. Women are generally more disadvantaged than men in impoverished regions of the world, having an effective lack of opportunity when it comes to education and employment. Such situations may well, as outlined above, influence the decision to register with a MOB agency. This means that the women often do not freely choose to become a MOB but that economic pull factors force them to consider such options. The role of economic hardship of women from developing countries has a strong bearing on the step to enter the MOB industry. Therefore, the recognition of economic coercion of circumstances, as a form of means for the trafficking definition, should not be left out. As such, in abusing the power differentials that exist between husbands and foreign brides, the MOB industry might constitute trafficking.

202 Elliot, 2015, p. 230
203 Ibid, p.68
The third element is the purpose element, the *mens rea* of the trafficking definition. The trafficking definition does not define exploitation but rather provides an open-ended list that includes, at a minimum, prostitution, sex exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs. The Council of Europe has, as mentioned above, labelled the MOB industry as a modern form of slavery. As such it would fall under the part of the trafficking Convention which is called “practices similar to slavery,” and therefore fulfil the criteria of the definition. This would entail that the Council’s Trafficking Convention can be used as an additional instrument — next to the Istanbul Convention — to protect victims of domestic violence after entering Europe through the MOB industry. Nevertheless, neither of the Conventions seems to sufficiently protect domestically abused MOBs as both lack more specific provisions and enforcement mechanisms.

3.1.3. Concluding Remarks
Considering that EU MS are parties to international human rights treaties and the Council of Europe Convention on Human Rights and Fundamental Freedoms, they already have obligations in respect of protecting women against gender based violence. In addition, there are legal obligations ensuing from the Women’s Convention and the two main Human Rights Covenants to tackle stereotypes and systemic discrimination against women.

The legal measures which have to be taken consist of bringing all the laws and policies in conformity with the concepts of equality and non-discrimination as understood in these conventions. The extra-legal measures which need to be taken include raising awareness of harmful traditions and stereotypes through education and information — such as through media campaigns — with the purpose of bringing about a change in mentality as well as specific training courses for law enforcement officials and local authorities with a view to achieving *de facto* equality between men and women.

Translated to the situation of MOBs, this entails that specific information has to be provided for MOBs who enter a EU country as regards emancipation legislation and policies. Examples for this are that men and women are supposed to share care-taking responsibilities, that women have an equal right to access education and job training irrespective of their marital status, and that married women are equally entitled to access and manage the marital property, and that available protection — in the form of safe-houses for the victims and injunctions and eviction orders against the perpetrators — exists for cases of domestic violence. Furthermore, legislation needs to be adopted that makes it possible that MOBs who are victims of abuse and who wish to terminate an abusive relationship can obtain an autonomous residence permit, irrespective of the duration of the marriage.

In respect of protection against trafficking in persons, it must be noted that there is insufficient proof that the MOB-industry is a major way of luring women into the sex industry. However, depending on the definition of trafficking that is used, MOBs who find themselves trapped in an abusive relationship may be considered victims of servitude of slavery-like practices.

In view of these existing legal obligations, possible EU legislation needs to confirm these rules and may complement them with enforcement mechanisms that are currently lacking at the international level.
3.2. European Union Framework

The focus of the section investigating the relevant EU law lies on the migration implications of the MOB phenomenon, as well as the obligations that MS may have under EU law to regulate IMBs and/or protect MOSs, MOBs and/or their children. Whereas not specifically addressed, specific human rights considerations under EU may also be relevant. The EU institutions, as well as the MS where they are implementing EU law, must have due regard to the Charter of Fundamental Rights of the European Union. As such, it may be that the generalist rules below must be modified in duly considered situations in order to comply with Charter obligations.204

204 Case C-256/11, Murat Dereci and Others v Bundesministerium für Inneres, ECLI:EU:C:2011:734, para. 70-74.
3.2.1. The ‘family’ under Eu Law

In order to adequately address the migration implications of the MOB phenomenon under EU law, it is necessary to consider whether a MOB and possible children are to be seen as a “family members” for the purpose of applying the various EU legal instruments.

The MOB as spouse.

A first question that arises is whether the MOB qualifies as a “spouse.” This term is used in several EU regulatory acts, including Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and the Directive 2003/86 on the right to family reunification.

However, the term “spouse” is not defined in these Directives. The Court of Justice, when it has been called upon to interpret the term, habitually refers to the lex loci celebrationis: a person is a “spouse” when he or she is regarded as such under the law of the country in which the marriage was celebrated. The Court is further unwilling to look beyond the marriage veil; that is to say, separation, non-cohabitation, or even contemplation of divorce proceedings are not such as to call into question the status of “spouse.” Only when the competent authorities have duly terminated the marital relationship can it be regarded as dissolved for the purposes of EU law.

It follows where a marriage has been validly contracted between the MOS and the MOB (with the consent of both), the latter must be regarded as a spouse for the purposes of EU law. The fact that the marriage was made possible through the intervention of an IMB is not such as to call this into question. The Commission highlights both in the Guidance for better transposition and application of Directive 2004/38/EC as well as in the Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens that such “arranged marriages” must be considered genuine marriages where the partners intend to establish a durable relationship (rather than simply obtaining a particular benefit). The burden of proof lies with the MS where it seeks to deny existence of a genuine marital relationship.

It should be noted, however, that the criteria proposed by the Commission in assessing whether there a genuine marital relationship may lead to false negatives. It lists, inter alia, the fact that “the couple have never met before their marriage” and “evidence of a sum of money or gifts handed over in order for the marriage to be contracted” as possible indications that MS may take into account when considering whether the marital relationship is genuine.

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205 OJ [2004] L 158/77; see Article 2(2)(a) thereof.
206 OJ [2003] L 251/12; see Article 4(1)(a) thereof.
207 The Court of Justice also remarked on the lack of a definition in Case 59/85, State of the Netherlands v Ann Florence Reed, ECLI:EU:C:1986:157, para. 11-12.
209 Case 267/83, Aissatou Diatta v Land Berlin, ECLI:EU:C:1985:67, para. 20. More recently, see Case C-40/11, Yoshikazu Iida v Stadt Ulm, ECLI:EU:C:2012:691, para. 58.
211 SWD(2014) 284 final, p. 11.
212 COM(2009) 313 final, para. 4.2.
213 COM(2009) 313 final, para. 4.2.
relationship is genuine or not. These criteria should be applied with care in the context of a marriage that has resulted through the intervention of an IMB.

**Extending the family: the descendants of the MOS/MOB.**

For the purposes of EU law, the following persons count as “descendants” from the perspective of the MOS/sponsor:214

- The direct descendants of the MOS only.
- The common direct descendants of the MOS and the MOB.
- The direct descendants of the MOB only.215

It should be noted that the family tie of descent need not be biological: it includes family ties established through other means, e.g. adoption.216

**Dissolving family ties.**

For completeness sake, it should be mentioned that just as with the formation of a marriage, the dissolution of a marriage remains in the hands of the MS. However, several MS, including Germany, have adopted Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.217 This Regulation does not set out any material provisions as to the dissolution of marriages, but rather provides for conflict rules for situations involving a conflict of laws in the context of divorce and legal separation.218

3.2.2. Migration Aspects of the MOB Phenomenon: a Mosaic of National, EU free Movement and EU Migration Law.

The set of legislation applying to the possible migration of the MOB to one of the MS of the EU is relatively complex. Depending on the nationality and residence status of the MOS, national, EU free movement, and EU migration legislation may be applicable in the sense of laying down the conditions under which the MOB is able to join the MOS. For the overview below, it is assumed that the MOS and MOB have already established a relationship by means of a validly contracted marriage (status of “spouse”).

The MOS is an EU citizen who has not exercised his free movement rights.

In the situation in which the MOS resides in his own MS (for example, the MOS is a Dutch national living in the Netherlands), EU law as a rule does not apply.219 This is normally referred to as a situation wholly or purely internal to one MS. In such circumstances, national law will apply to the question of entry and residence of the MOB.220 It is important to note, however, that there are three exceptions to this rule.

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215 E.g. Case C-413/99, Baumbast and R v Secretary of State for the Home Department, ECLI:EU:C:2002:493, para. 56-57.
216 Case C-275/02, Engin Ayaz v Land Baden-Württemberg, ECLI:EU:C:2004:570, para. 41, 45-47 and Joined Cases C-356/11 and 357/11, O. and S. v Maahanmuutovirasto; Maahanmuutovirasto v L., ECLI:EU:C:2012:776, para. 54-56. See also ECtHR, Wagner and J.M.W.L. v Luxembourg, No. 76240/01, of 28 June 2007.
218 Article 1 Regulation 1259/2010
220 Refer to the sections below containing the country studies for an indication of the legal framework.
First, where the MOS EU citizen has exercised his free movement rights and subsequently returns to his MS of origin, Directive 2004/38 will apply by analogy to the question of residence of any family members. This is conditional on the requirement that the period spent abroad in another MS was sufficiently extensive as to constitute (an attempt at) settlement in that MS. This is, in turn, normally held to be the case where the Union citizen has resided abroad on the basis of article 7 of the Directive 2004/38 rather than simply under article 6 of that Directive – that is to say the residence abroad must normally have lasted some three months or more.

Example: Jan is a Dutch national who works and resides in France. He is joined there by his Russian MOB, Anna. After four months of having lived in France, the couple returns to the Netherlands. In such circumstances, Directive 2004/38 will apply by analogy to the question of Anna’s residence in the Netherlands.

Deliberate attempts by Union citizens to make use of this “U-turn construction” (moving abroad, settling, and subsequently returning to the MS of origin) and thereby avoiding national law are not, as a rule, considered an abuse of EU law. The conditions set out by Directive 2004/38 for entry and residence of the spouse will be elaborated below.

Secondly, there is what may be dubbed the “frontier exception.” In situations in which the MOS EU citizen lives in his own MS but is engaged in other MS (e.g. as a frontier worker or because he regularly travels abroad to provide services), he may also be able to rely on EU law to claim a right of residence for his MOB spouse. In the case of the Court has held that:

The effectiveness of the right to freedom of movement of workers may require that a derived right of residence be granted to a third country national who is a family member of the worker – a Union citizen – in the MS of which the latter is a national.

The exact parameters of this exception to the wholly internal situation rule have not been clarified. Where, for example, the spouse enables the MOS to work abroad due to her care for their children, this may be sufficient. Alternatively, it is conceivable that where the MOS and MOB own a business together and are frequently engaged abroad, deportation of the MOB would undermine the effectiveness of the free movement rights so exercised.

The third situation concerns the Ruiz Zambrano rule. That case concerned the residence of the TCN parent of two Union citizens, whereby the latter were residing in their MS of nationality (Belgium). The Court ruled that:

Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union.

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221 Case C-456/12, O. v Minister voor Immigratie, Integratie en Asiel and Minister voor Immigratie, Integratie en Asiel v B, ECLI:EU:C:2014:135, para. 44-50. The actual legal basis for the rights so derived is Article 21 TFEU.  
222 Ibid, para. 51.  
223 Ibid, para. 52-54.  
224 Case C-109/01, Secretary of State for the Home Department v Hacene Akrich, ECLI:EU:C:2003:491, para. 55.  
226 Case C-60/00, Mary Carpenter v Secretary of State for the Home Department, ECLI:EU:C:2002:434.  
227 Ibid, para. 40. See also, Case C-60/00, Carpenter, ECLI:EU:C:2002:434, para. 39.  
228 Case C-457/12, S. & G., ECLI:EU:C:2014:136, para. 43.  
229 Case C-34/09, Gerardo Ruiz Zambrano v Office national de l’emploi (ONEm), ECLI:EU:C:2011:124, para. 42.
In this case, it was held that the lack of a right of residence of the TCN parent (and the concomitant right to work) would constitute such an interference, as this would have the consequence that the children would have to leave the territory of the Union in order to accompany their parents.\(^{230}\)

The decisive criterion in these cases is the degree of dependency that is present between the Union citizen and the TCN: this must be such as to force the former to leave and accompany the latter where he or she is not granted a right of residence.\(^{231}\) In follow-up cases, the Court has denied that such relationship of dependency exists, as a rule, between spouses;\(^{232}\) in other words, where a MOB would not be granted a right of residence in the MS of nationality of the MOS, she, in the eyes of the Court, is not as such forced to leave the territory of the Union. As a point of departure, therefore, the MOS/MOB couple cannot rely on the *Ruiz Zambrano* rule to claim a right of residence for the MOB in the MS of nationality of the MOS.

*The MOS is an EU citizen who has exercised his free movement rights.*

Where the MOS has exercised his free movement rights by moving to and residing in another MS of the EU, Directive 2004/38 sets out the applicable regime determining the right of residence of the MOB.\(^{233}\) It is irrelevant, for the purposes of the applicability of the Directive, whether the family was constituted already in MS of origin of the Union citizen or whether it was only formed while abroad.\(^{234}\)

Consider the following example as a point of departure:

Erik is a Swedish national living in Germany. After having used the services of an IMB, he marries Nastya, a Ukrainian national. The couple would like to continue to live in Germany.

Being married to a Union citizen, Nastya is a “family member” for the purposes of the Directive.\(^{235}\) She thus has the right to enter Germany, conditional on the possession of a passport and obtaining the necessary visa.\(^{236}\) The visa must be provided free of charge and on the basis of an accelerated procedure.\(^{237}\) However, a MS may not simply deport or refuse residence even where a TCN spouse lacks both a passport and the relevant visa. In the *MRAX* case, the Court held that

(...) a MS may not send back at the border a third country national who is married to a national of a MS and attempts to enter its territory without being in possession of a valid identity card or passport or, if necessary, a visa, where he is able to prove his identity and the conjugal ties and there is no evidence to establish that he

\(^{230}\) Ibid, para. 43-44.


\(^{233}\) See Article 3(1) Directive 2004/38.


\(^{237}\) Ibid.
represents a risk to the requirements of public policy, public security or public health (…) 238

After entry, the first three months of residence are simply subject to the requirement that Nastya has to hold a valid passport.239 In addition, from the moment of entry as a family member of Erik, Nastya has the the right to work240 and the right to equal treatment with host MS nationals under the conditions specified in the Directive.241

After three months, however, Erik (as the "sponsor"/EU citizen from whom the right of residence of Nastya is derived)242 must fulfil the conditions in Article 7 of the Directive.

This article provides for a right of residence for the couple if the Union citizen:

1. Is a worker or self-employed person in the host MS;243 or
2. Has sufficient resources for himself and his family members (here, Nastya) not to become a burden on the social assistance system of the host MS, as well have comprehensive sickness insurance cover in the host MS;244 or
3. Is enrolled at a private or public establishment, accredited or financed by the host MS on the basis of its legislation or administrative practice for the principal purpose of following a course of study, including vocational training, and has comprehensive sickness insurance cover in the host MS and assures the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and his family members (here, Nastya) not to become a burden on the social assistance system of the host MS.245

In essence, where Erik is economically active or has sufficient resources and comprehensive medical insurance for himself and his family member(s), Nastya will have a right of residence. It should be noted that the sufficient resources need not be Erik’s, but could also be provided by or through Nastya.246 No further conditions, such as mandatory language or integration courses, may be imposed.247

After five years of residing in the host MS in compliance with the conditions as laid down in the Directive, both Erik and Nastya would obtain a right to permanent residence.248 Once that status is obtained, no further conditions of residence (e.g. being economically active) may be imposed by the host MS.

The MOS is a TCN: Directive 2003/86 on the right to family reunification.

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238 Case C-459/99, Mouvement contre le racisme, l’antisémitisme et la xénophobie ASBL (MRAX) v Belgian State, ECLI:EU:C:2002:461, para. 62.
246 Case C-200/02, Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department, ECLI:EU:C:2004:639, para. 28-30.
247 Some administrative formalities will have to be complied with, however. See Articles 8-11 Directive 2004/38. However, whereas non-compliance with these formalities may lead to sanctions, it will not call into question the right of residence: Case 48/75, Jean Noël Royer, ECLI:EU:C:1976:57, para. 38.
Where the MOS is a TCN lawfully residing in one of the MS of the EU, the regime of Directive 2003/86 in principle sets out the conditions under which the MOB is allowed to join her husband.249

In that context, article 3 of the Directive provides that the MOS, as prospective sponsor, must hold a residence permit with a validity of at least one year and must have reasonable prospects of obtaining a right of permanent residence in order to be eligible for family reunification.250 In addition to holding such a permit, a MS can also require that the sponsor must have already been a resident for a period of up to two years.251

Nanda is an Indian national who has resided in Belgium for a period of two years on the basis of a work permit. The permit accorded by the Belgian national authorities is valid for a period of five years. In these circumstances, he can rely on Directive 2003/86, insofar that the other conditions are fulfilled, to bring over his equally Indian MOB.

Article 7 further provides that the MS can furthermore optionally require evidence that the sponsor has:252

a) "Accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State;

b) Sickness insurance in respect of all risks normally covered for its own nationals in the MS concerned for himself/herself and the members of his/her family;

c) Stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the MS concerned (…)

253

In addition, Member States may subject TCNs to integration measures in accordance with national law,254 as well as require that the spouse has a minimum age as a safeguard against forced marriages (with the “maximum minimum age” that MS can require being 21 years old).255 Finally, an application may be rejected on public policy, public security, or public health grounds.256

In a series of cases, the Court has ruled that these conditions must be read in the light of the overall objective of the Directive which is to promote family reunification.257 As such, they must be interpreted restrictively.258 In this context, the Court has had occasion to rule that the Dutch system, which required 120% of the minimum wage as a reference point for


250 Certain permits are excluded, as listed in Article 3(2) Directive 2003/86.

251 Article 8 Directive 2003/86. In addition, that article provides that certain Member States can impose a waiting period for up to three years between the application for family reunification and the issue of the permit.


254 Article 7(2) Directive 2003/86.


256 See Article 6 Directive 2003/86.

257 Case C-153/14, Minister van Buitenlandse Zaken v K and A, ECLI:EU:C:2015:453, para. 50.

258 Case C-578/08, Rhimou Chakroun v Minister van Buitenlandse Zaken, ECLI:EU:C:2010:117, para. 43.
stable and regular resources, was precluded. This was despite the fact that this meant that the sponsor could be eligible for certain special social assistance benefits (but not general minimum subsistence benefits). 259 In addition, no fixed amount may be set below which all family reunification requests are refused; a reference amount may be set, but individual circumstances must be taken into account. 260

Similarly, whereas a civic integration test (societal knowledge and a degree of language knowledge) to be taken abroad was allowable as a precondition for family reunification, special circumstances of test takers (e.g. disabilities, age) had to be taken into account and fees could not be excessive 261 — for example, a fee imposed by the Dutch authorities of some 460 euros was considered excessive. Finally, of particular importance to the situation of MOBs is that MS cannot distinguish as to “when” the family was formed: the provisions apply equally to pre-existing family ties (families previously having lived together) or those newly formed (as with MOBs who normally have not lived together at an earlier stage). 262

Overall, the conditions as listed represent the “outer limits” under which MS must authorise family reunification. Once admitted, the position of the MOB is harmonised with that of the sponsor: 263 she can benefit from equal treatment rights as regards education and in principle has the right to work (although a waiting period may be applied) 264 in the same way as the sponsor. A final point to remark is the interaction with Directive 2003/109 concerning the status of TCNs who are long-term residents: 265 after five years of continuous residence, the MOS and the MOB should qualify for long-term residence 266 provided the couple has stable and regular resources and comprehensive sickness insurance and has complied, where applicable, with integration conditions. 267

The status of children.

It will be recalled that, for the purposes of EU law, all persons in the direct descending line count as family members, be they children of the MOS only, of both the MOS and MOB, or of the MOB only. For the purpose of analysis, it will be assumed that the MOB seeks to bring her (TCN) child(ren) with her to join the MOS. As with the MOB, the migration status of the child(ren) will differ depending on whether the MOS is a Union citizen or not.

Where the MOS is a Union citizen.

For the purposes of EU free movement law, in order to count as a family member, the child should either be under the age of 21 or be dependent on either (or both) of his parents. 268 Dependency is a question fact only (it is not relevant whether the child could be independent) 269 and is characterised by a need for material support that exists in the state of origin at the moment of application for entry and residence. 270 Subsequent entry to

259 Ibid, para. 49-52.
260 Ibid, para. 48.
262 Case C-578/08, Chakroun, ECLI:EU:C:2010:117, para. 59-66.
265 OJ [2004] L 16/44.
266 Article 5 Directive 2003/109. This is provided the persons in question do not constitute a threat to public policy, public security or public health: see Article 6 Directive 2003/109.
267 See further Case C-579/13, P and S v Commissie Sociale Zekerheid Breda and College van Burgemeester en Wethouders van de gemeente Amstelveen, ECLI:EU:C:2015:369.
269 Case 316/85, Centre public d'aide sociale de Courcelles v Marie-Christine Lebon, ECLI:EU:C:1987:302, para. 22.
270 Case C-1/05, Yunying Jia v Migrationsverket, ECLI:EU:C:2007:1, para. 37.
employment does not affect the initial assessment of dependency and thus residence status.\textsuperscript{271}

Where the MOS Union citizen has not exercised free movement rights.

Where the Union citizen resides in his MS of nationality, the situation is normally considered as “wholly internal” to that Member State. It follows, as set out before, that national law applies to the question of whether the child of the MOB spouse can join the couple. However, as seen before, three main exceptions exist to this rule that EU law does not apply.

As regards the “U-turn” situation, insofar that the conditions are satisfied (genuine residence period abroad), the child counts as a family member for the purpose of analogous application of Directive 2004/38.

With regards to the “frontier exception,” its application in the absence of further clarification by the Court is legal speculation. One could imagine that the non-admittance of the child could lead the MOB and MOS to decide to move to another MS, thus modifying the conditions under which the free movement rights are exercised. Whether this interference with free movement rights is sufficient to invoke the protection of EU law is not known.

Finally, concerning the \textit{Ruiz Zambrano} rule, the child cannot rely on this to claim a right of residence. The rule takes the Union citizen as its point of departure – it is thus the MOS’s chance of forced departure from the EU that must be at stake. Since the Court already ruled that non-admission of a TCN spouse is not such as to force a Union citizen to leave the territory of the Union, it is unlikely that non-admission of the child of that TCN spouse should change the assessment.

Where the MOS Union citizen has exercised free movement rights.

In this situation, the position of the child of the MOB is equivalent to that of the MOB itself (as also noted above). He or she will have a right to entry and initial residence (for the first three months), as well as continued residence if the conditions of article 7 are fulfilled. Similarly, he or she will have a right to work (where applicable) and equal treatment rights under the conditions of article 24 of the Directive. See above for a full exposition of the relevant conditions.

Where the MOS is a third-country national.

Article 4(1)(d) Directive 2003/86 provides for the situation in which the MOB would seek to bring her minor child,\textsuperscript{272} over whom she has custody and who is dependent on her,\textsuperscript{273} with her to join the MOS sponsor in a MS of the EU.\textsuperscript{274} Article 4(1)(b) covers the situation of a child common to the MOS and MOB. In order to have the status of child, he or she must be unmarried. If these conditions are fulfilled, the child can apply under the Directive for family reunification. In addition, MS can also optionally provide for reunification with adult unmarried children who are dependent on the spouse of the sponsor.\textsuperscript{275}

\textsuperscript{271} Case C-423/12, \textit{Flora May Reyes v Migrationsverket}, ECLI:EU:C:2014:16, para. 29-33.
\textsuperscript{272} The age of majority being determined by the relevant Member State in which reunification is sought: Article 4(1) Directive 2003/86.
\textsuperscript{273} Dependency is assessed in the same manner as set out above.
\textsuperscript{274} In case of shared custody, agreement of the person with whom custody is shared is necessary.
The actual conditions attached to for reunification are largely the same as above: accommodation, stable resources, and comprehensive health insurance on the part of the sponsor are a precondition as well as that there must not be a threat to public policy, public security, or public health. Some important differences exist, however. First, minor children under the age of 12 cannot be subjected to integration measures abroad (but may be subjected to integration measures at a later stage in accordance with Article 7(2) Directive 2003/86); where they are over the age of 12 and arrive independently from the MOB, their admission may be made subject to verification of a condition of integration. In addition, some Member States may require that the child must have been under the age of 15 when submitting the application for reunification; if over the age of 15, entry and residence must still be authorised if the conditions are fulfilled but on other grounds than family reunification.

3.2.3. Protective Measures

There are no protective measures as such targeted at the MOB phenomenon at the EU level. Nonetheless, some of the generalist EU legislation, as well as the case law of the Court, is capable of offering a degree of protection.

Protecting the MOS.

A common danger for the MOS is the fact that the Internet-based approach makes him susceptible to being scammed. In addition, it is not impossible that MOSs can face abuse at the hands of a MOB. Finally, there is a risk in the form of a breakdown of a relationship.

The scam risk. In an online dating romance scam, criminals typically “contact their victims through online dating sites or social networking sites, creating fake profiles with stolen photographs of attractive people. While they simulate developing relationships with their victims, the end goal of the scammers is to defraud them of large sums.” The scam can take place at two instances. First, the IMB itself may be untrustworthy, creating false profiles while having its customers pay a monthly fee or a fee for contacting the women (who may simply be employees or computer programmes) (false IMB). Secondly, the IMB may be a legitimate business, but the person with whom the MOS communicates could be a scammer (false MOB).

At the EU level, the only relevant protective instrument is the E-commerce Directive. This Directive operates according to the “internal market principle,” where a service provider (providing “information society services”) is established within the EU it applies. This Directive requires MS to ensure that service providers provide information as to their business (name, address, registration etc.) and to provide minimum requirements for commercial communication and the process of contracting (to receive a particular service). In addition, MS are obliged to provide means of (legal) redress and to establish contact points for service providers and recipients to obtain general information as

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281 Articles 6, 7 and 9 Directive 2000/31.
to their rights and obligations, possible mechanisms for redress, as well details of authorities and associations capable of providing further support.  

It is furthermore clear that where an IMB itself is a false IMB, it is *prima facie* liable under civil law. However, an important question to ask is whether the IMB could also be held liable for scams perpetrated by its users (false MOBs). A positive answer to that question would create an incentive on the part of the IMB to actively monitor its content in order to prevent scams. In this respect, the Directive 2000/31 provides in articles 12-14 that MS must exempt so-called intermediary service providers from liability: those whose activity is "limited to the technical process of operating and giving access to a communication network over which information made available by third parties is transmitted or temporarily stored." A classic example would be an Internet service provider not in principle being liable for the content of the web it transmits (e.g. child pornography).

An IMB could argue that it would fall under article 14 of the Directive 2000/31, which provides:

\[
\text{Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service (…)}
\]

The argument would run that an IMB simply hosts information and provides for interaction between the users (MOSs and MOBs) of its website: content is user created without the IMB having a hand in it. However, in order to rely on this exemption, the Court has held that: "it was necessary to examine whether the role it plays is neutral, in the sense that its conduct is merely technical, automatic and passive, pointing to a lack of knowledge or control of the data which it stores."  

It is questionable whether IMBs are merely passive and automatic in this respect. Indeed, in considering whether the exemption in article 14 could apply to eBay, an online auction site, the Court held that:

\[
\text{Where, by contrast, the operator has provided assistance which entails, in particular, optimising the presentation of the offers for sale in question or promoting those offers, it must be considered not to have taken a neutral position between the customer-seller concerned and potential buyers but to have played an active role of such a kind as to give it knowledge of, or control over, the data relating to those offers for sale. It cannot then rely, in the case of those data, on the exemption from liability referred to in Article 14(1) of Directive 2000/31.}
\]

Such optimisation possibilities are frequently offered by IMBs. For example, a large IMB website called *AnastasiaDate* provides a welter of additional options, such as “Flowers & Presents,” “Virtual Gifts,” or other ways to highlight one's profile. As such, the IMB is not simply a neutral broker, but it takes an active hand in the interaction between its users.  

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285 Case C-291/13, Sotiris Papasavvas v O Fieleftheros Dimosia Etaireia Ltd and Others, ECLI:EU:C:2014:2209, para. 41.  
286 Case C-324/09, L’Oréal SA and Others v eBay International AG and Others, ECLI:EU:C:2011:474, para. 116.  
It follows that it may not rely on the exemption from liability clause, meaning that depending on the domestic system of the MS in question, it could conceivably be held liable for scams perpetrated by its users. Nonetheless, it remains the case that such remedies are *ex post* only; there is very little by way of *ex ante* safeguards imposed by EU law to ensure the legitimacy of IMBs and to prevent scams (e.g. requiring IMBs to collect more information about women offering themselves for marriage).

**The risk of an abusive relationship; death and divorce.** It is not inconceivable that the “MOB-route” puts the MOS at risk of an abusive relationship — after all, such marriages are not normally preceded by extensive contact. Generally, there is no EU legislation which offers protection in case of an abusive (MOB) spouse — rather, reference must in those instances be made to national law. However, once a protective order has been issued, EU legislation provides for the mutual recognition of such orders (whether issued in the context of civil or criminal proceedings) across the MS. In terms of the options the MOS has to divest himself of the relationship, these do not seem especially more circumscribed in the context of a MOS/MOB relationship than a groom faced with abuse in a relationship that has come about “conventionally.” After all, the MOS’s residence is as a rule not dependent on the family relationship: neither while residing in his home MS nor when residing in another MS of the EU. As such, separation and divorce remains a viable option. This reasoning is, *mutatis mutandis*, the same for the situation of a “regular” breakdown of a relationship due to divorce or death of the MOB.

**Protecting the MOB.**

Common risks faced by a MOB fall into four categories: scams, a potentially abusive MOS, situations involving the breakdown of the relationship, and the risk of being trafficked.

**Scams.** Insofar the scams simply involve economic harm, the reasoning is *mutatis mutandis* the same as above: civil liability, under national law, could exist on part of the MOS and the IMB. In case of the latter, civil liability is not excluded under EU law.

**Abusive relationship.** Unlike the MOS, the MOB is in a more vulnerable situation. As a TCN, she lacks an inherent right of residence in the EU and the relevant MS in particular. This could create a lock-in effect: the desire to leave the abusive relationship is pitted against the desire to remain in the relevant MS of the EU. At the EU level, there are currently no specialist legal instruments in place which would protect the MOB in this situation. Rather, she would have to rely on relevant national law and/or the generalist provisions of Directive 2004/38 or Directive 2003/86 which refer to death and divorce (including divorce as the result of domestic violence). The relevant conditions in this regard will be discussed below.

**Divorce and death.** In case of a breakdown of the relationship, the MOB has the following options.

1. Where the situation is wholly internal to a single MS of the EU (e.g. where MOS Union citizen resides, together with the MOB, in his own Member State). In such

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290 As before, it should be recalled that EU legislation provides for mutual recognition of protective orders issued by a Member State
circumstances, as highlighted before, national law applies in principle exclusively to the question of continued residence of the MOB.

2. Where Directive 2004/38 applies. It will be recalled that this is the case in the “U-turn” situation (in which it applies by analogy) and in the situation where the MOS Union citizen is residing in a MS other than that of his nationality together with the MOB.

Article 12(2) of Directive 2004/38 provides for the retention of the right of residence of a TCN family member (such as the MOB and/or any children) in case of death of the MOS. This right is conditional on the MOB (and/or any children) having resided in the host Member as a family for one year prior to the event of the death. In addition, the right of residence so “obtained” remains subject to the MOB fulfilling the conditions set out in article 7 of the Directive: she must be either economically active, have sufficient resources and comprehensive insurance for herself (and/or any children), or obtain the status of family member of another Union citizen. She must continue to fulfil these conditions until she (and/or any children) obtains a right to permanent residence under article 16 of Directive 2004/38 (normally after five years of legal residence).

Article 12(3) of Directive 2004/38 further provides that in case of departure or death of the Union citizen MOS from the MS in question while the children are enrolled in education, a right of residence is guaranteed to the children in order to continue their education, as well as the MOB provided she has custody over them.291

In case of divorce or annulment of marriage, TCN family members (such as the MOB and/or any children) shall retain a right to residence where:292

a) The marriage lasted for three years, including one year in the host MS prior to the initiation of the divorce or annulment proceedings, or
b) The MOB has custody of the children, or
c) This is warranted due to particularly difficult circumstances, including in particular having been the victim of domestic violence during the marriage, or
d) The MOB has a right of access293 to a minor child; where right of access is court ordered, it must also include a ruling that access must be in the host MS. This right of residence only continues for as long as is required.

Where a right of residence is acquired under this heading, the MOB remains required to fulfil the conditions set out in article 7 of Directive 2004/38: she must be either economically active, have sufficient resources and comprehensive insurance for herself (and/or any children), or obtain the status of family member of another Union citizen. After five years of legal residence, the MOB and/or any children are eligible for a right to permanent residence following article 16 of Directive 2004/38.

3. Where Directive 2003/86 applies. This is the case where the MOS is a TCN.

Article 15(1) of that Directive provides for an autonomous residence right for the MOB after five years of residence, although MS has the option of awarding such an autonomous residence permit after fewer years of residence. In addition, MS must lay down provisions for an autonomous permit in case of particularly difficult circumstances (such as domestic violence).294 The conditions and modalities are, however, left up to national law.295 MS

293 Either by agreement or court ordered.
further have the option of introducing autonomous residence permits for MOBs in case of widowhood, divorce, and separation.296

4. Additional protective rights: Primary EU law as interpreted by the Court of Justice.
Under certain circumstances rights additional to those discussed in the previous options (the rights specified in Article 12-13 Directive 2004/38) can be derived from EU law – particularly where children with Union citizenship are involved. For the next part, it will be assumed that the relationship between the MOS and the MOB has broken down and that the MOB is the primary carer/has actual custody over these children. For ease of analysis, moreover, reference will be made to a single child.

Case 1: The child is resident in his or her own MS together with the MOB.

Where the children are dependent on the MOB, she can derive a right of residence from EU law following the Ruiz Zambrano case, even in the situation where the Union citizen children reside in their own MS. According to settled case law of the Court of Justice, if deportation of a parent would cause Union citizen to have to have the territory of the Union, this amounts to an interference with the substance of the rights attached to the status of Union citizenship. In such a context, EU law can thus be relied on to gain rights beyond those offered under national law: a right of residence and a concomitant right to work (and possibly equal treatment for the purposes of receiving certain benefits).297

Case 2: The child resides in a MS of which he or she is not a national together with the MOB.

In this context, it is possible to rely directly on article 21 of TFEU (Treaty on the Functioning of the European Union) directly following the Chen case.298 In order to guarantee the effectiveness of a Union citizen’s free movement rights, a child who is a Union citizen has the right to be accompanied by his primary carer when exercising his or her free movement rights. Such rights of movement are not unconditional, as seen, and for residence beyond three months, the child will have to show that he satisfies the conditions of article 7 of Directive 2004/38 (applied by analogy).299 Insofar as the child qualifies as economically active (unlikely) or as a person of sufficient means (likely, if the mother works300 and/or provides the child with money), the child and the MOB can (continue to) lawfully reside in the host MS. The main advantage of this route over the options offered by Directive 2004/38 is that no other conditions (such as a minimum period of prior residence) need to be fulfilled in order to invoke these rights.

Human trafficking. It is not impossible that the IMBs are engaged in more nefarious behaviour than simply money scams. There is a degree of risk that the women that participate in these agencies are trafficked and subjected to forms of exploitation.301 Insofar as a link with trafficking exists, EU legislation is in place which requires MS to adopt

297 Case C-34/09, Gerardo Ruiz Zambrano v Office national de l’emploi (ONEm), ECLI:EU:C:2011:124, para. 42-44. See also Case C-86/12, Adzo Domenyo Alokpa and Others v Ministre du Travail, de l’Emploi et de l’Immigration, ECLI:EU:C:2013:645, para. 34.
298 Case C-200/02, Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department, ECLI:EU:C:2004:639.
299 Ibid, para. 42-47.
300 A right which has not been specifically confirmed by the Court of Justice. However, we can assume that such a right can be derived from EU law. The Court, after all, confirmed that the parent primary carer of a child had a right to work in the analogous situation of Ruiz Zambrano: Case C-34/09, Ruiz Zambrano, ECLI:EU:C:2011:124, para. 44.
301 See Hughes, 2004
appropriate measures to combat such trafficking as well as to protect its victims: Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA. 302

This Directive requires Members to criminalise:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 303

Non-compliance must be penalised with jail terms of up to ten years. 304 In addition, the Directive specifies that MS must ensure that persons with a leading position in legal persons (such as, potentially, IMBs) involved in trafficking can be held liable. 305 Sanctions must also be able to be imposed on the legal person, including criminal and noncriminal fines or, for example, judicial winding up. 306 Finally, it specifies that human trafficking victims have the right to assistance and support, including basic subsistence, medical and psychological treatment, and translation and interpretation services, where appropriate. 307

This is complemented by Directive 2004/81/EC, 308 which provides a residence permit for victims of human trafficking who cooperate with the authorities. However, it should be noted that such a permit is inherently temporary and does not provide a clear route to further residence once judicial proceedings have been terminated. 309

3.3. Country Specific Frameworks

3.3.1. Germany

Background

Marriage migration is one of the few remaining major avenues of (legal) migration to Germany. As such a migration route, it has been subject to some controversy over the years. 310 However, the specific phenomenon of MOBs is not a topical or particularly controversial issue within that context.

Legislation

Residence status of the MOB follows the regular rules for family reunification set out in section 6 ‘Aufenthalt aus familiären Gründen’ of the Aufenthaltsgesetz. The basic point of departure is set out in article 27, which provides in conjunction with article 6 of the German Basic Law a basic right to family reunification subject to certain conditions. No specific set of rules apply to the MOB phenomenon.

305 Article 5 Directive 2011/36.
308 Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ [2004] 261/19.
310 See generally Block, Policy Frames on Spousal Migration in Germany, Springer, New York, 2016
Insofar the MOS is a German national (or an EU citizen with a non-German nationality), he must have his or her ordinary residence in Germany; this principle is the primary and only condition. In exceptional circumstances, the family reunification may be refused if it is clear that the German national lacks sufficient resources. This, however, is not normally tested. No particular requirements are imposed on the MOB. After three years of residence, the MOB is eligible for a Niederlassungserlaubnis (a right to permanent residence), subject to having sufficient knowledge of the German language and there being no reason to expel her.

Where the MOS is a TCN, a more extensive set of requirements is imposed. In such a case, the TCN must be at least 18 years of age, hold a valid residence permit, and have resided in Germany for a period of two years. In addition, he must possess accommodation judged as sufficient for the couple and as well as sufficient resources. The MOB must be at least 18 years of age and have basic knowledge of the German language (as a condition for family reunification). The residence right will be renewed so long as the familial link continues to exist. After five years of residence, the MOB can qualify for a Niederlassungserlaubnis.

Insofar as the MOB has a minor, unmarried child (not common to the couple in the biological or legal sense), he or she can also be authorised to join the MOB. The MOB will act as the sponsor, meaning that reunification is possible only after her acquisition of the appropriate residence status. If the child has already reached the age of 16 at the time of the application and if he or she does not have his or her Lebensmittelpunkt (center of interest) with the parents, than he or she must also show either sufficient knowledge of German or that integration in Germany is likely due to his or her education and living circumstances.

In case of breakdown of the familial link (e.g. divorce from or death of the sponsor), the MOB can continue to reside in Germany provided that the family relationship had existed in Germany for a period of three years prior to the breakdown or the sponsor died during the existence of a family relationship in Germany. This minimum length of residence requirement can be set aside in case of hardship, such as domestic violence.

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311 Following Case 59/85, State of the Netherlands v Ann Florence Reed, ECJ: EU:C: 1986:157 as well Article 24 jo. 37 of Directive 2004/38, the right of equal treatment of EU citizens extends to issues of migration law. This is in particular relevant where these provisions, such as is the case here, are more favorable than those set out by EU legislation.
312 Article 28(1) Aufenthaltsgesetz.
313 Article 27(3) Aufenthaltsgesetz.
315 Article 28(2) Aufenthaltsgesetz.
316 Article 30(1)(1) Aufenthaltsgesetz.
317 Article 29(1)(1) Aufenthaltsgesetz.
318 Article 30(1)(3)(d) Aufenthaltsgesetz. The residence requirement is not applied where the sponsor holds a Niederlassungserlaubnis or long-term residence. Exceptions furthermore exist where the marriage predated the acquisition of the residence permit by the sponsor, see Article 30(3)(e) Aufenthaltsgesetz; however considering the definition of MOB for the purposes of this study, this is unlikely to apply.
319 Article 29(1)(2) Aufenthaltsgesetz.
320 Article 5(1)(1) Aufenthaltsgesetz.
321 Article 30(1)(1) jo. 30(1)(2) Aufenthaltsgesetz.
322 Article 30(3) Aufenthaltsgesetz.
323 Article 9 Aufenthaltsgesetz.
324 Article 32(1) Aufenthaltsgesetz.
325 Article 32(2) Aufenthaltsgesetz.
326 Article 31(1) Aufenthaltsgesetz.
327 Article 31(2) Aufenthaltsgesetz.
Conclusion
For Germany, the MOB phenomenon cannot be considered a controversial policy point. No specific legislation is in place. Family reunification follows the general rules.
3.3.2. The Netherlands

Background
In a recent report of the *Sociaal en Cultureel Planbureau* on “marriage-migration in the Netherlands,” an attempt is given to contextualise marriage migration as a phenomenon as well as provide a background on the living situation of the migrants involved. IMBs are mentioned as one of the ways by which persons residing in the Netherlands come into contact with foreign partners. The report describes the phenomenon as largely internet-based, with first contact taking place through a website. After an initial “match,” the MOS usually travels to the country of potential MOB for face to face contact. The reverse (MOB visiting the MOS) is uncommon due to visa issues or high administrative fees. Despite there being indications that this way of meeting a potential partner seems increasingly popular, no statistics are available as to the actual extent of the MOB popularity in the Netherlands due to the social taboo resting on such relationships.

The fact that such a taboo exists, however, is not to say that the MOB phenomenon is a traditionally controversial or indeed a topical issue in the Netherlands. Whereas the issue of family reunification is firmly on the political agenda, in that context only very limited attention is paid to the MOB phenomenon. A search of the official parliamentary documentation centre confirms this: the term *postorderbruid* yields zero results. The term *importbruid* returns only 17 results, whereby it must be noted that the meaning of this word is broader and generally denotes a person to whom one is married and whom one is “importing” from abroad. Therefore, this term includes “regular” family reunification and forms of arranged marriages (through family intervention rather than an IMB) in addition to the MOB phenomenon. For comparison, the term *gezinshereniging* (family reunification) yields 2414 results.

Legislation
Residence status of the MOB follows the regular rules for family reunification — no specific set of rules apply. Conditions are imposed on both the MOS and the MOB. The MOS must be 21 years of age and either have the Dutch nationality or be a TCN who possesses a particular non-temporary residence permit. In addition, the sponsor must be able to

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328 Sterckx et al., 2014
329 Ibid, p. 11.
331 Ibid, p. 165.
332 Ibid, p. 165.
333 A search in the LexisNexis database of Dutch newspapers from 1980 onwards yields only 60 results for the search key ‘postorderbruid’. Only four of those articles directly address the phenomenon, whereas the other results are references to films or books. The search key ‘importbruid’ yields (a still limited) 439 results, but this word is less specific and also denotes a person to whom one is married and whom one is importing from abroad. This term includes ‘regular’ family reunification, forms of arranged marriages (through family intervention rather than a IMB) as well as the MOB phenomenon.
334 See [https://zoek.officielebekendmakingen.nl/](https://zoek.officielebekendmakingen.nl/) last visited 24 August 2016
335 A search in the LexisNexis database of Dutch newspapers from 1980 onwards yields only 60 results for the search key ‘postorderbruid’. Only four of those articles directly address the phenomenon, whereas the other results are references to films or books. The search key ‘importbruid’ yields (a still limited) 439 results.
336 Since the relationship was not pre-existing, the sponsor’s minimum age is increased from 18 years of age to 21 years of age; this is due to the distinction is made in the Netherlands between ‘family reunification’ and ‘family formation’.
337 Article 3.15(1)(a) Vreemdelingenbesluit 2000.
338 See Article 3.5(2) Vreemdelingenbesluit 2000; this refers in particular to residence permits granted for the purpose of seasonal work or medical treatment.
339 Article 3.15(1)(b) Vreemdelingenbesluit 2000. This includes, for example, residence permits for the purpose of work, study or temporary humanitarian grounds. For the full list, see Article 8 (a-e, l) Vreemdelingenwet 2000.
340 In addition, the MOS must declare himself as to be a ‘sponsor’ (referent) vis-à-vis the MOB: Article 3.22a Vreemdelingenbesluit 2000.
show that he has sufficient and regular income; as a reference amount, the minimum income specified in Wet minimumloon en minimumvakantiebijslag (Law on minimum wage and minimum vacation bonus) is taken. 341 For the year 2016, this is set at €1,524.60 per month (€1,646.57 including vacation bonus). 342

The MOB must be 21 years of age and be validly married to the MOS. 343 Rules also exist for registered partners or persons in a durable relationship. 344 She must moreover pass a basisexamen testing Dutch language skills and societal knowledge. 345 The permit will not be granted unless she is not a danger to public policy or public security, 346 and she may be required to undergo an examination for tuberculosis. 347 Upon arrival, the two must form a communal household and live together. 348 After five years, the MOB is entitled to an autonomous residence permit. 349

Insofar that the MOB has a minor child (not common to the couple in the biological or legal sense), he or she can also be authorized to join the MOB. In that context, the MOB will act as the sponsor, meaning that reunification is possible only after her acquisition of the appropriate residence status. 350

As a basic point of departure, where the family link is broken (divorce, widowhood etc.), the residence right as a family member also lapses (prior to being eligible for an autonomous residence permit). There are however exemptions for the situations in which the relationship broke down due to household violence 351 or in case of death of the sponsor. 352

Conclusion
For the Netherlands, the MOB phenomenon cannot be considered a controversial policy point. No specific legislation is in place. Family reunification thus follows the general rules.

3.3.3. Ireland

Background
The Irish Naturalisation and Immigration Services (INIS) policy document on immigration into Ireland for the purpose of family reunification does not mention the situation of MOBs. 353 Ireland does not participate in the EU Directive on Family Reunification but has developed its own national immigration policy. This policy is in conformity with the European Convention on Human Rights Act 2003, which is based on respect for family life as meant in article 8 of the European Convention on Human Rights and Fundamental Freedoms. 354 The last few years, the number of immigrants from non-EU states has

341 Article 3.22(1) jo. 3.74 Vreemdelingenbesluit 2000. Some exceptions exist for those of pensionable age or those who are permanently incapacitated for work: Article 3.22(2) Vreemdelingenbesluit 2000.
342 Article 8(1)(a) jo. 15(1)(a) Wet minimumloon en minimumvakantiebijslag.
343 Article 3.14(a) Vreemdelingenbesluit 2000.
344 Article 3.14(b) Vreemdelingenbesluit 2000.
345 Article 16(1)(h) Vreemdelingenwet 2000. Exceptions exist for, for example, disabled persons: Article 2.8 Besluit inburgering.
346 3.20 Vreemdelingenbesluit 2000.
347 3.21 Vreemdelingenbesluit 2000.
348 Article 3.17 Vreemdelingenbesluit 2000.
349 Article 3.51(1)(a)(1) Vreemdelingenbesluit 2000.
350 Article 3.14(c) Vreemdelingenbesluit 2000.
351 Article 3.48(1)(f) jo. Article 3.51(1)(j) Vreemdelingenbesluit 2000.
352 Article 3.51(1)(c) Vreemdelingenbesluit 2000.
354 INIS, 2013, para. 2.1.
increased in Ireland, but unlike other EU States, Ireland does not impose any integration related requirements. Immigrants are strongly advised, however, to take English language courses, especially if they intend to reside in Ireland for a long term or wish to become an Irish citizen.355 According to interviewee Laura Barry, the MOB industry in Ireland has increased since 2005 when she first started to study the phenomenon. Especially older Irish bachelors are interested in MOBs from South-East Asia, in particular from the Philippines because the brides will also be Roman Catholics. MOB relationships seem to have become more acceptable in Ireland.356

**Legislation**

Immigration status in Ireland ranges from limited or conditional to long term residence without condition. The length and conditions are at the discretion of the Immigration Officer.357 Unlike countries in the Schengen zone, the rules for visa requirements in Ireland do not distinguish between short and long stays.358 For the purpose of family reunification, an Irish sponsor is needed who has to assume certain responsibilities for the family member they bring into Ireland. The sponsor must not have been totally reliant on state benefits for a continuous period longer than two years immediately prior to the application, and over a period of three years prior to the application, he must have earned a gross income of not less than 40,000 Euro.359

In case the sponsor wishes to bring a bride or permanent partner to Ireland, it will be checked whether it is not a marriage of convenience.360 The applicant and the sponsor have to prove that their intention is to marry c.q. live together in case of civil partners or de facto partners. They have to submit a declaration to this effect as part of the application procedure.361 The spouse to be must be at least 18 years old at the time of the application and the marriage must be monogamous, freely entered into by both parties, lawfully conducted, and recognised under Irish law, which is all in conformity with the eligibility requirements for marriage within Ireland.362

In case the MOB is divorced or widowed, the immigration authorities must be informed and an application for a change of status may be filed with INIS. INIS will decide on a case by case basis whether such a change of status will be granted. In case of divorce, the MOB is eligible for an independent residence permit if she has been married for at least three years and she spent at least the last two years in Ireland. This is different if the MOB is a victim of domestic abuse at the hands of her husband. Victims may apply for immigration status in their own right, independent from the perpetrator.363 Where there is no change of circumstances, the MOB may apply for an independent immigration permission when she has resided in Ireland for at least five years. This is in line with the current eligibility criterion for naturalisation.364

Any children that are part of the household, but who are only related to the MOB and not to the sponsor, are eligible to be treated as part of the nuclear family on the same basis as the children born out of the marriage of the MOB couple. In cases of shared/joint custody

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355 INIS, 2013, para. 9.1.
356 Interview with Laura Barry, 2016
358 INIS, 2013, para. 10.1.
359 INIS, 2013, para. 17.2.
360 Marriage of convenience is defined as: a marriage entered into for the predominant purpose of obtaining an immigration advantage for one of the parties. INIS, 2013, para. 5.2 note 1.
361 INIS, 2013, para.
362 INIS, 2013, para. 15.1 and 15.2.
363 INIS, 2013, paras 23.2 – 23.5.
364 INIS, 2013, para. 23.5.
of such children of the MOB and the children’s father, this man’s consent is required in respect of the children’s residence in Ireland.365

Conclusion
Although there seems to be an increase of the MOB industry in Ireland, particularly involving Filipino women, there is no specific legislation concerning such marriages. MOBs are treated like any other immigrant coming from a non-European Economic Area country. Similar to other EU States, Ireland makes it possible for women who are battered by their husbands to apply for an independent residence permit, also before the term of five years of residency dependent on their sponsor have expired. As Ireland does not participate in the EU Directive on Family Reunification, it seems unlikely that the country would want to participate in a EU Directive focused on the situation of MOBs.

3.3.4. United Kingdom

Background
Like Ireland, the UK does not participate in the EU Directive on Family Reunification. There are no specific rules in regard to MOBs, but since 2012, their situation is covered by Appendix FM of the Immigration Rules. Spouses are the largest single category of migrant settlement in the UK (40% in 2010). However, only limited research on marriage-related migration has been conducted.366 In 1997, the Primary Purpose Rule was abolished, under which applicants had to prove that their marriage was not a marriage of convenience. Since then, the number of spouses entering the UK has been increasing. In order to curb the influx of immigrants, several measures were taken as of 2006. The period qualifying for settlement in employment was raised from four to five years; the probationary period for settlement before permanent leave can be applied for was set at five, and in certain circumstances, even ten years;367 more stringent financial requirements were introduced;368 there was the introduction of the “Knowledge of Life in the UK” test which was to be passed by immigrants who wish to settle in the UK; the ability of the immigration authority to refuse applications in the name of the public good was enacted.369 It has been argued that the ever increasing strictness as regards applications from non-EU citizens is fuelled by the British resentment of the EU mandated facilitation of free movement for EU citizens.370 Based on reported cases of forced marriage especially concerning persons from Pakistani backgrounds, the minimum age for spouses was raised to 21.371 Although a research conducted on behalf of the Home Office does not mention the term MOB or import bride, it is acknowledged that IMBs play a role as regards the arrangement of marriage between UK citizens and, particularly, Filipino and Thai women.372

Legislation
In order to join the MOS in the UK, the MOB needs to apply for a “family of a settled person” visa. To that end, the MOS and the MOB need to prove that the MOB is over 18 years of age,373 that the couple has met in person before the application is filed,374 that the
relationship is genuine,\textsuperscript{375} that there is an intent to continue living with the MOS after the application,\textsuperscript{376} that the couple has an adequate place to live in the UK,\textsuperscript{377} and that the MOB has good knowledge of the English language.\textsuperscript{378} Where the couple has not married before the application is filed, it is nevertheless possible for an applicant to enter the UK as a fiancée, provided that the couple complies with the abovementioned conditions and that they have the intent to marry in the following 6 months.\textsuperscript{379} Furthermore, a financial requirement is imposed, according to which a yearly salary of £18,600 is required when the application is filed only for the MOB and £22,400 is required when the application is filed for the MOB and one additional child. An amount of £2,400 is required for each additional child.\textsuperscript{380} Any joining children must be under 18 years of age. Where the MOB satisfies these conditions, she will be admitted for an initial period not exceeding 33 months.\textsuperscript{381} For an extension of the right of residence, the MOB has to give evidence that she is married to a person present and settled in the UK that they intend to live permanently together, that there will be adequate accommodation without recourse to public funds, that they have sufficient resources, and that she has obtained an English language sufficiency certificate.\textsuperscript{382} The extension will be issued for a period of 30 months.\textsuperscript{383} The right to settle in the UK only becomes available after five years or, depending on the circumstances, ten years of continuous stay in the UK.\textsuperscript{384}

As is the case in other European States, the MOB no longer depends on the sponsorship of the MOS and is entitled to apply for independent permanent residency if she can prove that she is the victim of domestic violence at the hands of the husband. However, she needs to fulfil the following requirements: she was initially granted leave to stay in the UK as a spouse, the relationship was still on-going when the last application for leave in the UK was filed, and there is evidence to suggest that the relationship broke down because of domestic violence.\textsuperscript{385}

\textit{Conclusion}

In the context of an overall crackdown on perceived influx of migrants to the United Kingdom, the legislative regime in the UK has certainly become more restrictive over time. Generally, however, MOBs are not singled out; as such, their migration follows the general rules. There is no specific legislation concerning the immigration of MOBs in the UK but the regular rules concerning family reunification are applied. MOBs have to fulfil certain integration requirements, while the male sponsors have to show a certain financial capacity to maintain their bride-to-be. Also in the UK, MOBs who are victims of domestic abuse can apply for autonomous residency irrespective of the duration of the marriage.

\textsuperscript{374} HC 395, Appendix FM E-ECP.2.5.
\textsuperscript{375} HC 395, Appendix FM E-ECP.2.6.
\textsuperscript{376} HC 395, Appendix FM E-ECP.2.10.
\textsuperscript{377} HC 395, Appendix FM E-ECP.3.4.
\textsuperscript{378} HC 395, Appendix FM E-ECP.4.1.
\textsuperscript{379} HC 395, Appendix FM E-ECP.2.8.
\textsuperscript{380} HC 395, Appendix FM E-ECP.3.1.
\textsuperscript{381} HC 395, Appendix FM D-ECP.1.1.
\textsuperscript{382} HC 395, Appendix FM E-LTRP.1.2.
\textsuperscript{383} HC 395, Appendix FM D-LTRP.1.1.
\textsuperscript{384} HC 395, Appendix FM D-LTRP.1.1.-1.2.
\textsuperscript{385} HC 395, Appendix FM E-DVILR.1.1.- E-DVILR.1.3.
4. ASSESSMENT OF CURRENT PROBLEMS AND LEGAL GAPS IN RESPECT TO THE MAIL-ORDER BRIDE INDUSTRY IN THE EU AND THE RESEARCHED MEMBER STATES

4.1. Gaps in Current Legal Frameworks

Based on the research conducted and outlined above, some lacunae are revealed in the existing legal framework. Generally, there is no comprehensive set of legislation, either at the EU, Council of Europe, or MS level that deals with the MOB phenomenon. Given that this report identifies particular risks associated with engaging in MOB relationships which are associated with the women’s vulnerable position in the host country, gaps in the current legislation are potentially serious. Three such gaps deserve particular attention.

4.1.1. Lack of Regulation of the Activities of IMBs

IMBs operating within EU or providing services directed at clients in the EU are subject only to very generalist legislation (such as national legislation implementing the E-Commerce Directive), due to the lack of regulations of the activities of IMBs. Whereas, under existing rules, there are good reasons to assume that the liability of IMBs in case of fraud is not excluded under EU law, it remains the case that the IMBs are only subject to very limited obligations. Regulation of IMBs is nonetheless seen as a key element in preventing exploitative marriages.

4.1.2. Lack of a Harmonised Regime for Family Reunification

Three principal situations may be distinguished where it concerns family reunification in the EU: the wholly internal situation in which national law applies, the free movement (of EU citizens) situation in which EU free movement law applies (including in particular Directive 2004/38), and, finally, the lawfully residing TCN in which EU migration law applies (Directive 2003/86). For those EU citizens residing in their own MS, the conditions for admission for their spouses will vary from MS to MS. Of course, this is not specific to the MOB phenomenon; all forms of family reunification of EU citizens in a wholly internal situation have that issue. There are, however, specific risks related to status of MOB. A murky legal status tends to exacerbate the vulnerable position of these women and increase their dependence on the MOS. Such a murky legal status is likely to be the case as the MOB phenomenon has traditionally not received attention at the EU or national level. Generalist legislation on family reunification is not always sufficiently sensitive to this relatively unique migration issue. Moreover, the current patchwork of legislation makes it very difficult for women considering IMB services to inform themselves fully with regard to their rights and legal position in their potential host country.

4.1.3. Lack of Harmonised Protective Measures

As seen above, certain legislation providing protection for MOBs in case of a breakdown of the relationship (either due to abuse, or as a result of death or divorce) are in place. Still, depending on the specific status MOS/MOB couple (which determines whether national, EU free movement, or EU migration law applies), the extent of this protection will differ.

386 For the importance of appropriate legislation and the need to ensure that MOBs have sufficient resources and possibilities to escape abusive situations, see S. Lyneham and K. Richards, Human trafficking involving marriage and partner migration to Australia, (Australian Institute of Criminology, 2014).
387 Orloff and Sarangapani, ‘Governmental and industry roles and responsibilities with regard to international marriage brokers: equalizing the balance of power between foreign fiances and spouses’, Violence Against Women, 13(5), 2007, p. 469.
Directive 2003/86, for example, has very limited protective measures in place in case of breakdown of the relationship. Under the Directive, MS are not under a general obligation to provide for autonomous residence permits prior to five years of residence. This can be contrasted with Directive 2004/38 which provides for autonomous residence permits to TCN family members from one year’s residence onwards. The degree of protection afforded will therefore vary widely depending on the nationality and status of the MOS. Examined from the perspective of the MOB and the risks faced by these women, this bewildering maze is unlikely to facilitate protection.

4.2. Social Consequences and Possible Forms of Violence Resulting from Legal Gaps

The previously determined gaps in the legislation can have negative consequences for MOBs, MOSs, and children, including social consequences and possible forms of violence. While certain laws might be in place, problems can arise if these are not regulated and upheld or when individuals are not aware of and/or unable to access support services.

4.2.1. Women

Due to a lack of protective measures in addition to language barriers, cultural differences, difficulties in finding a job, and the possible inability or unwillingness of the husband to encourage integration and/or inform women about their rights, MOBs might face issues such as isolation and violence, which are arguably mutually reinforcing. Facing the risk of becoming completely dependent and reliant on their husbands, MOBs might lead an isolated life with a lack of supportive networks. Having external relationships outside the groom’s circle of friends and family is considered crucial for the MOB’s wellbeing as well as in contributing to the MOB’s knowledge of her legal status and legal rights, which are difficult to understand.

The possible dependent position of the bride in the relationship is arguably the most significant factor contributing to the likelihood of domestic violence. Domestic violence is considered the outcome of an imbalance in social dynamics between two partners, causing tensions and a systematic deterioration of abusive actions. In the context of MOB relationships, women might be forced to oblige their husband’s will in case they are legally, financially, and socially dependent on him (interview with Laura Barry, 2016; interview with Kenneth Franzblau). Arguably, the husband does not even do this on purpose or because he does not mean well, but rather because he is afraid of losing his wife.

The main question for many scholars regarding the MOB industry is the extent to which gender-based violence within a MOB relationship is growing or stagnating. Some studies reveal that women in international marriages run greater risk of ending up in a disadvantaged situation, as their economically and legally dependent position frequently leads to situations of mental and physical abuse from their future husbands. Such forms of domestic violence can vary from sexual exploitation, trafficking, and prostitution to

391 Interview with Alexandra Still, 2016
392 Interview with Kenneth Franzblau, 2016
393 Sterckx, et al., 2014; Interviews with Laura Barry, Kenneth Franzblau, Sophit Tubtim, Emma Gooding, and Alexandra Still, Susan Rutten, Daria Boll-Palievskaya, and Yuliya Zabyelinia, 2016
394 Belleau, 2003; Tettey, 2009; Lloyd, 2000
395 Rushchenko, 2016
396 Interview with Guri Tyldum, 2016
397 Tettey, 2009
398 Lloyd, 2000
modern slavery, debt bondage, and economic and legal dependency.\textsuperscript{399} Since comprehensive screening processes for male customers of IMBs are rare and IMB activities are hardly regulated, there is an increased risk of violent men being allowed to buy “advertised” submissive women.\textsuperscript{400} Given the MOBs immigrant status, a lack of harmonized protective measures, and unawareness of their rights, they may become victims of (sexual) exploitation through debt bondage and other forms of modern slavery. It is, however, difficult to estimate the numbers of MOBs becoming victims of violence due to the lack of data.

Numbers for physical and sexual abuse among MOBs are lacking, however, what is known is that there is a considerably higher rate of physical and sexual abuse among immigrant women.\textsuperscript{401} Women that experience such forms of abuse are more likely to suffer from psychological issues and personality disorders. Given their legally weak position, there is the increased likelihood that domestic violence occurs without any repercussions for the husband.\textsuperscript{402} It is essential to analyse the disparate perceptions of abuse, as they could be interpreted differently per country and ethnic background. For instance, in some countries the beating of women is still deeply entrenched within the culture, leading women to believe that such actions are justifiable.\textsuperscript{403} Such beliefs could also lead to a misrepresentation of data, as some women do not feel they should report their abusive husband. In addition, women often lack information regarding their legal rights and do not know about their possibilities in asking for help.\textsuperscript{404} One can argue that the link between culture, gender, social class and migration plays a pivotal role in determining the probability of sexual or physical abuse.\textsuperscript{405} Hence, not only women who are by definition MOBs but also female marriage migrants (from third countries) can be identified as a particularly vulnerable group, which arguably needs additional protection.

4.2.2. Bridegrooms

Not only the brides but also the husbands may become victims because of engaging in MOB relationships.\textsuperscript{406} Despite the numerous attempts to map the causes and consequences of international marriages, very little has been written on the position of abused grooms in such marriages. The general consensus is that MOSs are in a less vulnerable position than the MOBs and therefore encounter fewer problems.\textsuperscript{407} Whereas women are often victims of abuse and domestic violence, men are more likely to become victimized through deception and fraud as the IMB industry is hardly recognised.\textsuperscript{408} An example for this is if men provide money to an IMB without ever becoming involved in a MOB relationship.\textsuperscript{409} Due to the way in which these men procured their bride, it may be difficult and shameful to report these crimes to the police. Some scholars argue that male victims of abuse are often considered

\begin{itemize}
  \item \textsuperscript{399} Brocato, 2004
  \item \textsuperscript{400} Chun, 1996; Jackson, 2006
  \item \textsuperscript{402} Cunneen et al.,’Cultural criminology and engagement with race, gender and postcolonial identities’, \textit{Cultural criminology unleashed}, 2004, p. 97-108.
  \item \textsuperscript{403} Rushchenko, 2016
  \item \textsuperscript{404} Interview with Benedicta Deogratias, 2016
  \item \textsuperscript{405} Cunneen et al., 2004; Rushchenko, 2016
  \item \textsuperscript{406} Sarker et al, 2013
  \item \textsuperscript{407} Interviews with Lea Ackermann and Daria Boll-Palievskaya, 2016
  \item \textsuperscript{408} Zug, 2014
  \item \textsuperscript{409} Interviews with Yuliya Zabyelina, Sophit Tubtim, Emma Gooding, Alexandra Still, and Melita Maria-Thomeczek, 2016
\end{itemize}
weak by their environment, especially in non-Western European countries.\textsuperscript{410} This adds to the taboo and fear of losing face that grooms in (international) marriages may undergo. As cyberspace has developed itself into a new platform for finding romance, new forms, typologies, and dimensions of scamming and online fraud have risen to the surface.\textsuperscript{411} This has created an opportunity window for cyber criminals to mislead both men and women through international marriage agencies. Men might also be surprised when they realize they have to provide financial support for the family of the MOB in her country of origin\textsuperscript{412} and if the MOB does not behave as submissive as expected.\textsuperscript{413}

4.2.3. Children

Generally it was observed that very limited information could be retrieved on the risks and consequences for the children whose parents are involved in a MOB relationship. If women have children before they engage in a MOB relationship, they often leave their children behind in their origin country. It is typically difficult for MOBs to bring their children as getting a visa for them can be a time-consuming process. In these cases, the children oftentimes grow up without their mothers and are taken care of by a family member.\textsuperscript{414} If MOBs manage to bring their children with them, they face the risk of being neglected by the MOS who is not the biological father.\textsuperscript{415}

There are also effects on the children born within MOB relationships. These children have a hard time negotiating their identities, especially when their parents are engaged in such a relationship.\textsuperscript{416} They often face bullying from their peers in school.\textsuperscript{417} Children are also in an especially vulnerable position when there are disagreements between the MOB and MOS. In some cases, MOSs use the children to control the women or the mother might not allow the children to see their father.\textsuperscript{418}

If there is a divorce or separation of MOB relationship that produced children, custody issues might arise. There is evidence that in such cases usually the mother gains the custody.\textsuperscript{419} Surprisingly, however, a number of interviewees report that in case of MOB relationships, it is often the father who gains the custody. Possible reasons for this might be that the MOS is able to speak the official language of his country of residence and is more familiar with the customs in their own country, allowing him to much more easily navigate and take control in these situations. Furthermore, they can argue in court that they can be of greater support for their children growing up, for instance regarding education.\textsuperscript{420} Additionally, problems might arise if the MOB wants to go back to her home country and take the children with her. This may cause problems concerning parental authority or visitation rights and the husband may have a stronger position.\textsuperscript{421} In addition to legal issues, the child’s development may be negatively affected. The children might remain vulnerable and unprotected in these situations, although those with European citizenship have a strong legal position.

\textsuperscript{410} Sarker et al., 2013
\textsuperscript{411} Sarker et al., 2013
\textsuperscript{412} Interviews with Jean-Noël Sanchez, Anonymous I, Lauran Bethell, 2016
\textsuperscript{413} Interview with Daria Boll-Palievskaya, 2016
\textsuperscript{414} Interview with Jean-Noël Sanchez, 2016
\textsuperscript{415} Interview with Kenneth Franzblau, 2016
\textsuperscript{416} Interview with Asunción Fresnoza-Flot, 2016
\textsuperscript{417} Interview of Kenneth Franzblau, 2016
\textsuperscript{418} Interview with Anonymous I, 2016
\textsuperscript{419} Statistisches Bundesamt, 2011; Interviews with Prof. Gerard René de Groot and Gene Alcantara, 2016
\textsuperscript{420} Interviews with Babette Rohner, Sopi Tubtim, Emma Gooding, Alexandra Still and Lea Ackermann, 2016
\textsuperscript{421} Interview with Susan Rutten, 2016
4.3. Concluding Observations

In conclusion, there is no comprehensive legislation regulating the MOB industry, neither at national nor at the supranational level. This report identifies three main legal gaps namely the lack of regulation of IMB activities, the lack of a harmonized regime for family reunification, and the lack of harmonized protective measures for women in case of relationship break up. This can be considered a problem because it becomes even more difficult for the MOBs to understand and make use of her rights. In addition, individuals might try to circumvent strict rules, for instance by getting married in another MS. These legal gaps, in combination with additional risks commonly associated with engaging in MOB relationships (language barriers; cultural difficulties; legal, economic, and social dependency on the husband), leave MOBs at high risk of being caught in a vicious circle of dependency, isolation, and violence. If women are caught in such a vicious cycle, it is arguable difficult for them to break it. Men are at risk of becoming a victim of Internet fraud and underestimate the burden to support their wife’s family financially. Challenges for children growing up in MOB relationships can be manifold, including for instance being neglected, bullied, used to control one parent and having difficulties in negotiating their identities. One should note that it is dangerous to assume that all women, men, and children involved in MOB relationships equally experience these consequences. Just like female marriage migrants, they are assumed to be more vulnerable in general. However, there is no data indicating how many MOB relationships are successful or not, which is why one should be careful with generalisations.
5. PROTECTION OF MAIL-ORDER BRIDES, THEIR SPOUSES, AND CHILDREN

5.1. Overall Outcomes of the Interviews
As discussed in previous chapters, women in many cases will be economically, legally, and socially dependent on their husbands, putting themselves in a vulnerable position. In order to complement the legal analysis, the literature review, and the mapping of the IMB websites as well as to arrive at a better understanding of the current status of the MOB industry in the EU, twenty-five expert interviews, an interview with the director of a German-Russian marriage agency, and an interview with the director of a Thai online dating website have been conducted. This chapter analyses the most important findings of the interviews, focusing in particular on possible ways to better protect all individuals involved in MOB relationships. In case any discrepancies were found with the examined legislation and regulations, these are specifically mentioned.

5.1.1. Experts
Table 4 lists all interviewees, their current position, and relevant experience in working with the MOB industry where applicable. In total 25 experts from academia, national and local authorities, and representatives of NGOs and civil society organizations agreed on being interviewed for this report. Two of the interviewees prefer to remain anonymous.

Table 4: List of Interviewed Experts

<table>
<thead>
<tr>
<th>Interviewee</th>
<th>Position</th>
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<tbody>
<tr>
<td>Dr. Gwenola Ricordeau</td>
<td>Associate Professor of Sociology, University of Lille (France); Visiting Professor at the University of the Philippines</td>
</tr>
<tr>
<td>Dr. Asunción Fresnoza-Flot</td>
<td>Postdoctoral Researcher on migration from the Philippines, labour migration, and transnational parenthood at the University of Radboud Nijmegen</td>
</tr>
<tr>
<td>Prof. Marcia Zug</td>
<td>Professor at the University of South Carolina-Columbia (USA) teaching Family Law, Advanced Family Law, and American Indian law, with experience researching the MOB phenomenon</td>
</tr>
<tr>
<td>Dr. Daria Boll-Palievskaya</td>
<td>Cultural expert and cross-cultural trainer for Russia</td>
</tr>
<tr>
<td>Dr. Babette Rohner</td>
<td>Sociologist teaching at Alice-Salomon University of Applied Science Berlin (Germany) and working as social worker at the NGO Ban Ying supporting the rights of female migrants having experienced violence, abuse, or trafficking.</td>
</tr>
<tr>
<td>Dr. Aleksandra Jolkina</td>
<td>PhD Candidate at Queen Mary University, London (UK); As an investigative journalist, she studied sham marriages between Latvian women and TCNs in the UK and Ireland.</td>
</tr>
<tr>
<td>Gene Alcantara</td>
<td>Immigration consultant in the UK, Chairperson of the European Network for Filipinos (ENFiD)</td>
</tr>
<tr>
<td>Interviewee</td>
<td>Position</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Eric Gubbels</td>
<td>Legal Civil Affairs advisor for the Amsterdam municipality</td>
</tr>
<tr>
<td>Melita S. Sta. Maria-Thomeczek</td>
<td>Philippine Ambassador to Germany</td>
</tr>
<tr>
<td>Rohlee De Guzman</td>
<td>Policy Advisor, Executive Director, &amp; Development and Promotions Director at the European Network for Filipinos (ENFID)</td>
</tr>
<tr>
<td>Kenneth Franzblau</td>
<td>Human trafficking expert</td>
</tr>
<tr>
<td>Laura Barry</td>
<td>Lawyer, investigative journalist, and filmmaker (&quot;Bride Trafficking Unveiled&quot;)</td>
</tr>
<tr>
<td>Benedicta Deogratias</td>
<td>PhD Candidate at Maastricht University, Private Law and Marriage Captivity</td>
</tr>
<tr>
<td>Sister Dr. Lea Ackermann</td>
<td>Founder of SOLWODI, a German NGO</td>
</tr>
<tr>
<td>Prof. Gerard René de Groot</td>
<td>Professor at Maastricht University (Netherlands), specialized in private international law, comparative law, family law and nationality law</td>
</tr>
<tr>
<td>Prof. Susan Rutten</td>
<td>Professor at Maastricht University (Netherlands), specialized in law and multicultural cohabitation as well as person and family law</td>
</tr>
<tr>
<td>Sophit Tubtim, Emma Gooding &amp; Alexandra Still</td>
<td>Experts on Thai Immigration to Belgium (NGO)</td>
</tr>
<tr>
<td>Prof. Jean-Noël Sanchez</td>
<td>Associate Professor of Université de Strasbourg Expert in match-making websites in South-East Asia</td>
</tr>
<tr>
<td>Anonymous I</td>
<td>Expert on Thai Immigration to the UK</td>
</tr>
<tr>
<td>Dr. Yuliya Zabyelina</td>
<td>Assistant Professor at John Jay College of Criminal Justice (USA), expert in human trafficking and organized transnational crime</td>
</tr>
<tr>
<td>Dr. Helga Eggebø</td>
<td>Senior Project Manager at KUN (Centre for Gender Equality), PhD: “The Regulation of Marriage Migration to Norway”</td>
</tr>
<tr>
<td>Dr. Pauline Kruiniger</td>
<td>Postdoctoral researcher and docent Private Law, Maastricht University; Specialisation: gender and human rights, multicultural cohabitation</td>
</tr>
<tr>
<td>Anonymous II</td>
<td>Human rights expert (CoMensha)</td>
</tr>
<tr>
<td>Dr. Guri Tyldum</td>
<td>Migration Researcher at Fafo (Institute for Labour and Research) in Norway, experience in research international marriage migration</td>
</tr>
<tr>
<td>Lauran Bethell</td>
<td>International consultant on human trafficking and exploitation, particularly experienced with disadvantaged women working in the sex industry</td>
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</table>
To begin with, it is important to note that the majority of the interviewees do not approve of the term "Mail-Order Bride"[422] and/or stress that it is important to define the phenomenon properly.[423] Reasons for this are *inter alia* that the term is associated with negative connotations and stereotypes and that its use might affect attitudes towards and perceptions of international couples in general.[424] In addition, the term is perceived as outdated because it is difficult to assess whether or not a woman is a MOB according to the definition applied in this report, particularly since opportunities for women to look for possible partners via other means such as social media, established migrant networks, and diaspora or international communities are increasing. In times of globalisation, women can even meet their future husband in person by, for instance, deliberately visiting well-known tourist hotspots. This possibly relates to the fact that some interviewees were surprised about our research project as they did not perceive the MOB phenomenon as a pressing issue anymore compared to the 1990s when the industry arguably was at its peak.[425] There is disagreement, however, regarding the role of the Internet. On the one hand, it might have contributed to the growth of the MOB industry as it becomes easier for IMBs to operate. On the other hand, women are more independent in their search for a Western partner without relying on services of IMBs. Certainly, the Internet increases the risks for Western men to become a victim of fraud and scamming.[426]

Opinions on whether or not to regulate the MOB industry vary. While it might be a way to better protect all individuals involved, prohibiting the industry could have negative consequences like individuals turning to illegal ways to find a foreign partner, further increasing the vulnerability of both brides and bridegrooms. In addition, further regulation might create additional obstacles and restrictions for other international couples who face enough challenges already. Getting married, for instance, is often very difficult for international couples as it requires many documents, which might not even exist in some countries. To circumvent such strict rules, many international couples get married in Denmark where it is relatively easier.[427] After all, both women and men deliberately choose to find a partner abroad and to engage in MOB relationships despite all warnings. Female marriage migration to the West is likely to persist since one can argue that it has become a cultural norm and a prominent way for women to support their families and communities and to meet the cultural requirements of getting married.[428] It is important to note that MOB relationships might actually work in many cases, as a majority of interviewees were quite often able to give successful examples of such relationships,[429] although their work by nature involves more bad cases. Interviewees agree, however, that issues directly relating to crime like human trafficking, the sex industry, inhuman behaviours like IMBs offering satisfaction guarantees with return policies, and Internet fraud should be addressed, and laws should be implemented rigorously. A prominent idea among interviewees is to create standards for marriage agencies and online dating platforms, for instance in form of a certificate.[430]

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422 Interviews with Laura Barry, Yulia Zabyelina, Daria Boll-Palievskaya, Asunción Fresnoza-Flot, Gwenola Ricordeau, Gene Alcantara, Jean-Noël Sanchez, Rohlee de Guzman, and Guri Tyldum, 2016
424 Ricordeau, 2012
426 Interview with Daria Boll-Palievskaya, 2016
427 Interview with Daria Boll-Palievskaya and Babette Rohner, 2016
428 Interviews with Lauran Bethell and Joseph O’Connor, 2016
429 Interview with Guri Tyldum, 2016
430 Interviews with Kenneth Franzblau, Sophit Tubtim, Emma Gooding and Alexandra Still, 2016
One cannot only focus on problems of MOBs and ignore the problems of female marriage migrants from third countries in general, which are often rather similar. A majority of the interviewees, therefore, recommends educating female marriage migrants in general and providing them with information on their rights, obligations, and possible contact points (helplines and NGOs) in case they need help. Such information could come in various forms, for instance, as a preparatory course before migrating as in the Philippines, integration courses upon arrival in the host country, or even simply information brochures that are distributed by embassies or immigration services. One should note that it is assumed that a majority of MOBs are aware of the risks but nevertheless decide to become a MOB since they are convinced that they will not become a victim. Consequently, education and information should not necessarily aim at preventing women from becoming MOBs but instead provide them with something to remember or come back to in case of emergency.431 By a majority of interviewees, it is considered crucial that MOBs and migrants in general learn the official language of the destination country to be able to integrate both socially and economically, arguably leading to more equality between partners. Another suggestion is to create more flexible immigration and family laws so that residence permits and visas of MOBs do not depend on the husband, which increases the women’s vulnerability and might prevent them from leaving their husband in case of abuse. Other ideas are to facilitate divorce, shorten the period before a marriage migrant can apply for permanent residence, or to give MOBs the possibility to maintain residence in the destination country in case of abuse and relationship breakup.432

When considering further regulating the MOB industry and introducing protective measures for all individuals involved, it is important to determine at which level — either the supranational or national level — action should be taken. Results from the expert interviews are mixed, suggesting that a combination of both would be most useful. None of the interviewees spontaneously recommend the Council of Europe to take action to address the MOB issue, although it might be a convenient instance to do so taking into account that it aims at promoting human rights and has passed related regulations earlier. Rather, the interviewees consider the EU an appropriate actor, acknowledging that it might be difficult for the EU to address the issue since migration and family law are sensitive topics.

### 5.1.2. Representatives of the Marriage and Dating Industry

This section discusses the most important findings of interviews with two representatives of international marriage agencies and international online dating platforms, respectively. As it is impossible to draw general conclusions for the whole industry based on two interviews, both cases are discussed separately.

**Table 5: List of Interviewed Representatives of the Marriage and Dating Industry**

<table>
<thead>
<tr>
<th>Interviewee</th>
<th>Position</th>
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<tbody>
<tr>
<td>Ksenia Droben</td>
<td>Director of the Match-Making Service Ksenia Droben Partnervermittlung, based in Heidelberg, Germany and St. Petersburg, Russia</td>
</tr>
<tr>
<td>Joseph O’Connor</td>
<td>Operations Director at AtlanticThai Internet Co. Ltd based in Bangkok, Thailand</td>
</tr>
</tbody>
</table>

432 Interviews with Helga Eggebø, Pauline Kruiniger, Guri Tyldum, Marcia Zug and Babette Rohner, 2016
5.1.3. Ksenia Droben

Ksenia Droben’s agency seems to be a role model of an international match-making service. With almost twenty years of experience, Droben is dedicated to facilitating realistic relationships between Russian women and European (mostly German) men. With offices in Russia and Germany, she and her employees get to know both her female and male customers in person to help them find the “perfect match” and to prevent relationships which would be doomed to fail. In order to protect her clients and reputation, Droben reserves the option to reject clients if she notices that they have completely wrong expectations or could be dangerous for their partner. While the Russian office caters more to the needs of the women, the German one focusses on the men’s needs. Services offered by Droben’s agency include support with correspondence including translation, the organisation of personal meetings between men and women in Russia, and singles parties in Germany, Russia, Finland, and Ukraine. In addition, the agency offers seminars for men and so-called bridal schools (German: *Brautschulen*) for women to prepare them for international relationships. Droben and her team are always available for additional consultations and support clients as much as possible with the migration process and legal issues. Furthermore, they aim at staying in touch with their clients through newsletters, blog posts, and social media, which they also use to disseminate additional information.

Droben cannot describe typical clients or confirm any stereotypes. Men and women come from all sorts of demographic and socioeconomic backgrounds. Both male and female clients are informed about possible risks an international marriage might involve, such as cultural and mental differences between the partners, restrictions the migration process might bring for the women (e.g. not being allowed or able to work for a certain time), and information on where to find help if necessary. Droben is furthermore dedicated to eliminating unrealistic expectations among her clients such as men looking for significantly younger women and women expecting to live in luxury when marrying a craftsman. Droben claims that most of the couples she and her team brought together stay together and only few get divorced. She would be willing to help women in cases of abuse or violence, but she is not aware of such cases. She does not exclude them either because women might be afraid or embarrassed to talk about it.

Droben is in favour of further regulating the match-making industry and would be willing to cooperate with the authorities in charge. In the current situation, she argues, anyone can open a match-making agency and many fail after a short period of time. In Droben’s opinion, this can be dangerous for clients because the service requires a lot of skills and experience to be successful. On the other hand, it can be harmful to the reputation of other agencies, leading to the assumption that all agencies are criminals engaging in fraud and cheating. For Droben, a possible solution to this problem is to certify match-making agencies so that only those that have been tested and adhere to certain standards can operate. Another idea would be to set up a European database of existing (certified) match-making agencies providing contact details and information on experience and other aspects that might help possible clients choose a certain agency. This way, risks to become a victim of fraud, for instance, could be minimised. In addition, Droben would like to find a way to prevent clients from cheating regarding their economic and family situation. Requesting passport copies from clients as a backup and to be able to perform background checks might be one way of doing so. Droben’s cooperativeness is further expressed through publishing a call, asking former and current clients to support the current research project (see Print Screen 4, in German).
5.1.4. Joseph O’Connor

Joseph O’Connor runs an Internet company which operates inter alia a social networking and dating site called ThaiLoveLines, catering to both international dating in Thailand as well as dating among Thais. O’Connor emphasises that his company is not involved in any way with marriage broking or any activity connected with directly introducing marriage partners let alone human trafficking. The idea behind the dating site is to bypass services of IMBs by finding a partner (abroad) independently, thereby avoiding loneliness. By signing up on the website, forms of relationships other than marriage, e.g. friendship, are also possible. It is also interesting to note that ThaiLoveLines caters for all sexual orientations and stands for an inclusive dating environment. In order to guarantee the security of all users and to prevent Internet fraud, approximately 7.5 per cent of applications to the dating site are rejected on grounds of security or decency standards. Services offered by ThaiLoveLines include chats, Internet calls, correspondence via email, an innovative match service, and a social networking service.

Being married to a Thai woman himself and living in Thailand for more than a decade, O’Connor arrived at a complex understanding of Thai cultures and traditions that helps explain why Thai women look for Western partners in particular. He points out that while individuals in the West grow up thinking marriages are for love, they cannot last if the economic aspect is not settled, which is often forgotten. Further, O’Connor states that, despite being focused on finances, Thai women will still be loving towards their husbands.

O’Connor acknowledges that there are cases of fraud and abuse and that oftentimes it is people’s own fault that they become victims. What he is most concerned about is that the online dating and match-making industry is conflated with the trafficking industry, although, for him, it is arguably the exact opposite. Online dating and international marriage should rather be seen as a tool for some women to fix their broken lives, which is important in Thailand because, for instance, unmarried mothers, divorced women, and women with darker skin do not have the same opportunities than others. O’Connor suggests that many women in Thailand are faced with a culture of chronic debt and few prospects of advancement.

Regulating the industry and introducing protective measures for all individuals involved should prevent stigmatization of international marriages. O’Connor argues that these relationships should be seen positively rather than being labelled or stereotyped in a negative way. These regulations should stress that the relationships are not the result of trafficking in human beings but a deliberate choice of both partners. According to O’Connor, while there can be cases of abuse or scamming within these relationships, they are usually equal between the man and his wife. O’Connor suggests that the two individuals will grow to love each other as they go through things together as a couple.

Accordingly, O’Connor proposes that protective measures should include orientation courses for both the bride and the husband because the courses would not only provide them with necessary information regarding their future life and what to do if problems occur but also give a certain approval to the relationship as both partners show that they mean well. O’Connor maintains that these courses would provide the necessary protections for women but also allow men to be vetted voluntarily. In addition, he identifies the language barrier as a key problem in international relationships and recommends that protective measures should also include language courses.
5.1.5. Personal Experiences

Due to time constraints, the research group was not able yet to establish in depth trust relationships to be able to access the networks of MOBs and MOSs. Therefore, the objective to interview men and women who have engaged in MOB relationships could unfortunately not be realised. MOBs and MOSs the research team identified through personal networks
were not willing to support the research project. In addition, attempts to find possible interview partners with the help of Ksenia Droben and her match-making service as well as general requests for participants made on immigration fora (such as buitenlandsepartner.nl) failed. This limits the report to second hand knowledge and emphasises the sensitivity of the issue. Thus, examples of both women and men involved in MOB relationships were obtained second-hand solely from the experts interviewed. Through these interviews, a range of experiences with MOB relationships were revealed, from negative to positive.

5.1.6. Women

One big problem for MOBs is that, in some cases, the men looking to engage in such a relationship are entitled to an Umtauschrecht (return guarantee), meaning that they are able to try out and return the women if the relationship does not work out, even after sexual contact. In such cases, MOBs, on the other hand, are not allowed this right and are typically required to engage in the relationship. Specifically, Babette Rohner (2016) gave an example of a Thai woman who was presented with two men who she did not accept but she was obliged to take the third. Another example from Lea Ackermann concerned a MOB who had left her violent husband and returned to her marriage broker, who subsequently raped her. This puts emphasis on the asymmetric relationship. The MOS largely defines the relationship and has the power to end it at any time during the first three years, whereas the MOB has limited rights and would possibly have to return. Unfortunately for the women, this often means that they are themselves responsible for the costs of returning back home, which might force them to work in the sex industry.

While women can engage in MOB relationships voluntarily, there is often also community pressure for them to become married, especially for financial reasons. Lauran Bethell (2016) provides an example of a case specific to an ethnic minority in Thailand where unmarried women are considered evil and therefore are more likely to agree on being married to a terrible man. Hence, pressure to engage in a MOB relationship might also be exerted by the women’s community. Further, once women get involved in such relationships, they often leave their own countries, leaving behind their families and even their own children. In addition, Gene Alcantara (2016) provides an example of a woman from the Philippines who was brought to Romania to meet her future husband and feels lonely even though the relationship seems to be good. Therefore, one can assume that in many cases, MOBs feel alone and isolated in their host countries and are unable to return home as often as they would like.

While MOBs can find themselves in bad relationships, there are also instances where international marriages are positive for all individuals involved and should be seen as an opportunity for both the MOB and the MOS to substantially improve their lives. Joseph O’Connor (2016) suggests that, while it is of course not always the case, he has seen five documented situations where Thai women married Western men, moved to their husband’s home country, and acquired citizenship of the destination country. He compares their new life to fairy tale.

Even more so, Tyldum (2016) suggests that many men work towards making their relationship more equal, implying that the MOB can be independent economically and

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433 Interviews with Lea Ackermann and Babette Rohner, 2016
434 Speaking in the context of Norwegian immigration law.
435 Interview with Guri Tyldum, 2016
437 Interviews with Guri Tyldum, Asunción Fresnoza-Flot, Laura Barry and Melita S. Sta. Maria-Thomeczek
socially in order to resemble a normal relationship. She specifically cites an example of a Thai woman living in the Norwegian countryside, initially without a job or driver’s license and caring for her husband’s parents. Eventually, she learned Norwegian, was offered a cleaning job, and was able to attain a driver’s license after having made her own money. This allowed to her gradually be in a position where she was able to control her own life and to be on an equal footing with her husband.

5.1.7. Men
While most examples provided in the expert interviews concerned MOBs, there were also some regarding MOSs, specifically illustrating the possibilities for men to get involved in scams. O’Connor (2016) provides two such examples. The first concerned a man who has been using his online dating website for eight years and send money to women he was corresponding with although he arguably should have known better. Despite being initially scammed, the man continues to maintain friendships with women in Thailand through the website and will send them money. In the second example, O’Connor describes a recently divorced English building contractor who had to put Thai land he had bought to build apartments on his wife’s name. His wife, however, claimed eventually that the apartments were hers and asked the man to leave. He shortly found another girlfriend and moved to the north of Thailand where he is now involved in farming.

5.2. Best Practices
As noted above, the US has longstanding experience with MOBs and the phenomenon is openly discussed and addressed. The latest legal development in this regard came with the IMBRA introduced in 2005 after two high profile cases in which MOBs had met their death at the hands of their husbands.

The act as adopted imposes significant obligations on IMBs which are either established in the US or operate abroad but address the US market. These include:

- A prohibition of IMBs including girls younger than 18 in their catalogue.
- Extensive background checks on US clients (the would-be MOSs), including:
  - Searching whether they are mentioned on the National Sex Offender Public Website,
  - Determining whether they have (active) restraining orders, whether they have been arrested or convicted for certain crimes (such as murder, sexual assault, stalking, but also prostitution or alcohol/substance abuse related),
  - Determining their (past) civil and marital status, whether the MOS has previously sponsored a foreign national, whether the MOS has any descendants in the primary line under the age of 18, as well as the MOS’ history of past movement across US States.
- Requirement to inform the US client (the would-be MOS) that his or her visa sponsorship would be subject to a criminal background check.
- Requirement to provide information to foreign clients (the would-be MOBs), including:

International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

- The background information collected on the MOS, in the primary language of the MOB.
- Provision of an information pamphlet (see annex 3) detailing the legal rights and resources available to immigrant victims of domestic violence and other crimes, as developed by the State Department.
- Requirement to obtain consent from foreign clients (the would-be MOBs) before their personal contact information is provided to the (would-be) MOS.

Should the IMB seek to misuse background information obtained (in regards to the MOS) or otherwise try to dodge its obligations (as regards either the MOS or the MOB), it may be fined and the responsible persons subject to imprisonment.

Flanking the IMBRA, the US operates a permissive immigration context. The classic immigration route for MOBs, the “K-1 visa,” allows the MOB to enter the US and reside for a period of ninety days during which she can decide whether to marry her fiancé. This provides the prospective bride with a degree of latitude in making her decision and to familiarise herself with the host country. After marriage, she becomes a conditional residence which includes right to leave and re-enter the US, to attend education, and to work. Finally, after two years of residence, the MOB is eligible for permanent residence. This permanent residence can be obtained through self-petition, i.e. without needing the permission of the husband.

As such, the US policy to address the MOB phenomenon in this regard can be summarised in two points:

1. A firm belief in the autonomy of the women involved. The IMBRA legislation draws few hard borders (e.g. no children may be advertised) and rather mainly seeks to ensure that the women using IMB services make informed decisions. Indeed, the stated purpose of the IMBRA is to:

   (…) to better inform women entering this country as a prospective spouse about the past history of the man she may be marrying and to better inform them of their rights as residents of the United States if they become victims of domestic violence.

As such, the regulation focusses on IMBs conducting extensive background checks vis-à-vis potential MOS. The information so garnered must be provided to the women in a language they can understand, under penalty of fines and possible imprisonment should the IMB not take sufficient action. It should be noted, however, that actual enforcement of these IMBRA obligations has not consistently been rated as sufficient by the US Government Accountability Office.

2. Migration legislation which takes into account and tries to correct for the inherently vulnerable position of a person whose initial position is one of dependency. This includes

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441 Available at https://travel.state.gov/content/visas/en/general/IMBRA.html last visited 24 August 2016
multilingual information packages targeted towards the MOB as to her rights and legal position, the possibility of a “get-to-know-one-another” visa (fiancé visa), emancipatory rights upon initial family reunification (such as labour market access and access to education), and a view to permanent residence without needing the cooperation of the MOS after a relatively short period of time.

In addition to the legal protections provided by the IMBRA law in the US, other countries have made efforts in attempts to reduce the vulnerabilities of MOBs and pre-emptively inform women that have a high likelihood of getting involved in a MOB relationship. In many cases, this is done through the distribution of information to MOBs both in their destination countries upon arrival as well as in their countries of origin already before their departure. In Latvia, NGOs have been working with the Latvian government since 2008 to carry information campaigns targeting young women, some still in high school, that are living in the countryside. The campaigns aim to inform women that make up potential risk groups of the possible dangers of sham marriages abroad.445

Another way this spread of information is accomplished is through informational seminars and the distribution of leaflets. As a result of Thai governmental policy, most embassies in Thailand have information leaflets that are given to women when they register for their visas.446 The Philippines, on the other hand, has pre-departure orientation courses that are intended to inform women of the risks of being involved in a MOB relationship and what can be expected in their destination country as well as information regarding social services and the promotion of economical literacy.447

Further, some destination countries, such as the Netherlands and Germany, are implementing similar orientation and integration sessions for foreigners not limited to MOBs. These can be mandatory in some cases depending on what basis individuals migrate to the respective country.448 These are intended to help build good local relations as well as inform MOBs of their rights and their new communities. Organizations and associations, such as the European Network of Filipino Diaspora (ENFiD), are also engaging Filipinos to help foster a sense of community abroad.449 According to its website, ENFiD is “an active international networking association that seeks to cultivate a sense of shared nationhood and cooperation among Overseas Filipinos in Europe... [It] is active in organising cultural events, relief operations, focused training workshops, fora for the discussion of issues pertinent to Euro-Filipinos and partnering with institutions for greater access to migration issues on culture and development.”450 The organisation is currently active in twenty countries, including the UK, the Netherlands, Germany, France, Belgium, and Denmark, and coordinates worldwide with NGOs, UN agencies, churches, overseas Filipino organizations, and Philippine government institutions in order to support and empower Filipinos abroad.

Another such organisation is Love Abroad. This project is dedicated to helping trafficked, exploited, and marginalized individuals in Belgium, specifically in the Brussels and Antwerp areas. They offer information and support regarding marriage and relationships, obtaining a visa, as well as finding friends and integrating into the community. They also offer

445 Interview with Aleksandra Jolkina, 2016
446 Interview with Sophit Tubtim, Emma Gooding, and Alexandra Still, 2016
447 Interviews with Melita Maria-Thomeczek and Jean-Noël Sanchez, 2016
448 Interviews with Sophit Tubtim, Emma Gooding, Alexandra Still and Ksenia Droben, 2016
449 Interview with Rohlee de Guzman, 2016
450 ENFiD website, http://enfid.org/
information on the various hotlines that women can contact if they find themselves in distress or in difficult situations within the UK, the Netherlands, and Belgium.451

5.3. Comparison with 2001 Council of Europe Report and the European Commission Project HeiRat

The Council of Europe project entitled “The Impact of the Use of New Communications and Information Technologies on Trafficking in Human Beings for Sexual Exploitation: Role of Marriage Agencies in Trafficking in Women and Trafficking in Images of Sexual Exploitation” by Hughes (2001) aims to address the role of new digital technologies in the trafficking and recruitment of adult persons for sexual exploitation. In addition, it considers the trafficking of images of adult persons through which nude or pornographic images of woman are circulated on the web without their consent. Hughes brings together data and information from Internet-based IMBs located in the former Soviet Union, reports from NGOs, researchers, and law enforcement, as well as from individuals in Eastern Europe starting sex sites on the web. Her project provides an in-depth insight into how IMBs and traffickers function and reveals areas of focus for future research.

In comparison to Hughes’ 2001 project, it is nowadays difficult to identify exclusive MOB websites because many websites sell their services as (premium online) dating services. The sites emphasize that the end result of the relationships they support does not necessarily need to be marriage. By selling their services as dating services rather than marriage, the IMBs are able to often claim that they are not MOB websites, while they clearly are in terms of our definition. Further, Hughes provides an overview of the location of the women and the agencies, which cannot be replicated as such. When searching for women, it is often difficult to differentiate between their origin countries. For instance, often Ukrainian or Russian women are referred to as women from the CIS in general. The number of women available on the websites is countless, sometimes up to 10,000 per website, making it extremely difficult to extract specific data of the women. Moreover, IMBs mostly regulate their services outside the origin country of the MOBs, who are recruited by subcontracted local agencies. Another difference is a newly observed trend of promoting MOBs via apps and social media including Facebook, Pinterest, and Tumblr. Further, unlike Hughes’ project described, no disabled women were currently observed to be promoted as MOBs. What is observed is that in exceptional cases clients of IMBs had the option to define their ideal partner as disabled and that, on some websites, there were under-aged children claiming to be 18 years old.452

Considering an additional project, the project “Marriage Migration as Immigration Gate: The Situation of Female Marriage Migrants from Third Countries in the EU Member States” (acronym: HeiRat I) conducted in 2003 aims to address the issue of marriage migration.453 The target group in this project consists of female immigrants from third countries who married either immigrants residing in the EU or EU citizens. The project presents an overview of the legal regulations on international marriage of the EU Member States as well as the social situation of the woman, taking into account NGOs, programmes, and initiatives providing protection to this group of migrants. The second phase of the project, ‘Protection and Aid Measures for Female Marriage Migrants from Third Countries in the Member States of the European Union’ (acronym: HeiRat II), conducted in 2004, aims at

452 Tschechische Traumfrauen and Asian Women Planet
researching female marriage migrants’ access to legal and social counselling in the then 15 EU Member States. HeiRat II builds on the findings of HeiRat I by additionally interviewing the women.

HeiRat studied the female marriage migration context of TCNs to the EU about 13 years ago. Although the project did not focus on MOBs in particular, it is interesting to consider HeiRat’s main points of recommendation and compare them with the current situation. First, HeiRat stresses that there is a need for enhanced support for female marriage migrants from third countries not only on the social, but also on the legislative level. Therefore, HeiRat recommended that the females should be provided with information on the procedures before arriving in the destination country. It was suggested that the woman should be aware of the legislation of their marriage and the procedures they must undertake in order to engage in an international marriage. This would provide these women that are living and married in a foreign country with a sense of agency. The current research identifies similar issues and finds that some basic actions are taken by several host and home countries in providing information to female marriage migrants, but their effectiveness can be questioned. Furthermore, it stresses the importance of language and cultural classes in the host country to enable integration and prevent social isolation and associated risks.

Secondly, the HeiRat project mentions that the public perception of the female marriage migrants should be enhanced since there is a stigma towards this particular group. Again, this is rather similar to the current situation. Stigmas regarding female marriage migrants, especially MOBs, still exist according to the interviewed experts. Recurrent advice from the interviewees is not to use the term “Mail-Order Brides” anymore, as it is arguably outdated and associated with negative connotations, not necessarily reflecting the modern phenomenon of marriage migration. In addition, the term increases the stigmatization of certain female marriage migrant groups. In particular due to the rapid changes regarding the use of the Internet, mobile phones, and social networks, it is extremely hard to distinguish the MOB phenomenon as defined in this report from other forms of female marriage migration. In addition, the HeiRat project advises in the case of Germany and the UK to abolish the probationary period for female third country marriage migrants to retain their residence rights if they choose to end the relationship. Additionally, the HeiRat project recommends that female marriage migrants should be able to end their relationships without providing evidence of domestic violence. In line with this, the project recommends that all evidence of domestic violence should be accepted at the lowest threshold. Furthermore, in case of experiencing domestic violence, the woman should also be able to access social benefits and welfare and should not be denied public funds.

Since the HeiRat report, the Istanbul Convention was adopted in 2011 and ratified in 2014 by the Council of Europe. The Istanbul Convention provides a comprehensive framework to prevent violence, to protect victims of gender-based violence, and to prosecute perpetrators. Unfortunately, this Convention has not been ratified by many of the EU MS.

Furthermore, the cooperation between organisations at the local and the national level that work towards the protection of female marriage migrants should be enhanced. Currently, cooperation is still advised. However, it should not be limited on a host country level. Recent expert interviews show that transnational networks, such as diaspora groups, and home countries are involved in the support and training of marriage migrants, such as MOBs.

In the case of Denmark, the HeiRat projects recommends that restrictions and requirements for family reunification as introduced in 2000 and 2002 should be abolished
since they violate international conventions and discriminate against marriage migrants. This act states that Danish residents intending to marry a third country national should not have drawn on welfare funds for the past 12 months, should be 24 years or older, show evidence of permanent residence, and show that they are able to support their spouse upon arrival. Furthermore, both individuals must provide evidence that their ties with Denmark are greater than to any other country. Since this act has not been changed to this date, it is interesting that the current report finds that getting married in Denmark was relatively easy for TCNs and EU citizens even though they do not reside in Denmark.

5.4. Concluding Observations

This chapter has discussed the main results of the interviews with experts and representatives of the marriage and dating industry. In general, the term “Mail-Order Bride” does not find much approval as it is associated with negative connotations and is arguably obsolete since the distinction between MOBs as defined in this report and other forms of international marriage migration is blurred. If addressing the issue, it is therefore considered particularly important to define the phenomenon properly, without excluding certain groups of female marriage migrants or discriminating against international relationships.

A majority of interviewees agrees that the industry should not be prohibited but rather regulated in order to better protect all individuals involved and prevent them from taking illegal and more dangerous measures to marry internationally. The representatives of the marriage and dating industry interviewed for this study are very much interested in protecting their clients and would be willing to cooperate with the authorities in charge for this purpose. However, some form of self-selection bias of the representatives of the marriage and dating industry that were willing to be interviewed needs to be noted. Another reason for not prohibiting the industry is that MOB relationships are assumed to be successful in many cases but overshadowed by those which do not work. Indeed, there is a greater risk for MOBs as well as female marriage migrants in general to become victims of violence and abuse. To decrease their vulnerability, interviewees agree that these women need to be informed about possible risks such a relationship may carry, their rights and obligations, and what to do in case of emergency. Since international marriage migration is likely to persist despite all risks, one should furthermore decrease the women’s dependency on their husbands, for instance, by facilitating divorce and adjusting residence rights in case of abuse and exploitation.

Best practices identified include the US International Marriage Broker Regulation Act, the Commission of Filipinos Overseas’ orientation courses for marriage migrants, integration courses for migrants in destination countries, the organisation of networks and communities in the destination country, and the Love Abroad project offering information regarding marriage migration online. When comparing the results of the current study to earlier ones, it appears that, while it is increasingly difficult to distinguish between MOBs and other forms of marriage migration as individuals use other means to find a partner abroad, risks for individuals and recommendations on how to better protect them largely stay the same.
6. POSSIBLE ROLE OF THE EU AND THE COUNCIL OF EUROPE IN ADDRESSING THE PROTECTION OF MAIL-ORDER BRIDE SPOUSES AND CHILDREN INVOLVED

After having discussed existing legal frameworks relevant for the protection of all individuals involved in MOB relationships and their gaps, it is important to consider which instances might be appropriate to address the latter.

6.1. Possible Role of the Council of Europe

The Istanbul Convention is a very valuable instrument to protect all women — including MOBs — from gender-based violence and in particular domestic violence, but it has not been ratified by many EU MS. Thus, both the Council of Europe and the EU should actively promote the Convention and impress upon their MS the importance of becoming parties to this treaty. In view of the fact that so far only 22 of the MS of the Council of Europe, including 14 EU MS,\(^454\) have ratified the Istanbul Convention, it does not seem opportune at the moment to draft a specific convention for MOBs.

Instead, it may be advisable that the Council of Europe organizes an international conference to explain and discuss the specific situation of MOBs in Europe and that subsequently a Recommendation is adopted that is geared towards their protection. In this Recommendation, it should be emphasized that existing laws may be instrumental in putting MOBs in danger of becoming victims of violence as the women are put in a position of dependency on their sponsors and kept in isolation by not allowing them to find remunerated employment.

6.2. Possible Role of the European Union

6.2.1. Legal Scope for Action

Instruments regulating issues specific to MOBs generally fall into two main categories: legislation that applies to the migration status and legislation that addresses the activities of IMBs. As regards the former, the scope for potential EU legal action is broad. Following Article 79(1) TFEU, the EU is specifically tasked with developing a common immigration policy, setting out conditions for entry and residence including for the purpose of family reunification as well as for combating trafficking in persons (in particular women and children).\(^455\) Both give impetus to the idea that the EU could take action in order to ensure that a legal avenue exists for this type of migration (and so prevent the development of routes hidden from scrutiny). For measures proposed under this heading, the ordinary legislative procedure applies.

As regards legislation that would seek to specifically regulate the activities of IMBs, Article 169 (consumer protection) 114 TFEU is capable of constituting the relevant legal basis. Relying on these articles is justified in order ensure the desired protection for both MOSs and MOBs and to address the fact that the current disparity between the MS of the EU is capable of putting the MOBs at risk and makes the provision of IMB services in the internal market more difficult.\(^456\) As with Article 79 TFEU, the appropriate procedure for measures

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\(^{454}\) Austria, Belgium, Denmark, Finland, France, Italy, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden

\(^{455}\) Article 79(2)(a,d) TFEU.

\(^{456}\) Article 114 TFEU requires that a measure must ‘genuinely have as its object the improvement of the conditions for the establishment and functioning of the internal market’, see Case C-376/98, Germany v European Parliament and Council, ECLI:EU:C:2000:544, para. 84.
proposed under this heading is the ordinary legislative procedure. There are furthermore strong grounds to argue the need to integrate both elements (migration and the regulation of IMBs) into one instrument, as they serve the same objective, would likely not be effective on their own (inseparable), and do not have conflicting procedures.\textsuperscript{457}

\textsuperscript{457} Case C-155/07, European Parliament v Council, ECLI:EU:C:2008:605, para. 36-37.
7. CONCLUSIONS, POLICY OPTIONS AND RECOMMENDATIONS

This study set out to examine the impact of the MOB industry on women’s rights. It finds that women engaging in MOB relationships are vulnerable to certain risks including domestic violence, sexual exploitation as well as legal, financial and social dependency on the husband. Generally, there is no comprehensive set of legislation, either at the EU, Council of Europe, or MS level that deals with the MOB phenomenon. Moreover, the legal analysis of the four countries studied in more detail in this report shows that none of them has in place specific legislation concerning the immigration of MOBs. Nonetheless, some of the generalist legislation and case law are capable of offering a degree of protection. However, these do not seem to sufficiently protect the women, their husbands and children. Based on the literature review, the analysis of MOB websites, the legislative mapping, and the results of interviews with experts and representatives of the marriage and dating industry, the following six topics were identified points of attention that are considered crucial to understand and possibly address the protection of all individuals involved:

1. Definition of the term
2. Migration and family law
3. Domestic violence
4. Children
5. Regulation of IMBs
6. Cooperation and information sharing

7.1. Definition of the Term

This report finds that a majority of interviewed experts do not agree with the MOB term, as it is associated with negative connotations and leads to stigmatisation of international marriages. Even though earlier studies and projects recommend to address this issue, this report comes to the conclusion that stigma regarding female marriage migrants and MOBs in particular still exist. In addition, it is increasingly difficult to distinguish MOBs from other female marriage migrants as individuals do not rely on the services of IMBs as much anymore but try to find a partner abroad by various means including apps and social media. In addition, MOBs and female marriage migrants in general are assumed to find themselves in very similar situations. Therefore, using a separate term for a specific group that is so difficult to define and distinguish from others does not seem appropriate. The differentiation becomes even more difficult as there is a lack of data providing adequate information about the number of female marriage migrants and MOBs from third countries to the EU. Taking into account that the MOB term is not considered appropriate and that the line between MOBs and other female marriage migrants is blurred, it is questionable if specific regulations regarding the MOB phenomenon are necessary. Rather it seems that protective measures should cover female marriage migrants in general.

Even though female marriage migration facilitated by IMBs should not be conflated with human trafficking, certain linkages can be identified. There are, however, major differences among the definitions of trafficking in persons that are used by the UN and the Council of Europe. Therefore, it seems advisable to adopt a European definition of human trafficking that specifically includes the situation of female marriage migrants, who in some cases can be seen as victims of modern forms of servitude or slavery-like practices.
Points of interest

- Eliminate the term "mail-order bride", but refer to female marriage migrants (from third countries) in general.
- Influence stereotypes associated with international marriages, specifically between European men and women from third countries.
- It is crucial to collect data regarding the number of female marriage migrants from third countries coming to the EU in order to address the issue and determine to what extent women actually experience potential problems identified in this report.

7.2. Migration and Family Law

This study shows that there is a need for enhanced support for female marriage migrants from third countries on a social level and legislative level as many of them encounter problems regarding migration and family law. This result is in line with the findings from previous studies. Migration laws put female marriage migrants in a dependent position because of the legally required sponsorship construction and the limited remunerated employment. In addition, they may not be aware of existing legal rights and duties of spouses in the receiving state, in particular as regards the marital property regime, in particular due to the current patchwork of legislation. Specific legislation may be necessary because of the increase of international marriages and considering the vulnerable position of these women who are often completely dependent on their husband. Currently actions from countries of origin and destination are often limited to non-targeted information provision, missing out on accessing the correct target group because of existing language barriers inter alia. The Filipino government and its Commission for Filipinos Overseas is considered an exception and is identified as a best practice regarding the preparation and protection of their citizens abroad by the support and trainings. However, more comprehensive approaches seem necessary because one-sided action might not sufficiently protect female marriage migrants.

Points of Interest

- Consider the creation of more flexible immigration and family laws to decrease the dependency of female marriage migrants from third countries on their husbands.
- Lack of linguistic skills, information on how society is organised, and where to go for support might lead to dependency and isolation and is likely to increase the women's vulnerability for abuse. Thus, it should be the responsibility of the EU MS to provide obligatory cross-cultural seminars. These mandatory (language) seminars should include information on the culture and legislation in the receiving state. However, there should not be a test to determine whether the MOBs have achieved a certain level of proficiency. The mandatory character of the courses will be necessary considering that some husbands might not support their wives’ integration.
- The requirements related to the seminars and their obligations for participation should be standardized/harmonized throughout the EU.
- The EU MS should make certain that there are no legal or other barriers that prevent the wives from accessing and managing the marital property on an equal footing with their husbands. Therefore, MOBs should be informed about the receiving state’s marriage property regime before the marriage takes place.
- Female marriage migrants should be provided with information on the procedures regarding migration and family law before arriving in the host country. Women
should be aware of the legislation of their marriage and the procedure they must go through in order to provide them with a sense of agency.

- It is advised to sign Memorandum of Agreement (MoA) with the main countries of origin of female marriage migrants to support training programs for female marriage migrants similar to the Filipino model in order to inform the women that are planning to migrate. When the woman attends these classes in her country of origin, a note can be made on her application via the Visa Information System (VIS), which might speed her visa request. The MoA also can include information sharing between the countries on violence or sex offenders.

### 7.3. Domestic Violence

Responses to domestic violence differs across MS. The risks involved are clearly women rights violations and legal standards are needed to ensure better protection. Female marriage migrants from third countries are particularly vulnerable to domestic violence and abuse since in many cases they are confronted with stereotypes and legal restrictions that result in legal and economic dependency on the husband. Particularly during the legal term of the relationship, women may find it very hard to leave an abusive husband especially since they lack adequate information of where to find help and support. Only women who can prove that they are victims of domestic violence at the hand of their husband are entitled to help and support and will be allowed to remain in the receiving state on an independent residence permit. Female marriage migrants who wish to return to their country of origin seem to be on their own. Except if women can be identified as victims of human trafficking, which is rather unlikely in the case of MOBs, the receiving state should pay for their repatriation under the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). In some countries of origin, for instance in the Philippines, help is provided to women who wish to re-integrate in society. The Istanbul Convention, adopted in 2011 and ratified in 2014 by the Council of Europe, provides a comprehensive framework to prevent violence, to protect victims of gender-based violence, and to prosecute perpetrators. Unfortunately, this Convention has not been ratified by many of the EU MS, including Germany, the UK and Ireland.

### Points of Interest

- Data on physical and sexual abuse among MOBs and female marriage migrants is lacking and needs to be collected in order to be able to determine to what extent domestic violence actually forms a problem in this regard.

- All EU MS are parties to the Convention on the Elimination of All Forms of Discriminations Against Women. Therefore, they should be encouraged to specifically report to CEDAW on the situation of MOBs under their jurisdiction. This is because protection against gender-based violence falls under the definition of discrimination against woman in article 1 of this Convention.

- Being part of the Convention on the Elimination of All Forms of Discriminations Against Women brings other responsibilities to the MS as well. The fact that MOSs are still stuck with stereotypical ideas about men’s and women’s roles in society, which induces them to look for “traditional” wives outside of the EU, seems indicative of the failure of EU MS to correctly implement article 5 of this Convention.

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458 Only a limited number of EU MSs have ratified this Convention. For instance, Germany, Ireland, the Netherlands, and the United Kingdom are not parties to this treaty.

459 Council of Europe, 2016
This, in turn, has negative consequences for the achievement of equality between men and women within the EU. As stereotypes are part of the foundation of the international marriage and dating industry, it would help if EU guidelines would emphasize the legal obligation of MS to use legal and extra-legal measures to modify existing traditions and stereotypes that are harmful for women.

- It seems that both the women and men lack necessary information in regard to the potential risks of an international relationship or marriage. Men may not be aware of their stereotyped thinking and the fact that the woman may not live up to their expectations. Female marriage migrants may not be aware that they will be completely dependent on their husband because, for the first few years, they will not be entitled to independent residency and they cannot become economically independent because they are not allowed to find remunerated employment.

- When tackling problems of female marriage migrants from third countries, it is important to consider that being informed about the possible risks of international marriages will not prevent women to migrate (via IMBs). Social pressure to get married together with the deprived economic conditions in the countries of origin is often one of the main drivers for the women to look for a partner abroad.

- As the Istanbul Convention is not ratified by many MS and it serves as a good framework to address gender-based violence, it is highly advised that both the Council of Europe and the EU actively promote the importance of the Convention and urge the remaining MS to ratify it.

- As advised under the “Points of interest” regarding migration and family law, it should be the responsibility of the MS to provide obligatory cross-cultural seminars to prevent social isolation and inform women about any risks and solutions in case of gender-based violence.

  - The potential female marriage migrant should receive information about the legislation, possible employment possibilities, and the culture in the receiving state before deciding on emigration. Most importantly, the women should be informed about the prohibition of domestic violence in the receiving state. They should be informed about the possibility to inform the police, the existence of safe houses and helplines, and the possibility of independent residency if they become victims of abuse. This information should be provided by the Immigration and Naturalisation Services in the receiving state and by civil servants working at the embassy where the women apply for their visa.

- Similar to the rules regarding victims of human trafficking, one should consider ways to (financially) support the repatriation of the female marriage migrant in case of relationship breakup, in order to prevent the woman from being forced to work in the sex industry for instance.

### 7.4. Children

Different categories of children have to be discerned. Children who are born during the marriage most likely obtain EU citizenship, with all rights attached, if the MOS is a European citizen. Children who are not born out of the relationship but who have been adopted or acknowledged by the MOS will be in a similar position as the children in the first category. After a potential marriage break-up, these children will be allowed to remain in Europe, together with their caretakers as this is considered a human right under the
Convention on the Rights of the Child. However, should the mother want to return to the country of origin and bring the children with her, this may be difficult in cases where custody is shared. If custody is not shared, it is usually the mother who becomes the primary caretaker. However, interviewees who have experience in working with MOBs and female marriage migrants suggest that this is not usually the case in such relationships. Finally, children that were not born out of the relationship but who were brought to Europe by their mother are in a more precarious situation. When the marriage breaks up and the mother’s residency is still dependent on sponsorship, she might have to leave the country.

**Points of interest**

- MS should be encouraged to consider the intersection between the CEDAW and the UN Convention on the Rights of the Child in cases involving marriage migration, particularly in the context of MOBs.
- Specific measures should be in place targeting the integration of children into the host society, particularly including access to education (and measures facilitating such integration, such as funding for cultural sensitivity training of teachers).
- It is important to conduct further research on who usually becomes the primary caretaker in the context of MOB relationships to identify possible consequences for all family members and to determine if further measures need to be taken.

### 7.5. Regulation of IMB Services

This report shows that there are many different forms of female marriage migrants that do not fall into the MOB category as defined in this report. In addition, IMBs often distance themselves from the MOB industry and claim that marriage is not necessarily the end result of their services. They primarily offer support in establishing communication between the women and men signed up on their websites. Many of the IMB websites mapped for this report had their contact details in Europe and used local dating agencies to contract the ladies available on their websites. Expert interviews with the IMBs showed willingness to cooperate to establish regulations to control the quality of the IMB websites. The biggest concerns regarding IMB websites are possible scamming where mainly men become victims and the lack of scanning of the male profiles that make women on those websites more prone to domestic violence or sexual offenders.

**Points of interest**

- There should be agreement among all MS on the definition of IMBs as well as the target group that is to be protected. Clear and recognized definitions are key in the further discussion of regulations, data collections, awareness campaigns, and service provisions.
- IMB websites often do comply with the American IMBRA, so a similar EU regulation is highly advised, in particular considering:
  - Transparency about previous domestic violence or sexual offenses by the man by requesting the absence of a criminal record to assess reliability. It is the responsibility of the websites to evaluate these records and to make sure that in case violence or sex offenders present themselves to their websites, the IMB will notify European law enforcement authorities and agencies. Additionally, IMBs are responsible that this information is stored confidentially and not shared with third parties.

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460 Convention on the Rights of the Child, article 9
The possibility to enter via a fiancé visa, for the period of six months, in order for the two concerned individuals to get to know each other and the new country before getting married.

In addition, it is advised that if such a law is implemented on EU level, IMBs cannot simply claim on their websites that they comply with this. This can be misleading and does not guarantee correct implementation. Similar to or in cooperation with the ISO 9001 quality management system and the International Accreditation Forum (IAF), a EU controlling body that continuously maps and audits the relevant websites should be installed. Complying to this quality management system, websites should also be responsible for auditing their own subcontractors, making sure that they comply with the law in the origin countries of their clients.

Having an EU controlling quality system provides the possibility to classify the websites in three categories: high compliance, medium compliance, and noncompliance or blacklisted websites. When applying for the fiancé or marriage visa the IMB can be named on the application of the spouse via the VIS. When the couple uses a high compliance website and are able to provide proof, this can speed their visa request.

- There should be a central database that possible clients can access in order to identify a trustworthy IMB.
- Tailored awareness campaigns need to be constructed to inform the users of these websites.
- IMBs should be obliged to provide information regarding costs and services in a more transparent way as a means of protecting clients from becoming scam victims.

### 7.6. Cooperation and Information Sharing

This study as well as previous projects such as the HeiRat project advise to enhance cooperation between organisations at the local and the national level working towards the protection of female marriage migrants. There seems to be a lack of collaboration between and among the local, national, and regional level as well as NGOs. Harmonisation of marriage legislation at the EU level will prevent couples from circumventing strict rules regarding marriage by getting married in another MS (e.g. Denmark).

**Points of interest**

- Currently, cooperation between organisations addressing female marriage migrants’ protection is advised. However, it should not be limited to a host country level. Expert interviews show that transnational networks, such as diaspora groups, are involved in addition to the home country in the support and training of female marriage migrants.

- It is advisable that all MSs have similar requirements for marriage and recognition of civil status. It may further be advisable to consider the adoption of legislation establishing a duty on the MS and the IMBs to provide information to the MOBs in respect of the rights and duties of the spouses in general and about the marital property regime in particular.

### 7.7. Ideas for Further Research

Future research and data collection on marriage migration and in particular MOB relationships is advised. It is highly recommended that correct and up-to-date data on this subject is made available in order to observe and support female marriage migrants, their husbands and children, as well as users of online marriage and dating services. Various guidelines for further research can be given. First, data must be collected on the prevalence
of MOBs living in the EU in order to gain further insight in this topic. Focusing on women who come from Eastern EU MS that are now EU member states must be included in this. Second, data on the number of successful MOB relationships is lacking. It is crucial to collect this data to determine to what extent it is an issue. However, this might be difficult due to the difficulty of identifying MOBs. In addition, the extent to which international couples circumvent strict marriage rules by getting married in countries with fewer regulations, such as Denmark, should be studied. Furthermore, there is a need to study whether the father or the mother usually gain custody in case of divorce. Lastly, it was beyond the scope of this report to perform in-depth qualitative research on the individuals involved in the MOB industry. However, this might yield interesting findings and further insights on the topic and could help identify protective measures that are considered useful by the target group. Therefore, an extensive follow-up project is proposed in order to provide further input for EU level governing.
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### Annex 1

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*Source: (verdana, 8)*
ANNEX 2

Interview Guides for Experts (NGOs, academics, MEPs):

1. Could you please introduce yourself briefly, and what is your function at the organisation that you currently work for?

2. How do you perceive the Mail-Order Bride phenomenon?
   a. Can you comment on recent developments (i.e. numbers, origin, destination, characteristics of individuals including educational level)?
   b. What is the role of the Internet?

3. Do you have any concrete examples/cases involving Mail-Order Brides that you came across in your work?
   a. Positive and negative?

4. What are any particular issues that Mail-Order Brides encounter related to their status as Mail-Order Bride?
   a. What are particular issues that men encounter?
   b. What are particular issues that children encounter?

5. Can you identify best practices in dealing with these issues?

6. Do you think there is a need for further regulation of the Mail-Order Bride phenomenon?
   a. On what level should the MOB phenomenon be regulated?
   b. Consider all parties involved.

7. Is there anything important you would like to add, that I might have missed during this interview regarding this topic?

Interview Guides for Experts (IND):

1. Could you please introduce yourself briefly, and what is your function at the organisation that you currently work for?

2. When a woman migrates to [respective country], do you distinguish how the marriage was formed? If yes, what tools do you use for that purpose?

3. How do you perceive the Mail-Order Bride phenomenon?
   a. Can you comment on recent developments (i.e. numbers, origin, destination, characteristics of individuals including educational level)?
   b. What is the role of the Internet?

4. Do you have any concrete examples/cases involving Mail-Order Brides that you came across in your work?
   a. Positive and negative?

5. What are any particular issues that Mail-Order Brides encounter related to their status as Mail-Order Bride?
   a. What are particular issues that men encounter?
   b. What are particular issues that children encounter?

6. Can you identify best practices in dealing with these issues?

7. Do you think there is a need for further regulation of the Mail-Order Bride phenomenon?
   a. On what level should the MOB phenomenon be regulated?
   b. Consider all parties involved.

8. Is there anything important you would like to add that I might have missed during this interview regarding this topic?
**Interview Guide for Brides:**

1. Could you please introduce yourself briefly?
2. Why did you decide to look for a husband via the Mail-Order Bride business?
3. How did you first get in touch with your husband?
4. Can you describe how you experienced the migration process?
   a. Were you informed about possible risks? If not, were you aware of risks?
   b. What were the hurdles you encountered (i.e. visa)?
5. What were your expectations of a Western man and have they been met?
   a. Negative Cases: Did you look for help?
   b. Positive Cases: What makes it so positive?
6. What were your expectations of living in [country X] and have they been met?
   a. Negative Cases: Did you look for help?
   b. Positive Cases: What makes it so positive?
7. Do you feel part of [country X’s] society?
8. Is there anything important you would like to add that I might have missed during this interview regarding this topic?

**Interview Guide for Bridegrooms:**

1. Could you please introduce yourself briefly?
2. Why did you sign up?
3. How did you first get in touch with your wife?
4. Can you describe how you experienced your wife’s migration process?
   a. Were you informed about possible risks? If not, were you aware of risks?
   b. What were the hurdles you encountered (i.e. visa)?
5. What were your expectations of a non-European woman and have they been met?
   a. Negative Cases: Did you look for help?
   b. Positive Cases: What makes it so positive?
6. Is there anything important you would like to add, that I might have missed during this interview regarding this topic?

**Interview Guide for Marriage Agencies:**

1. Could you please introduce yourself and the agency you work for?
2. What is the reason for establishing your agency in country X?
3. What services do you provide?
   a. Do you inform your female clients about possible risks? If so, what does this information include?
   b. Do you inform your male clients about possible risks? If so, what does this information include?
   c. Does the service include legal aspects regarding migration (i.e. visa)?
4. Do you notice clear types of men and women applying for the services of your agency? If so, how would you describe these men and women?
5. Do you follow-up the relationships that are established via your agency? If so, could you provide some examples?
   a. Positive examples
   b. Negative examples
      i. What makes these examples so negative and how can the protection of all individuals involved (brides, grooms, children) be improved?
6. Do you think there is a need for further regulation of the match making
service industry?
   a. If yes, how and on what level (national or supranational)?
   b. Scam prevention?

7. **Would you be willing to cooperate with the authorities to better protect all individuals involved?** If so, what are your suggestions for such cooperation?

8. **Is there anything important you would like to add, that I might have missed during this interview regarding this topic?**
Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa

Purpose:
Immigrants are particularly vulnerable because many do not speak English, are often separated from family and friends, and may not understand the laws of the United States. For these reasons, immigrants are often afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.

This pamphlet will explain domestic violence and inform you of your legal rights in the United States. The Immigrant Marriage Broker Regulation Act (IMBRA) requires that the U.S. Government provide foreign fiance(e)s and spouses immigrating to the United States information about their legal rights as well as criminal or domestic violence histories of their U.S. citizen fiance(e)s and spouses. One of IMBRA’s goals is to provide accurate information to immigrating fiance(e)s and spouses about the immigration process and how to get access to help if their relationship becomes abusive.

What is domestic violence?
Domestic violence is a pattern of behavior when one intimate partner or spouse threatens or abuses the other partner. Abuse may include physical harm, forced sexual relations, emotional manipulation (including isolation or intimidation), economic and/or immigration-related threats. While most recorded incidents of domestic violence involve men abusing women or children, men can also be victims of domestic violence.

Domestic violence may include sexual assault, child abuse, and other violent crimes. Sexual assault is any type of sexual activity that you do not agree to, even with your spouse, and can be committed by anyone. Child abuse includes physical abuse (any injury that does not happen by accident, including excessive punishment), physical neglect (failure to provide food, shelter, medical care or supervision), sexual abuse, and emotional abuse (threats, withholding love, support or guidance).

Under all circumstances, domestic violence, sexual assault, and child abuse are illegal in the United States. All people in the United States (regardless of race, color, religion, sex, age, ethnicity, or immigration status) are guaranteed protection from abuse under the law. Any victim of domestic violence – regardless of immigration or citizenship status – can seek help. An immigrant victim of domestic violence may be eligible for immigration protections.

If you are experiencing domestic violence in your home, you are not alone. This pamphlet is intended to help you understand U.S. laws and know how to get help if you need it.

What are the legal rights for victims of domestic violence in the United States?
- All people in the United States, regardless of immigration or citizenship status, are guaranteed basic protections under both civil and criminal law. Laws governing families provide you with:
  - The right to obtain a protection order for you and your child(ren).
  - The right to legal separation or divorce without the consent of your spouse.
  - The right to share certain marital property. In cases of divorce, the court will divide any property or financial assets you and your spouse have together.
  - The right to ask for custody of your child(ren) and financial support. Parents of children under the age of 21 often are required to pay child support for any child not living with them.

Consult a family lawyer who works with immigrants to discuss how any of these family law options may affect or assist you.

Under U.S. law, any crime victim, regardless of immigration or citizenship status, can call the police for help or obtain a protection order.

Call police at 911 if you or your children are in danger. The police may arrest your fiance(e), spouse, parent, or another person if they believe that person has committed a crime. You should tell the police about any abuse that has happened, even in the past, and show any injuries. Anyone, regardless of immigration or citizenship status, may report a crime.

Likewise, if you are a victim of domestic violence, you can apply to a court for a protection order. A court-issued protection order or restraining order may prohibit your abuser from calling, contacting, approaching, or harming you, your children, or other family members. If your abuser violates the protection order, you can contact the police, who may arrest the abuser. Applications for protection orders are available at most courthouses, police stations, women’s shelters, and legal service offices.

If your abuser accuses you of a crime, you have basic rights, regardless of your immigration or citizenship status, including: the right to talk to a lawyer, the right to not answer questions without a lawyer present, the right to speak in your defense. It is important to talk with both an immigration lawyer and a criminal lawyer.

What services are available to victims of domestic violence and sexual assault in the United States?
In the United States, victims of crime, regardless of immigration or citizenship status, can access help provided by government or nongovernmental agencies, which may include counseling, interpreting, emergency housing, and even monetary assistance.
International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

The national telephone numbers, or “hotlines,” listed below have operators trained to help victims 24 hours a day free of charge. Interpreters are available and these numbers can connect you with other free services for victims in your local area, including emergency housing, medical care, counseling, and legal advice. If you cannot afford to pay a lawyer, you may qualify for a free or low-cost legal aid program for immigrant crime or domestic violence victims.

National Domestic Violence Hotline 1-800-799-SAFE (1-800-799-7233) 1-800-797-7171 (TTY) www.stacija.org

National Sexual Assault Hotline of the Rape, Abuse and Incest National Network (RAINN) 1-800-656-HOPE (1-800-656-4673) www.rainn.org

National Center for Missing and Exploited Children 1-800-THE LOST (1-800-843-5678) www.missingkids.com

The National Center for Victims of Crime 1-800-8-BEA-U (1-800-823-2888) 1-800-233-7254 (TTY) www.ncvc.org

NOTE: These are organizations whose primary mission is safety and protection.

If I am a victim of domestic violence, sexual assault, or other crimes, what immigration options are available to me?

These are three ways immigrants who become victims of domestic violence, sexual assault, and some other specific crimes may apply for legal immigration status for themselves and their children. A victim’s application is confidential and no one, including an abuser, crime perpetrator or family member, will be told that you applied.

- Self-petition for legal status under the Violence Against Women Act (VAWA)
- Cancellation of removal under VAWA
- U-Visa (immigrant status (crime victims)

These immigration benefits each have specific requirements that must be established. Consult an immigration lawyer who works with victims of domestic violence to discuss how any of these immigration benefits may affect or assist you.

How does the marriage-based immigration process work?

Marriage-based immigration processes involve several steps to obtain legal immigration status in the United States, and over time, to be eligible for citizenship. Three steps depend on the type of marriage-based visa you lived on the United States, as well as other factors. The following information is an overview of some of these types of visas, as well as information on your legal rights.

- K-1 nonimmigrant status (as the fiancé(e) of a United States citizen). You are required to either marry the United States citizen within 90 days of entry to or depart the United States. Following your marriage to the U.S. citizen fiancé(e) who petitioned for you, you must file an Application to Register Permanent Residence or Adjust Status (Form I-485). If your Form I-485 is approved, your status will be adjusted from a K nonimmigrant to that of a conditional permanent resident. You will have that conditional status for two years.

If you remain in the U.S. without marrying the U.S. citizen who sponsored your K-1 visa, or marry someone else, you will void the terms of your visa, have no legal status, and may be subject to removal proceedings or other penalties.

- K-3 nonimmigrant status (as the spouse of a United States citizen). You are allowed to enter the United States temporarily while waiting for approval of a family-based visa petition (I-130). Once the I-130 is approved, you are entitled to lawful permanent residence (green card) and will need to file an Application to Register Permanent Residence or Adjust Status (Form I-485).

All other marriage-based immigration status holders should refer to the information given to them from the U.S. consulate. Additional information may be found online at http://www.uscis.gov.

What are the penalties for marriage fraud?

Immigrants who conceal marriage fraud may be subject to removal proceedings and may be barred from receiving future immigration benefits in the United States. Conviction for marriage fraud can involve imprisonment for up to five (5) years and fines up to $250,000 (U.S. currency).

If I am married to a U.S. citizen, who filed immigration papers on my behalf, what is my immigration status?

If you have been married less than 2 years when your Form I-485 is approved, you will receive conditional residence status from USCIS. Ninety (90) days before the second anniversary of your conditional residence, you and your spouse generally must apply together to remove the conditions on your lawful residence. To do so, you must prove the marriage is in “good faith” and true. Once the conditions are removed, you have permanent residency that is not dependent on your U.S. spouse.

If you have been married more than 2 years when your Form I-485 is approved, you will receive permanent residence status from USCIS. On that date you will no longer be dependent on your U.S. citizen spouse for immigration status.

These are three situations when the law allows conditional residence the option to request a waiver of the requirement that you and your spouse file jointly, to request removal of the conditions: 1) The removal of the conditional resident from the U.S. would result in extreme hardship; 2) The marriage was legally terminated, other than by death, and the applicant was not at fault for failing to file a timely application to remove the conditional basis of his or her status;
OR 3) During the marriage the U.S. citizen or lawful permanent resident spouse subjected the conditional resident to battery or extreme cruelty. All three waivers are filed on Form I-751 and require you to prove your marriage was in “good faith” and not fraudulent.

What other ways does the U.S. government try to inform foreign fiancées and spouses about their rights and protect them and their children from abuse?

The International Marriage Broker Regulation Act of 2005 (IMBRA) is a law in the United States that changed the marriage-based immigration process to help foreign fiancé(e)s and spouses. IMBRA mandates that the U.S. Government give immigrating foreign fiancé(e)s and spouses information and self-help tools to help protect them against violence from the partners who sponsor their visas. Immigrating fiancé(e)s and spouses are often unfamiliar with the U.S. laws and supported by family or friends to escape violence at home.

IMBRA required this pamphlet to be written and distributed to tell you about laws and services that can help you in the United States if you are abused. IMBRA prohibits U.S. citizens from sponsoring multiple visas for foreign fiancé(e)s if they have history of violent crimes. IMBRA requires the U.S. government to give foreign fiancé(e)s and spouses of U.S. citizens a copy of the criminal background check that USCIS does on U.S. citizen-sponsors, as well as a copy of the visa sponsorship application.

How does the United States government regulate “International Marriage Brokers”?

If an agency qualifies as an "international marriage broker," it is required to give you background information on the U.S. client who wants to contact you, including information contained in Federal and State sex offender public registries, and get your written permission before giving the U.S. client your contact information. The agency is required to give you a copy of this pamphlet. It is prohibited from doing business with you if you are under 18 years of age.

Can I rely on the criminal background information on my U.S. citizen fiancé(e) or spouse? The criminal background information compiled by the agency comes from various public sources, as well as information provided by the U.S. citizen on immigration applications. USCIS does not have access to all criminal history databases in the United States. The U.S. citizen sponsor may not tell the truth in the sponsorship application. It is also possible the U.S. citizen has a history of abusive behavior but was never arrested or convicted. Therefore, the criminal background information you receive may not be complete. The intent of IMBRA is to provide available information and resources to immigrating fiancé(e)s and spouses. Ultimately you are responsible for deciding whether you feel safe in the relationship.

Can foreign fiancé(e)s or spouses who are victims of domestic violence also be victims of human trafficking?

Other forms of exploitation including human trafficking can sometimes occur alongside domestic violence, when the exploitation involves compelled or coerced labor, services, or commercial sex acts.

Help regarding human trafficking may be found at:

National Human Trafficking Resource Center
1-888-373-7888
(24 hours a day, 7 days a week)
www.acf.hhs.gov/trafficking

Human Trafficking and Worker Exploitation Task Force-Brief, U.S. Department of Justice
1-888-428-7581
(Monday - Friday, 9am to 5pm)
www.usdoj.gov/crr/crimes/traffick.php

More information can be found at our website or by calling the toll free number listed below.

USCIS General Information
In the United States, telephone toll free to:
1-800-876-6785 or

Visit our internet website at:
http://www.uscis.gov
POLICY DEPARTMENT
CITIZENS’ RIGHTS AND CONSTITUTIONAL AFFAIRS

Role

Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas

- Constitutional Affairs
- Justice, Freedom and Security
- Gender Equality
- Legal and Parliamentary Affairs
- Petitions

Documents

Visit the European Parliament website:
http://www.europarl.europa.eu/supporting-analyses