

# Realising Rights

## Case studies on state responses to violence against women and children in Europe

Liz Kelly, Carol Hagemann-White, Thomas Meysen & Renée Römken

**cwasu**

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## INTRODUCTION

The commitment within Europe to combating violence against women (VAW), and to a lesser extent violence against children, has increased throughout the last decade as a result of sustained actions by women's movements, non-governmental organisations, and initiatives such as DAPHNE. The initial set of DAPHNE activities were carried out on an annual basis between 1997 and 1999. Thereafter, those activities were continued by the European Commission in the form of DAPHNE I (2000-2003), DAPHNE II (2004-2008 with a budget of EUR 50 million), and DAPHNE III (2007-2013 with a budget of EUR 166 million). The projects funded under DAPHNE have addressed VAW and violence against children and youth, with most focusing on one or the other.

*Realising Rights* (RRS) is part of the current DAPHNE III programme and explores both fields of violence. The aims of the RRS project were threefold:

- to provide a comprehensive analysis of existing European legislation in the fields of violence against women (VAW) and child maltreatment (CM);
- to undertake in depth case studies on approaches to, and effectiveness of, protection and justice;
- to present an analytic overview of promising directions and gaps in legislation and implementation, in order to suggest directions for further reforms in laws, procedures and public policy.

Mapping legislation was begun in 2009 and then carried over and deepened in a feasibility study for the European Commission<sup>1</sup> which also included sexual orientation violence. That research project covered the first aim, and to some extent the third. In this report we present the multi-country case studies from phase 2 of RRS focused on the wider policy context and the social and institutional processes that define the practices covering: national action plans (NPA) on VAW; child protection processes; and protection for women living with domestic violence. One of our starting points is to develop a deeper understanding of how and why the same principles and concepts lead in diverse directions or why diverse legal frameworks seem to achieve similar results in terms of implementation and understandings of women and children's human rights.

Whilst core principles are established in human rights discourse for addressing VAW and VAC respectively, historical, societal and cultural diversity and legal traditions appear to shape their interpretation, especially when different rights can be interpreted as being in tension. Three case studies were developed to explore this conundrum more fully, involving the four specialised institutions collaborating in this project:

- Child & Woman Abuse Studies Unit (CWASU, London Metropolitan University, United Kingdom);
- International Victimology Institute Tilburg (INTERVICT, the Netherlands);
- Institute for Educational Science, University of Osnabrück (Germany).
- German Institute for Human Youth Services and Family Law, Heidelberg (DIJuF, Germany)

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<sup>1</sup>European Commission (2010) *Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence*. Hagemann-White, C., Kelly, L., Römkens, R., Meysen, T. Brussels: European Commission. [http://ec.europa.eu/justice/fundamental-rights/document/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/document/index_en.htm)

CWASU undertook the NPA case study involving the following countries: Bulgaria, Finland, Germany, Italy, the Netherlands, Serbia, Turkey and the UK. These countries were selected in order to provide a reasonable geographic spread, a diversity of legal frameworks, and different social, economic and cultural traditions and conditions.

The Institute for Educational Science of the University of Osnabrueck and the German Institute for Human Youth Services and Family Law (DIJuF) in Heidelberg undertook the study on child maltreatment and child protection practice across a range of countries, while INTERVICT in Tilburg, the Netherlands, conducted the study on barring orders.

Each case study used a slightly different methodological approach to the case studies, meaning that these are documented within each chapter. The first chapter supplements the European Commission report on legal responses (European Commission, 2010), presenting data on an additional 11 non-EU countries with respect to VAW and VAC. Chapters 2-4 present the three case studies and the final chapter explores cross-cutting themes.

## CHAPTER 1 – LEGISLATION ON VIOLENCE AGAINST WOMEN AND CHILDREN IN A LARGER EUROPEAN SCOPE

Carol Hagemann-White and Bianca Grafe

### INTRODUCTION

#### ELEVEN STATES UNDER REVIEW: CLOSE TO, BUT OUTSIDE THE EU

The project “Realising Rights?” covered a total of 38 states: in addition to the 27 member states of the European Union, data collection included candidate states negotiating accession to the Union, the parties to the European Free Trade Association (EFTA) that generally adopt EU legal frameworks, and the Western Balkan states that are formally considered prospective candidates for EU accession. During the course of this project, two of this group of 11 states acquired candidate status. The information was gathered through a highly differentiated questionnaire with the help of regional consultants who additionally drew on the knowledge of experts within countries in the region.

For the feasibility study in 2010 the data from the EU member states could be expanded and analysed in some depth, and sexual orientation violence (not part of the framework of the RRS project) could be additionally included. The RRS aim of understanding processes of convergence and divergence, diversity and similarity in Europe as a whole needs to be complemented by this wider view. In the present chapter, data from the 11 states classified as “in proximity to the EU” are reviewed with a selective focus on aspects that emerged in the 2010 study as significant with respect to common European values and approaches to dealing with discriminatory violence and violence resulting in harm to a child’s development. An overview of these aspects and the information available for the 11 states that are close to, but not (yet) within the EU is to be found in the form of a matrix in Appendix I of this report. The corresponding data country by country for the EU can be found in Annex 1 of the feasibility study (European Commission, 2010).

The 11 states are not a homogenous group. Four belong to the EFTA and have long been identified with norms and standards of Western Europe. Norway and Iceland (the latter now a candidate for EU membership) are members of the Nordic Council, sharing in its regional experience with policy, research and practice. Switzerland and Liechtenstein have long-standing links to the discussions on addressing violence against women (and against children) in the German speaking region. Thus, these four countries could be expected to have many similarities with the EU member states. Turkey entered into association agreements with the EEC some 50 years ago and applied for full membership in the EU as early as 1987. Feminist grass-roots activism in Turkey brought violence against women and violence against children to public attention from the early 1980s on, and persistent lobbying achieved reforms of the Civil Code (2001) and the Penal Code (2004) to remove discriminatory provisions and establish women’s and children’s rights (Anil et al., 2005).

The Balkan states outside the EU are – to a greater or lesser degree – still in a process of economic and social transition. Here, too, activist and women’s groups had already begun to raise the issues of domestic and sexual violence in the 1980s, establishing hotlines for women and children from 1990 on. With the disintegration of Yugoslavia and the following ethnic conflicts, the focus of advocacy shifted to the intersections of war and violence. Engagement of the state in responding to violence against women and children more generally developed later, in a complex process involving NGOs, international actors and changing governments (Lindgren & Nikolić, 2011; Dedić, 2007). Of the five former Yugoslav states in this study, three are now candidates for EU membership (Croatia, Montenegro and the Former Yugoslav Republic of Macedonia), while two have not reached that

status. Bosnia-Herzegovina, and Serbia are, like Albania, considered potential candidates<sup>2</sup>. All six post-socialist countries joined the Council of Europe soon after 1990 and have sought to establish democracy, human rights and the rule of law, struggling to overcome authoritarian traditions while confronting persistent problems such as poverty and corruption. International organisations and donors have been very active in this region, promoting and funding programs to address violence against women and/or child protection, although resources have diminished over recent years.

Given these historical differences it must be expected that considerable cultural and social diversity will influence how human rights considerations enter into legal frameworks, services and their implementation addressing violence against women and violence against children.

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## INTERNATIONAL OBLIGATIONS

In general, the overview of the legal frameworks in these 11 European countries (see table 1) illustrates very clearly the “horizontal” process of Europeanisation through transfer of practices, diffusion of models and gradual construction of norms, as opposed to vertical or “top-down” conformity with directives or conditions of accession. In areas such as domestic (and sexual) violence, where the EU has no clear competences, “Europeanisation is mainly driven by the identification of national policy-making environments with an abstract norm of ‘Europeanness’” (Kriszan & Popa, 2009). International law is an important factor in shaping perceptions of what it means to have a European identity. In the course of a prolonged public discourse on discrimination and violence as human rights issues, policies and practices spread, are taken up as possible models, and modified to fit different circumstances. Certainly the Council of Europe, to which all states in this study belong, pursues an overarching framework of European values and expected good practices that, while not legally binding, seems to be highly suggestive of what “good Europeans” should do.

The 11 states under review in this chapter appear willing to sign and ratify the UN and Council of Europe instruments and protocols pertaining to violence against women and to violence against children to an even greater extent than the EU member states. Whilst all EU Member States and all states in this chapter have ratified CEDAW, the ECHR and the CRC (see European Commission, 2010, 123), the 11 states have also all ratified the CEDAW optional protocol allowing citizens to complain directly to the CEDAW committee and the TOC trafficking (Palermo) protocol, and all but one have ratified the optional protocol to the CRC on the sale of children, child prostitution and child pornography (Liechtenstein has signed but not yet ratified). The very few cases where a state in this group has neither signed nor ratified a relevant international instrument are all to be found with conventions on the European level (Council of Europe). Both within the EU and in the present group, a number of states have signed but not yet ratified some more recent instruments, especially the convention on the protection of children against sexual exploitation and sexual abuse (2007). The 1988 convention on compensation for victims of violent crime seems to present a barrier to ratification for some states, doubtless because of the economic consequences.

The overall picture suggests that all 11 states have been eager to join the “moral community” of European values by accepting commitments that are binding in international law, even where some EU member states have been less willing to commit themselves. The implementation of standards still differs but by ratifying conventions all states accept the obligation to make improvements, if necessary.

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<sup>2</sup> Kosovo did not declare independence until after data collection for this study began.

### OVERALL STRATEGIES

The 11 states in this chapter have been considerably less likely than those in the EU to establish a broad National Plan of Action on violence against women (see table 1); only three have had such an NPA since 2002, and of these, two (Montenegro and Norway) locate the issue clearly in a human rights framework and as an issue of gender equality, while Iceland addresses violence in a gender context without explicit reference to international norms. Consistent with the predominant legal frameworks, five states have had an NPA on family violence or domestic violence, four of which also use both a human rights framing and a gender equality perspective, both of which are rare within the EU. Together, however, all of these states except Switzerland (whose federal structure inhibits national strategies) and Serbia<sup>3</sup> have set up an NPA either on VAW generally or on domestic violence (sometimes combined with specific other issues).<sup>4</sup> By comparison with the EU Member States it could be said that the non-EU states are, on the one hand, more inclined to define the obligation of the state, as expressed in a National Plan of Action, with reference only to the family or to domestic violence but, on the other hand, are more likely than the EU member states to frame their action plans with an explicit reference to human rights.

This can be seen as a contradiction, but can probably be best understood as a compromise between the demands of women's NGOs and the growing influence of civil society in general and the gradual shift in attitudes and policies in governments. It seems that references to human rights and to gender inequality tend to be made in the preamble to a law or a NPA, while the definition of the practical issues to be addressed and the content of the measures, especially in the Balkan states and Turkey, follow an ideal of the family as a place of safety. Overall, it can be said that the Europeanisation process of affiliation to a community grounded in fundamental rights is influenced by international law and the due diligence obligation, and that this is more explicit than in some EU member states, but this obligation tends to be implemented within a family frame.

### INTIMATE PARTNER VIOLENCE

A strong pattern of convergence can be seen in recognition of intimate partner violence as an issue calling for legislative response (see table 2). All 11 states in this group – as opposed to 18 of the 27 EU Member States – have passed a dedicated or specific law addressing violence in the home or in close relationships. The approaches differ, as they do within the EU. Liechtenstein and Switzerland followed the Austrian model and focussed first on the immediate and effective protection of victims, introducing measures available when any kind of violence occurs in the domestic environment, without defining a specific criminal offence. However, Switzerland then revised its criminal law provisions on bodily harm to make any assault on a present or former partner an aggravated offence calling for prosecution *ex officio* (with a special provision permitting provisional dismissal at the request of the victim). This approach has the advantage of being applicable to same-sex couples. In the other 9 countries, IPV either falls into the definition of a specific offence (often “family” or “domestic” violence), thus appearing explicitly in the Criminal Code and the crime statistics, or the domestic context is designated as an aggravating circumstance calling for a higher penalty (following the model introduced in France in 1994). Whilst 19 of the 27 EU Member States penalise domestic violence under one of these two categories, the proportion is higher in the proximate non-EU states (10 out of 11), suggesting that criminalisation finds wider acceptance in this group than in the EU as a whole. So does police intervention: six of the 11 states in this group (including all four EFTA states

<sup>3</sup>However, Serbia adopted a National Strategy for Prevention and Elimination of Violence Against Women in the Family and in Intimate Partner Relationships in April 2011.

<sup>4</sup>Turkey, for example, had a NPA addressing domestic violence and “honour killings”.

as well as Albania and Bosnia) have instituted police emergency removal orders to ban a perpetrator from the residence, while only 11 of the 27 EU Member States have adopted this measure. States in the Balkan/ Southeast region have apparently been more hesitant to use police intervention: Croatia, FYROM, Montenegro, Serbia and Turkey do not employ this tool. Being a candidate for EU accession does not seem to point in any specific direction on this issue.

The relatively prominent role of penalisation corresponds to recommendations of the UN and of the Council of Europe to prohibit and punish all forms of violence against women. Monitoring of the CoE Rec(2002)5 and the campaign to end domestic violence 2006-2008 may have contributed to the sense of a common normative framework, while the EU has not taken a stand on preferred strategies. The EU guidelines on violence against women and girls apply only in the sphere of external action, but may of course have communicated a set of norms especially in the post-war Balkan region that are not binding within the EU. The Secretary General's campaign UNiTE may also have strengthened the convergence with its explicit aim to have all countries adopt laws to punish all forms of violence against women by 2015. That said, it must be noted that most of the specific legal frameworks use a family framing, and do so rather broadly, often including a long list of relations by blood or marriage. Only Albania, Iceland and Norway mention partner violence (in addition to family violence and/or domestic violence). Albania, Bosnia-Herzegovina and Iceland have a legal concept of gender-based violence. In Iceland gender-based violence is defined in equality law. In criminal law it is the family connection that constitutes an aggravating circumstance, while a specific offence applies to someone who "offends or humiliates" a spouse or former spouse, a child, or someone closely related in a way that "constitutes gross dishonour." (Note the similarity to the Swedish provision on "gross violation of integrity").

Although partner violence is thus not given strong legal recognition, protection orders that can prohibit the presence of a perpetrator in certain locations as well as prohibiting any attempt to contact the victim are available in at least nine of the 11 states (information was missing from Liechtenstein and Montenegro), and they are reportedly independent of criminal proceedings. However, the stronger civil (or possibly administrative) law measure of giving the victim exclusive right to the residence ("go-order") is less frequent, and of the seven states that have that possibility, four (Albania, Bosnia-Herzegovina, Norway and Switzerland) also have the emergency police removal order, to which the court order is the logical follow-up when the victim seeks separation and safety. Research is needed to discover how often protection orders are issued, what evidence is required of a victim seeking court protection, and whether there is a gap between police emergency measures and court orders, as well as their enforcement.

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## RAPE AND SEXUAL COERCION

In all 11 states, force is a defining element of rape (see table 3). Turkey has no separate rape law, but – like Germany – includes the use of force as well as penetration of the body as an aggravated case within an overall paragraph penalising any "attempt to violate the sexual integrity of a person". In six states, the use of force is the sole criterion; however, three states also include coercion by the threat of harm to a close person (Croatia, Macedonia and Serbia). This is an old provision, from the time of the former Yugoslavia. The "extended force" definition that seems to be gaining ground in the EU (European Commission, 2010) includes, along with physical force, taking advantage of, or bringing about a situation in which the victim is helpless or unable to resist. This definition is found in Iceland, Norway and Switzerland, and the law on sexual assault in Turkey can most easily be placed in this category. Albania uses the dual definition of both force and lack of consent ("against the will through use of force"), and in consequence can take a wide range of means of coercion into account.

As within the EU, rape is framed in different ways, and the differences may also relate to the choice of translation of national law for our questionnaire from the various languages in use. It is not always clear whether apparent differences reflect using different terms in English for the same underlying concept, or whether apparent similarities cover over differences that were lost in translation. Notably, in half of the states under review two or more frames are used. The combination “crime against sexual freedom and morality” is found in three states (Bosnia-Herzegovina, Croatia, FYROM), whereas sexual freedom appears linked to autonomy only once (Serbia). This suggests that the concept “sexual freedom” is not strongly linked to self-determination over one’s own sexuality, but more to the (moral) expectation of being able to go about one’s life free from sexual assault. The combination of “sexual crime” with “crime against sexual autonomy/integrity” appears twice, in Liechtenstein and Norway, and “sexual autonomy/integrity” is the sole framing in Switzerland, Montenegro and Turkey. Albania and Iceland classify rape simply as a sexual crime. Evidently, the wave of rape law reforms in Europe have tended to replace definitions based on public morals with those emphasising the sexual self-determination of every individual, but the process at present shows a mixture of frames and definitions whose actual meaning could only be uncovered with research on the practice of applying the law.

Seven of the 11 states have explicitly removed the marital exception and placed rape within marriage legally on the same footing as any other rape. In Liechtenstein, Montenegro, Serbia and Turkey, while penalised on the same basis, marital rape can only be prosecuted on complaint of the victim. The strongest explicit presumption against prosecution is found in Liechtenstein: within marriage, rape and sexual coercion can only be prosecuted if the victim lays a complaint, unless grave consequences such as serious bodily harm have also ensued. If the victim declares that she intends to continue cohabitation with the perpetrator, and if and on consideration of the perpetrator’s person and of the interests of the injured person it can be expected that cohabitation will be maintained, this can be considered an extraordinary mitigating circumstance.

There is a process of expanding penalisation with regard to the acts comprehended under rape law as well as with regard to the scope of means of coercion or lack of consent. Increasingly, rape law in Europe is including all kinds of sexual penetration of the body under the concept of rape, but as within the EU, some states still make a distinction between sexual penetration of a woman’s vagina and other forms of sexual violence and penetration, even when they are penalised on the same level of seriousness, as in the UK and in Slovakia; this is the case for Switzerland as well. It is not entirely clear what is included when the law penalises coercing someone to “intercourse or comparable acts”, as in Bosnia, Croatia, FYROM, Montenegro and Serbia. This provision is found in conjunction with framing rape as an offence against morality and sexual freedom, as in the Western Balkans. The immoral nature of penetrative acts that do not involve intercourse in the narrowest sense (with its potential for leading to pregnancy and possibly an “illegitimate” child) may well depend on the courts from case to case. Such offences were defined in former Yugoslavian law as “indecent assault against nature”, and the addition to rape law of acts comparable to intercourse was an achievement of NGO advocacy, with the aim of widening the concept of rape and setting the same penalty for all other acts of sexual penetration. Nonetheless, the failure of the law to be explicit about what is penalised leaves much room for unequal redress.

Regrettably, very little information is available from these 11 states on special arrangements for investigation, prosecution or court proceedings. This is an area which has received considerable attention in a number of EU Member States (but by no means in all), in consideration of the vulnerability of victims of sexual assault. The information we have at present does not allow for any conclusions about whether these concerns have been taken up in the states close to the EU, but does point to a lack of awareness of the serious nature of rape and sexual assault and the duties of states to protect victims.

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## STALKING AND SEXUAL HARASSMENT

Stalking, although often linked to IPV, has not been dealt with in a similar way. Of the 11 countries in this group, only one, Liechtenstein, has an explicit law addressing stalking (see table 4); it has been defined as a specific offence in the Criminal Code since 2007. Only three – Bosnia, Iceland and Serbia – offer victims the option of a civil protection order (although protection orders seem to be possible in Liechtenstein as well). While the feasibility study found a trend towards criminalisation of stalking (albeit in less than half of the EU Member States), no similar tendency can be identified among the 11 states reviewed in this chapter.

This stands in sharp contrast to the legislation addressing sexual harassment (table 5). Both are essentially “course of conduct” forms of violence affecting women in their daily life outside the family, and they could be bracketed together under a general concept of “harassment” (as is the case in UK law). Neither stalking nor (sexual) harassment fits easily into the traditional framework of criminal law, since neither is primarily constituted by a single act causing (physical) injury. The two forms of violence are similar with respect to the often devastating cumulative impact of repeated invasion of privacy, intimidation, persistent threat of harm and degrading treatment undermining the dignity of the victim.

Due to these characteristics harassment may be considered difficult to define legally and to prove in court. Nonetheless, almost all of the states under review here (information is missing from Montenegro) have a law specifically prohibiting sexual harassment, and in most states it is prohibited in two or three domains of the law. Equality law, labour law and criminal law are cited about equally often, and seven of the 10 states for which we have information penalise it as a crime. All but Turkey have established in law a definition of sexual harassment that draws directly on the wording of the EU Directive 2002/73/EC, recast as 2006/54/EC. All but one define it as an unwelcome sexual act that undermines dignity or that creates a hostile environment, and all but one also define it as a sexual act that could reasonably be considered offensive. The main divergence within this almost full consensus is to be found in whether, in addition to these criteria, the offensive sexual act involves some pressure to comply with demands, either because the victim could be treated differently if she refuses, or as an outright use of power to obtain sexual favours. Half of the states add one or the other of these criteria or both to their definition. As a rule, any one of the criteria suffices to qualify the action as harassment. Turkey prohibits sexual harassment by defining it as an offence in criminal law, but does not provide a legal definition.

Penalisation of the abuse of power (e.g. in the workplace) to obtain sexual compliance appears in five of the 11 states in this group, but only six EU member states have such a provision; within the EU, criminalisation is generally rare and the primary emphasis is on the responsibility of employers to ensure protection and redress. On the surface, it seems that the existence of an EU Directive with clearly spelled out definitions has led to even stronger legal provisions “on paper” in states that are not subject to EU law than within the EU itself, subjecting harassment, at least nominally, to criminal penalties. Detailed information could not be obtained on the implementation of measures in the workplace that would fulfil the norms articulated in the EU directive (in particular, the responsibility of employers); it is possible that criminalisation functions as a proxy for workplace protection<sup>5</sup>. Thus, these results should not be taken to mean that sexual harassment is taken more seriously or sanctioned more frequently outside the EU than within. Indeed, from the national reports in the feasibility study and the discussions with regional experts, it seems that the EU norms have made it possible to bring an issue into policy debate that would otherwise be completely ignored or denied. On the one hand, it is of some interest that the presence of a directive has led to verbatim

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<sup>5</sup> Implementation in labour law does seem to include the principle of employer responsibility, shifting the burden of proof and the right to compensation (for Croatia see for example Dedić 2007), but practice probably varies. As noted in the feasibility study, it is the liability of the perpetrator to penalties that signals whether harassment is understood to be a form of violence.

acceptance of the definitions and explicit prohibitions in almost all of the countries under discussion here, regardless of whether they have the status of candidates for EU accession or not. On the other hand, verbatim transposition of the Directive into national law – legislation by copy and paste, as it were – can be a merely symbolic act suggesting compliance without any corresponding measures of implementation.

As in several EU states, the definition of sexual harassment in criminal law is often quite narrow and does not correspond to the EU directive. Criminal penalties are only foreseen for:

- using a position of power and dependency to pressure a person to have intercourse or comparable sexual actions (Macedonia, Serbia, and by interpretation – no legal definition – Croatia);
- performing a sexual act in front of someone who does not expect it and thereby causing offence, or harassing someone sexually by actions or coarse language (Liechtenstein, Switzerland).

Criminal law in Iceland comes closest to the definition of the EU Directive (“any behaviour of a sexual nature abusing a person’s integrity”), with a higher penalty for the abuse of power/dependency at work. Turkey has no definition when penalising sexual harassment, but adds abuse of power in the workplace as an aggravating circumstance.

Thus, harassment in the general sense of the EU directive is not subject to criminal penalty in most states; the tendency in the legal frameworks is to reduce the intimidating and degrading course of conduct to a specific offensive sexual act, sexual assault or rape when inserting harassment into criminal law. Practice seems to differ due to diverging attention given to harassment in national policy, but little information is available to assess implementation from a comparative perspective.

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## TRAFFICKING

As the ratification of the Palermo protocol would predict, all 11 states have a specific law prohibiting trafficking (see table 6), and as in the great majority of EU member states, prosecution requires proof of a single element only. Beyond that, however, convergence towards a common approach is less evident. Seven states have a national competent authority, although more in-depth study would be needed to clarify what authority they have, and information is missing from three. Guidelines on the identification of victims are less well established (within the EU as well). Information from half of the 11 states is missing, and where guidelines exist they seem to be non-binding.

The most striking difference concerns the availability of a reflection period. Only FYROM, Norway, Serbia, and Switzerland have established a right to the reflection period, while 25 EU Member States have this in law. Croatia and Bosnia-Herzegovina grant a reflection period dependent on cooperation with investigation and prosecution. As noted in the feasibility study, the reality can be more complex, since in practice recognition as a victim of trafficking may only happen during cooperation with the police, and the frequent failure to establish guidelines that would preclude such a linkage suggest that this is a widespread practice. The duration of the reflection period varies as well, from two weeks in Bosnia-Herzegovina (and then only if the victim cooperates with the police), to periods of more than 60 days (in Norway and Serbia). The duration varies within the EU as well, albeit not quite as widely. The data suggest that, despite protocols and conventions, despite pressure from the US State Department, a European consensus on how victims of trafficking should be treated has not yet come about. The fact that international law has treated this issue in the framework of organised crime does not seem to have helped towards recognition of the human rights obligations of states towards victims.

## CHILD MALTREATMENT

All 11 states have ratified the CRC and in all states the principle of the best interests of the child is recognised (table 7; information on specific law is missing from Liechtenstein, but reporting to the CRC indicates that ratification is considered to have this effect). Most countries set the age of sexual consent at 14 (Bosnia, Croatia, FYROM, Liechtenstein, and Serbia), 15 (Iceland) or 16 (Liechtenstein, Norway, and Switzerland), but Albania and Turkey have no explicit legal age of consent, and in Montenegro the age of consent (14) is regulated indirectly in the law defining child sexual abuse.

The rights of children in family law and administrative proceedings that concern them directly are differently regulated. Only four states seem to have established specialised or specially adapted courts for family and child protection law proceedings (Albania, Montenegro, Norway and Serbia), although in some countries, such as Turkey, such measures are foreseen but not generally implemented (see case study). For six countries the experts were able to say that children have a right to separate legal representation or to a support worker during court proceedings (for the other five information was missing).

The duty to hear the child in all matters affecting her or him is a direct requirement of the CRC; it is established in law in nine countries and has been affirmed by a Supreme Court ruling in Turkey (information missing from Croatia). Exploration of the institutions and practices in the case study (see Chapter 4) has shown that this duty is implemented in widely differing ways across Europe, and the data on the 11 non-EU states in this study suggests the same. One state (Liechtenstein) requires that the child be heard in person during court proceedings, four states legally provide for hearing the child by a qualified expert outside of court or in cooperation with social services or a child psychologist; in the other states, the law does not clearly specify how hearing the views of the child is to be carried out. In five states, hearing the child depends on assessment of the child and circumstances of the case (FYROM, Iceland, Montenegro, Serbia, Switzerland). The age from which a duty to hear the child is usually recognised or legally required varies from seven (Norway) to either 10 or 12, (sometimes with a provision that the child is able to form her/his own views, as in Montenegro). Liechtenstein does not have a lower age limit but provides that for children under 10, the hearing can be carried out by social services rather than the judge. Sometimes, as in Albania, the child's right to be heard is understood to mean that this will happen if the child requests it; in other states, there is a firm requirement that after a certain age the child must be heard before a ruling on custody or similar matters (Liechtenstein, Norway). More often, the wording of the law does not make it clear whether hearing of the child is a necessary step before a court ruling, or whether it is a right that a child may claim (if made aware of the possibility). As the case study on child protection shows, variation in all these respects is to be found among the EU member states as well.

Only Iceland and Norway prohibit all corporal punishment in any context. Croatia prohibits corporal punishment in the family and by guardians or carers, but not in schools. Overall, however, as described in the feasibility study, prohibiting corporal punishment in schools (or at least in public schools) seems to come earlier than such a prohibition in the family context; in eight of the 11 countries corporal punishment in schools, or at least in public schools (Turkey) is unlawful and in seven of the eight it is explicitly forbidden by law (and usually penalised). In this respect, the non-EU states present a similar picture to the member states of the EU. However, except for the two Nordic countries, there seems to be a persisting reluctance of the state to interfere with the methods used for disciplining children in the family, although prohibiting corporal punishment in all areas of life can be considered a necessary consequence of ratifying the CRC. It must be noted, however, that only 17 of the EU member states prohibit all corporal punishment generally, including within the family.

All states in this study penalise sexual acts with a child, although the laws differ in how explicit they are as to the acts in question. They may be acts of sexual penetration, “sexual, intercourse and equivalent” or “all sexual acts”. Whilst Switzerland, Turkey, Liechtenstein, Serbia, Montenegro, Iceland and Norway penalise all penetrative acts with a child, other states are less clear. FYROM penalises rape “or some other sexual act” with a child. Albania, Bosnia-Herzegovina and Croatia criminalise “sexual intercourse or equivalent” (in addition, Albania also specifically mentions homosexual intercourse and gross indecency towards a child), and the Croatian law is understood to be not applicable to penetration of the mouth. All of these provisions can be taken to penalise sexual penetration with the penis, but while the 27 EU Member states criminalise all other forms of sexual penetration, only seven of the proximate states do so clearly.

Three states in this group – Iceland, Norway and Switzerland, all belonging to the EFTA – follow the dominant trend among EU member states of prohibiting a perpetrator convicted of child sexual abuse to work with children. For a number of countries, however, this information is missing. In some of these states, it is extremely rare for sexual abuse of a child to be reported, or if reported, to be prosecuted at all.

With regard to the sexual exploitation of children for commercial profit (table 8), the definitions of what acts are penalised is quite uniform across the EU, deriving directly from the international conventions. For a review of the 11 states in this chapter, it seemed of interest to ask the age under which it is illegal for children to appear in pornography or to be involved in prostitution (sell sex). While 23 EU Member States have such an age limit, the RRS questionnaire received confirmation from only six of the states: the age is 18 in Bosnia, FYROM, Norway, and Serbia and 21 in Turkey. In Iceland and Montenegro there is no legal restriction, Switzerland is currently establishing an age limit of 18, and for the remaining states information was missing.

There is a strong tendency towards mandatory reporting in this group of 11 states. In nine states all or at least some groups of professionals whose work brings them into regular contact with children or families have a legal duty to report suspicions of child maltreatment to the child protection agencies, and in all of these, all citizens also have a legal duty to report. Only in Switzerland (information missing from Liechtenstein) is reporting not mandatory, but failure to initiate protection in case of known abuse can have disciplinary consequences for teachers. This preference for mandatory reporting correlates with the relatively strong tendency to establish criminal penalties for domestic or family violence.

In seven states (Albania, Bosnia, FYROM, Montenegro, Norway, Serbia, and Turkey) reporting to the criminal justice system is also a legal duty (but subject to conditions in some cases, for example: only if it is an offence that would be prosecuted ex officio, and in Norway, only if it is in the best interests of the child). Overall, legal obligations of reporting suspected child abuse are more strongly anchored in law in these 11 states than within the EU. There are no data available to assess how often such duties actually lead to notification of authorities.

## FORCED MARRIAGE, HONOUR-BASED VIOLENCE AND FEMALE GENITAL MUTILATION

These three areas of violence against women, sometimes grouped together under the category of “harmful traditional practices”, share a further commonality of being neglected in European legislation and policy in general. On the whole this applies to the non-EU countries in this chapter as well, however, they are more likely than the EU member states to address forced marriage in either criminal or civil law. With one exception (see below) no pattern is evident with regard to EFTA members, candidates for EU accession or Western Balkans. Overall, there seems to be no common trend in Europe on how to address these very serious violations of both the human rights of women

and the fundamental rights of children. One could hypothesise that the intersection of women's rights and children's rights contributes to letting these forms of violence fall between the cracks in state due diligence obligations.

Four states (Albania, FYROM, Liechtenstein and Norway) penalise forced marriage explicitly in criminal law (table 9); only six EU Member states do so (although this may have changed since the time of data collection, as penalisation has been under discussion in several countries). However, six states – as opposed to only four in the EU – recognise forced marriage in civil law, for example by declaring consent to be invalid if it was given under duress, thus nullifying the marriage. In addition to Liechtenstein and Norway, that also penalise the use of coercion, Bosnia-Herzegovina, Serbia, Switzerland and Turkey have civil law provisions to this effect.

Honour-based violence (table 10) is prohibited in law only in Turkey, and there without mention of the concept of honour (the law refers only to "custom"); it is both a specific offence and an aggravating factor for other crimes. In the EU as well prohibition is rare, and civil law provisions are to be found only in countries that also penalise it in criminal law. Nowhere in Europe is it legally admissible to plead defence of honour as justification for violence, but, as more qualitative reporting shows, that does not necessarily prevent courts from considering it a mitigating circumstance in actual jurisdiction. The reality of honour-based or cultural defences would require research into case law.

Female genital mutilation (table 11) has been specifically criminalised only in Iceland and Norway (and very recently in Switzerland), as it is in several other Nordic countries within the EU (Denmark, Sweden). The low level of specific legislation within the EU as well as among the 11 states in proximity to the EU can be explained on the one hand by the widespread assumption that it is not a traditional practice in Europe and thus "does not happen here", on the other hand, by the presumption that mutilation is in any case a serious criminal offence, and that child protection law and institutions might be adequate to address the problem where it does occur. Because of the close connection to immigrant communities, there is some debate on whether specific laws can be effective towards protection.

## SUMMARY

With data from 11 states, conclusions about patterns can only be drawn with caution, especially since the historical background from which the states approach Europe differs significantly. Some commonalities are to be found among the former Yugoslavian states, due to the fact that their departure point was revision of an existing body of law common to them all; this appears in the rape law provisions, for example. The EFTA states share a history of adopting EU legal provisions, but there also seems to be a regional influence on how violence against women and against children are approached. But on many issues the differences do not fall easily into any pattern of subgroups.

The strong overall presence of international law and of criminalisation of violence in the states close to the EU may be understood as being, on the one hand, symbolic, serving to affirm European identity, and on the other hand, an effect of the efforts of NGOs, children's and women's rights advocates and other stakeholders to establish a point of leverage for changing practices. Both aspects are likely to be most significant for latecomers to the Europeanisation process, while the EFTA countries and Turkey might be more primarily guided by the priorities and longer-standing preferences of internal policy and politics. It can also be argued, however, that since the mid 1990s national governments have been the subject of dual pressure: from above, with respect to international law and processes through CEDAW and the CoE; and from below through emerging

civil society. It is precisely this combination, the “pincer” effect, which drives the convergence process.

Converging trends in addressing domestic and/or family violence within in the EU are mirrored in this group of 11 states, with a stronger emphasis on penalisation, but also on police intervention to give immediate protection. It is not clear how far the availability of court protection orders is effective in practice, and data on services to give effective protection to victims could not be explored here. A framing as gender-based violence or violence by intimate partners is relatively rare, but comparison with the matrix of EU member states shows that there, too, the family or domestic framing is predominant.

The changes in rape law in the EU, with an overall shift towards more inclusive definitions of sexual violence and extended definitions of force, can also be traced in this group of countries; it seems that sexual violence has also been a significant area in which women’s advocates and NGOs have negotiated with policy-makers and pressed for change. Nonetheless, marital rape, while no longer exempted from penalisation in any state, is still not penalised on the same footing as rape in general, with four states requiring a complaint of the victim as a prerequisite for prosecution.

Comparison of how sexual harassment and stalking are handled in policy illuminates the fact that an EU Directive exerts a significant “pull” towards corresponding legislation regardless of whether or not a state is a candidate for EU accession. In that sense, EU law puts its stamp on the understanding of “Europeanness”. The signs are that this is primarily a symbolic statement with no mechanisms for implementation in a number of states (inside and outside the EU), but over time, it can give stakeholders a lever for bringing about change.

A “negative” sign that explicit EU norms have at least a “halo effect” on the proximate states is that, with a few exceptions, almost nothing is being done in the area of “harmful traditional practices”. The relationship between international norms and national policy furthermore seems weak with respect to trafficking. Despite ratification of international conventions and full transposition of the UN definition of trafficking into national law, the crucial right to a reflection period and guidelines for identifying victims are less well established in the larger European sphere than within the EU. There is a range of difference, however, with a few states granting a substantially longer reflection period than usual in the EU. Here, as partially the case within the EU, migration policy probably mixes with international obligations to produce compromises.

The Europe-wide consensus on recognising the rights of the child does not yet generate anything like consistent practice. That is more noticeable in this group of states than within the EU, where both the accession process and cross-national networking seems to have pushed towards recognising certain standards. Overall this group of states more often fails to meet some of the minimum standards, such as securing separate legal representation or support for a child during court proceedings, establishing specialised courts, and prohibiting corporal punishment. To date only EFTA states forbid convicted sexual abusers from working with children. Additionally, as is the case among the EU member states, interpretations of the duty to hear the child vary widely. Based on the results of our in-depth case study (see Chapter 4) it seems likely that the preference for mandatory reporting, noticeably stronger in this group than within the EU, is often not backed up by well-developed child protection services, particularly in countries in economic and social transition. Legal duties to report suspected abuse to the criminal justice system are rather common in these countries, but it seems questionable whether they are helpful towards ensuring children’s fundamental rights.

Over the past 14 years, the European Union, while not having the competence to pursue coherent policies in these areas, has funded transnational cooperation projects through the Daphne programme, many of which worked in cooperation with partners in the countries moving towards accession as well as in all of the states in the present study. This opportunity – and the platforms offered by the Council of Europe activities, as well as those in other EU programmes – were seized and exploited by activists, non-governmental organisations, researchers and policy-makers to build networks, exchange experiences, and develop standards of good practice, thus implementing the “feedback loops” and socialisation processes of transversal Europeanisation. Looking at the development of legislation and its institutions in countries outside as well as inside the EU offers a snapshot of how much convergence has been achieved, where historical and cultural diversity still predominates, and what changes will require a stronger political will to realise rights.

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## CHAPTER 2: UNREALISED POTENTIALS: PLANS OF ACTION ON VIOLENCE AGAINST WOMEN

Jackie Turner and Liz Kelly

### INTRODUCTION

The NPA study builds on the mapping of legislation undertaken during phase 1 of RRS to investigate more closely the role of a key policy requirement first established by the UN, and subsequently endorsed by the Council of Europe. It draws on a number of key human rights principles and concepts and investigates the extent to which these inform policy development and implementation in diverse national settings with respect to all forms of VAW covered in the first stage of RRS, namely: rape; sexual harassment; female genital mutilation; forced marriage; stalking; intimate partner violence; trafficking; and 'honour'-based violence.

### INTERNATIONAL DEFINITIONS

The UN Committee on the Elimination of All Form of Discrimination Against Women (CEDAW), in General Recommendation 19 (1992)<sup>6</sup> provided that the definition of discrimination in Article 1 of CEDAW:

*... includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.*

CEDAW Committee General Recommendation 19, 1992, para 6 states:

*... the term "violence against women" is understood to mean any act of gender-based violence that is directed against a woman because she is a woman or that affects women disproportionately.*

Article 1 of the UN Declaration on the Elimination of Violence Against Women, proclaimed by the UN General Assembly in its Resolution 48/104 of 20 December 1993<sup>7</sup>, and reiterated under the terms of the Beijing Declaration and Platform for Action<sup>8</sup> adopted at the UN Fourth World Conference in 1995, defines violence against women as:

*any act of gender-based violence that 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 in private life.*

Article 2 sets out the three main (but non-exhaustive) forms of VAW:

*(a) physical, sexual and psychological; violence occurring in the family; wife battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation (FGM) and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;*

*(b) physical, sexual and psychological violence occurring within the general community; rape, sexual abuse, sexual harassment and intimidation at work and educational institutions, trafficking in women and forced prostitution;*

<sup>6</sup> CEDAW Committee Gen Rec No. 19 (1992), para 6

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

<sup>7</sup> UN Declaration on the Elimination of Violence Against Women, available at

<http://www.un.org/documents/ga/res/48/a48r104.htm>

<sup>8</sup> UN Division for the Advancement of Women <http://www.un.org/womenwatch/daw/beijing/platform/>

*(c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.*

Recommendation Rec(2002)5<sup>9</sup> of the Council of Europe on the protection of women against violence broadens the scope, and elaborates on the aforementioned definitions. Again, VAW is understood as ‘any act of gender-based violence that 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 in private life’. This includes, but likewise is not limited to, the following:

*(a) violence occurring in the family or domestic unit, including inter alia, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital mutilation and sexual mutilation and other traditional practices harmful to women, such as forced marriage;*

*(b) violence occurring within the general community, including, inter alia, rape, sexual abuse, sexual harassment and intimidation at work, in institutions or elsewhere, trafficking in women for the purposes of sexual exploitation and economic exploitation and sex tourism;*

*(c) violence perpetrated or condoned by the state or its officials;*

*(d) violation of the human rights of women in situations of armed conflict, in particular the taking of hostages, forced displacement, systematic rape, sexual slavery, forced pregnancy, and trafficking for the purposes of sexual exploitation and economic exploitation.*

Under international law state signatories to treaties and conventions have an obligation, known as the ‘due diligence’ standard (United Nations, 2006), to prevent violence against women, protect survivors and prosecute perpetrators to the best of their ability given their available resources and capacities. The due diligence standard was elaborated by General Recommendation No. 19 of the CEDAW Committee<sup>10</sup> and recognises that States need to address the structural gender inequality and discrimination which underpins and perpetuates violence against women, as well as putting in place measures to prevent and respond to individual cases of violence.

National Plans of Action (NPAs) have long been considered an important tool in meeting the due diligence standard and strengthening government accountability to end VAW and it is expected that their development, implementation and monitoring should involve the participation and engagement of civil society organisations, in particular, specialised VAW NGOs.

Guidelines for NPAs have been progressively developed beginning with the Beijing Platform for Action and then elaborated by UNIFEM, the Council of Europe (CoE) and CEDAW guidelines. These include:

- developing an integrated, holistic approach to address the range of inter-related needs and the rights of women survivors;
- ensuring that both responses to, and prevention of, VAW is encompassed in all relevant policies and programmes;

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<sup>9</sup> Council of Europe (2002), Recommendation (2002)5 of the Committee of Ministers to member countries on the protection of women against violence adopted on 30 April 2002 –

[http://www.coe.int/t/e/human\\_rights/05.\\_violence\\_against\\_women/003\\_rec%282002%2905.asp](http://www.coe.int/t/e/human_rights/05._violence_against_women/003_rec%282002%2905.asp)

<sup>10</sup> Supra note 2, para 9

- building multi-sectoral approaches, specifying the respective roles of state and non-state organisations (NGOs);
- setting out principles, costed concrete goals and the actions;
- timelines and actors/agencies with responsibility and competence to carry out the actions and;
- monitoring and accountability mechanisms.

These are often summarised by reference to the three Ps of prevention, protection and prosecution. However, a more recent approach to illustrating the requirements of a NPA can be found in the extended six Ps approach developed by the End Violence Against Women Campaign (EVAW) of the UK. These begin with:

- ‘perspective’, by which is meant underpinning principles of gender equality, human rights, due diligence and non-discrimination;
- ‘policy’ refers to an integrated strategy that addresses all forms of VAW and intersections between them; an agreed definition; research and disaggregated statistics; analysis of causes of VAW; and mainstreaming VAW into all policy areas.

These additional 2 P’s set the foundations for rolling out the other four:

- ‘prevention’ which encompasses education, work with perpetrators, public awareness and self-defence for women and girls;
- ‘provision’ includes the specialised women’s sector, women’s centres, rural women, black and minority ethnic women, and the statutory sector;
- ‘protection’ which likewise includes provision but also encompasses support networks, civil law, safety in public places, and non-discrimination;
- ‘prosecution’, holding perpetrators accountable, European models of good practice, procedural justice for victim-survivors, and, again, non-discrimination.

Prevention is located at the centre, since it cannot be an ‘add on’ if governments are to have any claim to be moving towards the UN goal of ‘eliminating’ VAW, and prosecution is in the final place, since most VAW remains un-reported and only a small proportion of reports result in prosecutions and convictions.

Monitoring of the Council of Europe Rec (2002)<sup>5</sup> suggests a high degree of acceptance for the principle of a comprehensive NPA. At the same time, three quarters of all CoE countries only address domestic/family violence and (to a lesser extent) rape and sexual harassment in the workplace; there is a persistent reluctance to include other forms of VAW - FGM/C, forced and early marriage, honour based violence. The extent to which stalking is included and sexual harassment in contexts other than employment also varies. A tendency is also evident, possibly prompted by the separate monitoring of the Palermo protocol, to separate trafficking NPAs, which creates a gap with respect to sexual exploitation within the sex industry which is not linked to trafficking.

According to the CoE monitoring process, there are eight countries that have comprehensive NPAs covering most forms of VAW: Bulgaria, Finland, Germany, Italy, Netherlands, Norway, Turkey and

the UK<sup>11</sup>. All but Norway are part of this case study, with Serbia included as an NPA as it was in process of being developed when the research took place.

That some states address certain forms of VAW in specific NPAs means that the integration requirement for VAW NPAs is potentially compromised, moreover timelines and key goals may not be synchronised. It is not always clear, especially without closer knowledge of the policy and practice structures, whether this separation might be a stepping stone towards a comprehensive approach to VAW, but in the case of trafficking appears to be an outcome of competing reporting demands under different UN processes. Both the CoE reporting and FSL found that many NPAs adopt weak, if any, approaches to sexual violence, reflecting the relative neglect of this form of VAW at national and regional levels over the last decades (European Commission, 2010; Regan and Kelly, 2003).

## METHODOLOGY

The purpose of this case study, then, is to further explore these issues across a sample of countries. The inclusion criteria were:

- geographical spread across the EU;
- potential candidate countries;
- countries with long-standing and renewed NPAs and recently developed ones.

In addition, countries where the research team either had expert knowledge or existing experts were prioritised. This resulted in seven states being selected: Bulgaria, Finland, Germany, Italy, Netherlands, Turkey and the UK. Serbia was added during the study to track in real time the development of a NPA.

The research builds on the data collected and analysed during Phase I of RRS the mapping in the FSL study (European Commission, 2010) alongside publically available material, such as laws and English language publications available on the internet. Other publically available information is also used, through internet sources and databases, or other published material and reports, including from the EC, EU, Council of Europe and United Nations.

Additionally, specific experts were sourced - wherever possible more than one - in each of the countries studied, with relevant academic, NGO and/or government backgrounds. Some were contacted through existing regional consultants who worked with RRS during Phase I, others through contacts from within the partnership team. The core data collection approach was a questionnaire sent electronically, combined with attendance at one of the two roundtable meetings at which issues were to be explored interactively and in more depth.

The questionnaire posed a series of open research questions designed to explore and more closely examine a set of criteria drawn from UN documentation (UNIFEM, 2010) which provides guidelines for NPAs. Specifically:

- the NPA development process, providing some historical background and contemporary information;
- the key actors in the process, their status and impact;

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<sup>11</sup> The UK in fact comprises four nations – England, Northern Ireland, Scotland and Wales – and each jurisdiction has a separate response to VAW. At the time of writing there are different, but integrated, NPAs on VAW in England, Scotland and Wales. Policy in Northern Ireland remains limited to domestic violence.

- whether an integrated NPA is in place or alternatively, which forms of VAW are excluded and why;
- the extent to which a human rights approach is adopted, including whether the NPA is located within gender equality policies and mechanisms;
- how far the NPA address multiple (intersecting) forms of discrimination;
- how prevention, protection and prosecution are addressed;
- the role of the NPA in promoting legislative reform;
- the nature of prevention measures and the extent to which they include interventions aimed at transforming gender norms and attitudes which accept gender-based violence, and seeking to end impunity;
- how a multi-sectoral approach is envisaged and the role accorded to NGOs;
- whether research is provided for, collecting/collating data and what monitoring mechanisms exist;
- accountability mechanisms;
- whether the actions are financially resourced, with clear time lines and responsible actors.

Additionally, experts were asked to reflect on what a NPA can/cannot achieve, their effectiveness in driving policy/legislation, their inclusiveness with respect to the forms of VAW covered and how the NGO sector is involved in the development and delivery of NPAs. This later set of questions formed the basis for the round table discussions.

The responses were collated into a structured account and then returned to each expert to check for accuracy. Where there were gaps, or clarification needed, these were included as questions to be answered. The revised documents were then used for comparative analysis and a draft presented at the final round table in London providing an opportunity for a final check/commentary.

Experts were invited initially to two round table meetings, organised jointly with CWASU, London Metropolitan University, the Institute for Educational Science, University of Osnabrück (Germany), and the German Institute for Human Youth Services and Family Law, Heidelberg (DIJuF, Germany), at which experts from Bulgaria, Germany, Italy and Serbia attended. UK experts were interviewed in country and data on Turkey was collected concurrent with a visit there to research child protection processes. A three day site visit to Serbia took place in order to meet government and other stakeholders and explore the NPA development process in detail. Data on Finland and the Netherlands is limited to responses to a questionnaire and follow up questions for clarification, since none of the experts from those countries were able to attend any of the project meetings. A legal expert from Iceland attended the final project meeting to provide input from a regional perspective.

A caveat is needed here with respect to the limitations inherent in the use of 'national experts'. It is seldom possible to ensure each has the same level of knowledge and expertise, and despite our best efforts it was not always possible to guarantee input from more than one expert per country. Additionally, for some countries the available documentation in English was more limited. We, therefore, do not claim to have the same breadth and depth of material and perspectives for each of the eight countries.

The rest of the chapter provides a brief overview for each of the eight countries, followed by an analysis of the extent to which they meet the NPA criteria outlined above. We conclude with some observations about how NPAs should be monitored and how they might be strengthened.

## THE CONTEXT AND DEVELOPMENT OF NPAS IN THE EIGHT COUNTRIES

In this section we outline the recent legislative changes and the status of current NPAs for the eight countries. The FSL study alongside monitoring data of the Council of Europe (CoE, 2008), indicates that a significant number of EU countries have implemented a range of legislative measures on violence against women, including those within the case study. These measures can be found in both criminal and civil law, although the primary forms of violence which are penalised are sexual violence and physical domestic violence. By contrast, for example, FGM, forced marriage, or sexual harassment at work are less frequently the subject of specific legislation and are penalised in fewer countries<sup>12</sup>. These and other 'less common' forms of violence against women are often presumed to be capable of prosecution under generic criminal law - arguably this affords inadequate protection to women and less certain remedies than where specific legislation is in place. Violence against women is in any event often hidden and where it is also 'hidden' in law, there will not only be additional barriers for women to name and overcome, but it is much more difficult to undertake research and monitoring since VAW is masked within more general codes and categories (European Commission, 2010).

A common problem across many European countries continues to be low rates of prosecution and conviction, especially for domestic violence and rape (European Commission, 2010). Whilst some countries have introduced, for example, specialised domestic violence courts (UK) or specialised gender violence courts (Spain), levels of awareness-raising and training remain inadequate among the judiciary and police in particular. In consequence, there has been increasing pressure, especially from the specialised women's sector, as well as calls from international and regional bodies, for countries, through NPAs, to develop comprehensive strategies to inform and coordinate legislative measures, policy, training and awareness-raising, support services and research. NPAs are thus not only an international requirement, but also a mechanism which, if implemented, should deliver progressive improvements across the three or six P's.

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### BULGARIA

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#### RECENT LEGAL AND POLICY DEVELOPMENTS

Historically, VAW has been a hidden problem in Bulgaria, in part due to the notion that sex equality had been achieved under the previous regime. As a consequence, VAW is still not expressly recognised in law. However, the sustained efforts of women's NGOs, the challenges of EU accession, international pressure and evolving human rights discourse (in particular the Beijing Platform for Action and Review Process) have contributed to developments regulating certain forms of VAW. Legal regulation began in the last decade with the enactment of the Law for Combating Trafficking in Persons and the Law on Protection Against Discrimination, both of which entered into force in early 2004, as well as the Law on Protection Against Domestic Violence (LPADV) which entered into force on 1 April 2005. These laws include provisions with respect to domestic violence, rape and sexual violence, trafficking for the purposes of sexual exploitation, sexual harassment and forced marriage.

The LPADV was an achievement of women's NGOs such as the Bulgarian Gender Research Foundation (BGRF) which, with the assistance of lawyers, other NGOs and international experts, drafted the law, and lobbied parliamentarians and the executive to raise awareness of the need for regulation.

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<sup>12</sup> According to the Council of Europe (2008), whilst some countries failed to respond, from those that did it could be established that harassment at work is not penalized, for example, in Ireland or the Netherlands, forced marriage is not penalized in Finland or the Netherlands, and FGM is not penalized in Finland, Hungary or Romania.

*The adoption of the LPADV is a critical step in the prevention of and protection against domestic violence. Domestic violence remains a widespread problem in Bulgaria. A 2006 report estimated that one in four women in Bulgaria are subject to domestic violence (U.S. Department of State, 2006).*

The LPADV provides victims of domestic with a civil remedy in the form of a protection order, non-compliance with, or breach of which, has attracted a criminal penalty since a 2009 amendment to the Penal Code. A further reform provided victims with broader protections, as well introducing provisions for State funding of services to victims of domestic violence. The then newly established NGO – Alliance for Protection Against Domestic Violence – was the driving force behind these reforms. Even so, a number of shortcomings in both law and policy are identified, in particular: inconsistent implementation by courts and police; the absence of effective prevention strategies and programmes, including regular training programmes for professionals; the lack of programmes and plans of action; inadequate support and assistance services; and the failure of child protection bodies to invoke the law in cases of where domestic violence is impacting children’s safety. The continuing failure of the criminal law to recognise domestic violence as an offence is similarly critiqued. Where it is prosecuted, it is under general criminal law relating to bodily injury, in which proceedings for ‘light’ or ‘average’ bodily injury must be initiated by private complaint; that is, there is no *ex officio* prosecution.

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#### NPA

Contrary to official reports to the CoE monitoring process, Bulgaria has no NPA, nor has it ever had. According to the experts who participated in the case study, a process for developing an action plan began in 2003/4 with the Advisory Council for Gender Equality under the Council of Ministers (for Labour and Social Protection). NGOs were members of the Council but not fully so. At that time, the first Gender Equality (GE) Plan was adopted, and further Gender Equality Plans have been adopted year on year since then. Following legislative changes in the law on domestic violence in 2005, an initial national programme on DV was adopted for the years 2006-2008, after which it lapsed. However, the 2010 GE Plan made mention of DV again, albeit the reference was to stereotypes only and no specific measures were incorporated. Through the involvement of NGOs, there are now three national programmes: one on DV from April 2011, full details of which were not available at the time of writing this report; one on trafficking; and one addressing child protection. All make reference to vulnerable groups<sup>13</sup>.

The raises the complex question of how a ‘programme’ is different from a NPA, especially since some of the plans of action discussed later confusingly are named ‘programmes’. One of the Bulgarian experts suggested that whilst these terms tend to be used interchangeably, a ‘programme’ might suggest a broader and more political approach and content. Whilst a ‘plan’ may be described as detailing concrete actions, a ‘programme’ will tend to include all possible aims and general strategic tasks. In short, a ‘plan’ will cover implementation, how responsibilities are to be allocated and what the time frames are and will include specific obligations for the state and financial commitment. Since these characteristics are some of the indicators the UN specifies for a NPA, we have agreed with the experts that Bulgaria does not currently have one.

The primary body involved in the development and implementation of the national programmes is the Advisory Council for Gender Equality under the Council of Ministers. NGOs are involved with the Advisory Council but not as full members. They were consulted and their views taken into account in drafting the national programmes, although to date calls for an Action Plan on all forms of VAW have

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<sup>13</sup> It is understood that this includes Roma although the lack of a specific naming of this is criticised by some Roma communities.

not been heeded. However, on 6 December 2008, the Bulgarian National Assembly did adopt a declaration regarding the Council of Europe's Campaign to Combat Violence against Women, including Domestic Violence<sup>14</sup>.

*The declaration reaffirms that combating violence against women, including domestic violence, is a priority of Bulgarian legislative activities. In addition, it states that the National Assembly supports the Council of Europe's domestic violence campaign, it will assist all governmental and non-governmental organisations in implementing information campaigns and creating zero tolerance toward domestic violence, and it will take legislative measures to effectively counter perpetrators of violence and establish opportunities for positive practices<sup>15</sup>.*

It is worth noting here that whilst the statement begins with VAW, all subsequent references are to domestic violence only. The case of Bulgaria raised the issue of what the difference is between programmes and NPAs, and how monitoring mechanisms can be adapted to ensure claims to having a NPA are accurate.

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## FINLAND

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### RECENT LEGAL AND POLICY DEVELOPMENTS

Most reforms to the Finnish Criminal Code were made during the course of the 1980s and the 1990s in response to international developments, notably the 1995 World Conference and the Beijing Platform for Action. The Criminal Law Chapters dealing with interpersonal violence (Chapter 21) and with sexual violence (Chapter 20) were both amended during the 1990s, although there have also been further developments this century. The 'rape in marriage exception' was removed in 1994, and subsequent reforms took effect in 1999. Sexual crimes were recast as violations of victims' rights to (sexual) self-determination, but the legal definition of rape continues to be forced-based and the law itself is gender-neutral. This is also the case with respect to interpersonal violence. There is no specific offence of domestic violence, which must be prosecuted under other, generic 'assault' laws. Chapter 21 of the Criminal Code was reformed in 1993 to make 'private' violence a public issue but the Judiciary Committee of the then Finnish Parliament added a section to the legislation empowering prosecutors to withdraw charges of domestic violence on the wishes of the victim. Restraining orders were introduced in 1998, with the further addition of eviction orders in 2005, empowering courts to order the removal of a perpetrator of domestic violence from a property shared with the victim. Police also have powers to do so on an interim basis in cases of emergency, in line with the increasing adoption of 'go orders' as a minimum standard within the EU (see Chapter 3).

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### NPA

Successive governments have also approached VAW as a policy issue, in particular, as a social policy issue with a focus on programmes to assist victims and address perpetrators, with a particular emphasis on domestic violence and more recently trafficking. Following a prevalence survey of women's experiences of violence in 1999, repeated in 2005 (Piispa, Heiskanen, Kääriäinen & Sirén, 2006), public sector workers such as social workers, health care workers and the police have received some specialist training in dealing with VAW. The STAKES programme was deemed

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<sup>14</sup> Declaration of the National Assembly of the Republic of Bulgaria Regarding the Campaign of the Council of Europe "Parliamentarians United in the Fight against Violence against Women Including Domestic Violence" 2006-2008, State Gazette 2006, No.101.

<sup>15</sup> Supra at note 7, p. 8

successful and was funded to deliver on some of the elements of the first plan, including an extensive research programme on prostitution. It has been followed by a successor programme, THL, which has been in place since autumn 2009 under the auspices of the National Institute for Health and Welfare (Niemi & Leskinen, 2010). The current NPA (2010-2015) is the second, following an earlier National Programme to Prevent VAW and Prostitution (1998-2002). We note that there was an eight year hiatus, and the second NPA followed Finland's appearance before the CEDAW committee, and NGO lobbying on VAW.

The plan is framed within the context of government national security programmes and the approach is now gender-neutral, focussing on the reduction of domestic violence. The aims of the current NPA are:

- to tackle violence proactively by seeking to influence attitudes and behaviours;
- to prevent repeated violence;
- to improve the position of victims of sexual violence and the crisis intervention and support services they are offered;
- to develop methods for identifying and intervening in the violence experienced by vulnerable groups;
- to enhance the knowledge and skills of the authorities and professional service providers in preventing violence against women and in helping victims.

The first NPA was arguably more comprehensive, and one of the few in Europe to include prostitution in its remit. A shift to gender neutrality and an emphasis on domestic violence is also evident between the first and second NPAs. In its concluding comments on Finland's last report to CEDAW, the Committee expressed concern 'that the policy on violence against women is couched in gender-neutral language, which undermines the notion that such violence is a clear manifestation of discrimination against women' (UN CEDAW, 2008).

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## GERMANY

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### RECENT LEGAL AND POLICY DEVELOPMENTS

Germany has had a history of policy developments in relation to violence against women spanning the past thirty years. Concerns about police and criminal justice intervention initially coalesced around issues of sexual violence, with early demands for reform of rape law (not realised until 1997), training programmes rolled out in a number of Länder for frontline police officers, and the appointment of specialised prosecutors. A very detailed police training curriculum for the two main areas of sexual violence and domestic violence was developed and published in 1993. The response to domestic violence focused initially on shelters and support only, as it was widely believed that victims would not favour prosecutions of their partners. With a shift towards multi-agency approaches in the mid-1990s, questions about legal frameworks for more active police and court intervention emerged. Multi-agency round tables were set up in response to the sexual abuse of girls, as these projects needed to work in partnership with statutory agencies. Multi-agency work on domestic violence was at first modelled on this round table approach. This sequence of developments may have paved the way for a more comprehensive approach to violence against women.

Significant legislative reforms have been introduced. In the criminal law these are intended to eliminate all "exceptions" that permit violence with impunity in the spheres of the family or

sexuality. Specifically the exception permitting marital rape has been abolished, as has the tradition of exemption from prosecution where violence occurs in the private sphere. Rape law reform introduced the concept of sexual coercion to include all sexual penetration. All legal reforms follow the principles of equality and fundamental rights and are thus extended to all persons, with abuse of a position of vulnerability constituting specific or aggravated offences. This set of principles precludes any legal definition of VAW or violence in the family. Nonetheless, VAW is expressly recognised in policy, beginning in the 1980s when attention was first directed at the treatment of rape victims within the criminal justice system. Significantly, a national government policy unit on VAW was established in 1981 and still remains, working closely with NGOs.

In civil law, the Protection against Violence Act entered into force on 1 January 2002 and marked a decisive shift in that it provided protection against stalking and enabled the removal of the perpetrator of domestic violence from any property jointly occupied with the victim. It is anticipated that the effectiveness of the Act will be further improved by concentrating responsibilities for measures taken under the Act in the family courts.<sup>16</sup> Additionally, the Federal Government has undertaken to monitor developments concerning the alignment of protective measures for women and orders affecting guardianship and contact between parents and children.<sup>17</sup> There has been a return recently to the issue of sexual violence, following several dedicated conferences and lobbying by NGOs.

#### NPA

The current NPA is the second action plan by the Federal Government, the first having been published in 1999. The impetus for the first NPA stemmed from concerted and sustained action at NGO level, and an emerging awareness – especially of domestic violence - as well as international influence and developments. Both NPAs are integrated and address all forms of violence against women, however, publication of the first NPA led to some tensions between federal government and the Länder, as federal government had, at that stage, not consulted widely with the Länder or undertaken a ‘mapping’ exercise to ascertain developments within individual states. Nevertheless, federal government had an agreement with all the Länder to enact laws giving force to the new ‘go order’, enabling police to expel from the home perpetrators of domestic violence, and some states did vie with one another to be the first to pass the new laws. Additionally, the first NPA laid the foundations for the action plan process and created legitimacy through a round table approach; this process led to the adoption of a common approach to protection of women by all parties, in particular the police. It was the acceptance of this by police, together with the role of women’s equality officers, which served to alleviate some feminist concerns in their dealings with state agencies. The first action plan created the basis for a comprehensive and consultative approach to VAW focused on legal reform, a process and approach intended to be carried forward through implementation of the second NPA, with further attention paid here on differently situated women and with considerable emphasis on early preventative measures in relation to children and their development.

The German NPA process offers an interesting model of participation and development of consensus positions at the regional and local government levels.

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<sup>16</sup> Second Action Plan of the Federal Government to Combat Violence Against Women, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, p. 32

<sup>17</sup> Ibid, p. 33

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**RECENT LEGAL AND POLICY DEVELOPMENTS**

Italy, like Germany, has no legal definition of VAW although its recently published NPA refers to the Council of Europe definition identified above. Hitherto, the definition adopted by the UN Beijing Platform had been the most widely used. As in most other countries, specific laws define specific acts of violence and reforms have occurred over recent decades. In 1975 a new Family Code was introduced which abolished the notion of 'marital authority' that had entitled a husband to use 'means of correction and discipline towards his wife'. A few years later, in 1981, certain forms of 'honour defences' were removed from the criminal code, for example, sentence reductions to husbands who murdered their wives for reasons of infidelity, or permitting a perpetrator of rape to evade punishment if he married his victim. So far as domestic violence is concerned, this has attracted explicit legal recognition since the turn of the century in Law 154 of 2001, labelled "Measures against violence on family relations", which introduced protection orders into the Italian justice system. Significant reforms of sexual crimes began in 1996 (l. n. 66/1996) when, inter alia, the location of these crimes in the criminal code was changed and they were moved from the section dealing with offences against morality to the section on offences against the person. The previous crimes of rape and sexual aggression were also merged into a consolidated offence of sexual violence (new art. 609 bis). In 2006, female genital mutilation received legal recognition and became prohibited by law 7/2006 and an anti-stalking law was introduced in 2009.

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**NPA**

The UN Secretary-General's data base on violence against women indicates that Italy had adopted a national plan on violence against women in 2008, addressing sexual violence/violence against women in general. It was further indicated that national funding had been allocated: 'Law 244/24 December 2007 (Finance Act for 2008) confirmed the allocation of 50 million euros to fund policies concerning rights and equal opportunities for the year 2008. Within this funding, an additional 20 million euros were allocated to fund the implementation of the National Action Plan Against Sexual and Gender Violence'<sup>18</sup>.

The experts involved in this study present a somewhat different picture. An NPA was drafted under the previous administration (1996-1998) with 20 million Euros earmarked for its implementation. That money, however, was re-allocated by the present administration which postponed publication of the NPA until February 2011. Expectations have been further limited through descriptions of what will be published as more of a 'declaration of intent' which initially remained without the allocation of any funds for its implementation. However, recent developments indicate funds have been promised by the Ministry of Equal Opportunity, namely four million Euros for the creation of new shelters, six million Euros for the existing shelter network, and 1.7 million for training purposes. The arrangements for allocation of the funds have, however, been criticised by the women's shelter network. Municipalities must apply, and each such application must include a commitment to provide 20 per cent of the funding. This comes against a backdrop of year on year cuts by central government of funds to the municipalities. Furthermore, if funding is then received by a given municipality, it will have the option of re-allocating the funds to service-providers within or outside of its own boundaries which, in turn, will have the potential to undermine local autonomous women's projects working in the field for years. It remains an open question, therefore, how much of the promised funds are actually allocated to VAW projects.

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<sup>18</sup><http://webapps01.un.org/vawdatabase/searchDetail.action?measureId=26270&baseHREF=country&baseHREFId=675> Accessed 3 August 2011.

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### RECENT LEGAL AND POLICY DEVELOPMENTS

In the Netherlands, activists within the women's movement, especially the shelter movement, were influential throughout the 1970s in bringing the issue of VAW to government attention. In 1984, this was formally acknowledged in a policy white paper (*Seksueel geweld tegen vrouwen en meisjes*) which advocated state intervention to address VAW, previously regarded as a 'private' matter. This resulted in some legislative changes. In 1991, rape in marriage was criminalised by the removal from the rape statute of the phrase 'out of wedlock'. That same year also saw changes to the legal definition of rape to make it a gender-neutral offence. In the mid-1990s, guidelines were issued to police and prosecutors, with detailed protocols for the investigation and prosecution of sexual offences. These protocols are regularly updated, the last such up-date being in 2008, and include some mandatory provisions, for instance, that sexual offences are investigated and prosecuted only by specially trained police officers and prosecutors. Guidelines and protocols are also issued with respect to domestic violence although there is no specific provision in the criminal law, meaning prosecution is only possible under general sections of the criminal code, such as assault, grievous bodily harm and rape.

In 2008 a number of municipalities put forward a proposal to create a (civil) Domestic Violence Act but this was rejected by government on the basis that sufficient legislative powers were already in place. The general approach to domestic violence has gradually shifted from a gender-specific to a gender-neutral one, although following criticism by the UN CEDAW Committee (2007)<sup>19</sup> policy papers now acknowledge its rootedness in gender inequality. Nevertheless, not only law but also guidelines remain gender-neutral in language and substance, including in civil and administrative law through which restraining and barring orders can be issued.

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### NPA

Plans to develop a NPA began in the mid-eighties, but were suspended with a change of government. At present no NPA is in force in the Netherlands. The first NPA ran from 2002-2008 – entitled *Private Violence-Public Issue Programme*. According to the government:

*... this inter-departmental programme, which comprised the cooperation of six Ministries and many national and local organisations, contained numerous measures for improving the fight against domestic violence. The measures were specifically aimed at creating an infrastructure, achieving cooperation, implementing legislation and providing help<sup>20</sup>.*

Specific targets were set for the police – to increase the recording and reporting of domestic violence and decrease repeat victimisation – and led to the development of a new way of flagging cases on records introduced in 2005. Support services were recognised and expanded. In 2008 a new NPA was introduced for the period 2008-2011 entitled *The Next Phase*. The focus of the first NPA was to establish an infrastructure to tackle domestic violence, including a nationwide network of support centres, regional and local forms of cooperation, and a national centre of expertise. The second NPA sought to broaden and deepen the approach through more research, alongside increased provision and measures for local authorities.

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<sup>19</sup> UN CEDAW/C/NLD/CO/4: Concluding Comments of the Committee on the Elimination of Discrimination Against Women, February 2007, p. 4. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/243/92/PDF/N0724392.pdf?OpenElement>

<sup>20</sup> Ministry of Justice (2010) Fact Sheet: Domestic Violence, p.1

Both NPAs were focused on domestic violence, defined as:

*... an act of violence committed by a person from within the victim's domestic circle. The 'domestic circle' includes partners, ex-partners, family members and family friends. The term 'domestic' therefore does not refer so much to the location where the violence took place, but to the relationship between the perpetrator and the victim. Domestic violence may take the form of child abuse, (ex-) partner-related violence in all conceivable forms, as well as the abuse, exploitation and/or neglect of the elderly. It may involve physical and sexual violence as well as psychological violence such as threatening behaviour or stalking<sup>21</sup>.*

As with some other examples in our study this is in fact a definition closer to 'family violence', blurring the distinction between VAW and abuse of children, whilst also appearing to extend to known persons outside the household and providing passing recognition of FGM and honour based violence. Such hybrid definitions are increasingly common, often the unsatisfactory outcome of lobbying by interest groups and political compromise. As a consequence they are often confusing, conflating contexts and forms of violence and invariably excluding some of the forms of VAW that NPAs are required to address.

The second NPA expressly acknowledged that different forms of 'domestic violence' require 'customised' approaches but maintained the gender-neutral perspective which a family/intimate relationship based approach implies. There is a reference in a footnote to gender inequality and its connections to 'much violence against women in the home'<sup>22</sup>. At the time of writing a discussion between ministries on whether there was a need for a new NPA was ongoing, however, there is no agreement on content and government appears hesitant. The absence of NGOs in the Netherlands with a wider VAW remit was seen by one expert as a barrier to extending the reach of any new NPA. Austerity measures were increasingly evident, and having impacts on the network of services supported by the previous NPAs.

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## SERBIA

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### RECENT LEGAL AND POLICY DEVELOPMENTS

Similar to many Eastern European countries legislative reforms and policy developments are recent, within the last decade. In particular, the Criminal Code was amended in 2002 to add Article 118a (Violence in the Family) and thereby create a separate offence of domestic violence. Prior to this domestic violence was dealt with under generic laws pertaining to (degrees of) bodily injury (Brankovic, 2007). The amendments also criminalised rape in marriage and sexual harassment in the workplace, although this provision has since been removed leaving civil sanctions available through labour law provisions. That said, the recently enacted Mobbing Prevention Law 2010 is deemed important in that it includes sexual harassment with the first avenue of redress, however, being conflict resolution procedures.

In 2003, trafficking in human beings became a specific offence under the Criminal Code, followed by the Witness Protection Law, passed in 2005. Additionally, Article 198 of the Family Code entered into force in 2005 with provisions for restraining orders in cases of domestic violence, empowering courts to order the removal of perpetrators from the family home. Importantly, 'family' is given a broad definition here, albeit that implementation of these provisions is inconsistent across the country. There are some indications of improved police responses but with the new Criminal Code, which

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<sup>21</sup> Ministry of Justice (2010) Fact Sheet: Domestic Violence, p.1

<sup>22</sup> *ibid*

came into force in 2006, penalties for domestic violence offenders were in fact reduced (Brankovic, 2007).

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## NPA

The Republic of Serbia established a Council for Gender Equality in 2003. According to the government, this 'is an expert and advisory body dealing with the equality of sexes, enhancing the status of women and the monitoring of implementation of projects in this field'. Members include ministry representatives, NGOs and academics. One of its priorities was to develop a national strategy on gender equality.<sup>23</sup>

The first Gender Equality Action Plan was produced under the auspices of this advisory body in 2006, and contained a section on VAW, albeit with a focus on domestic violence. The first NPA also made reference to sexual violence and trafficking. However, the NPA was not adopted by the government, although some of its content was included in the National Strategy on Gender Equality. This Strategy, adopted by government in 2009, refers primarily to domestic violence but is vague on any specific measures. Whilst NGOs were consulted in these processes their contributions were not mentioned in the text. The Strategy was signed by the newly created Directorate of Gender Equality, set up in 2008 under the Ministry of Labour and Social Policy.

This Strategy forms the core of the 2010-2015 plan of action on gender equality, and here we find a section on VAW with some specific measures on domestic violence, the marriage of minors, arranged marriages, traditional practices<sup>24</sup> and sexual violence also receives specific mention. There was also a promise here of a specific strategy on VAW, which was subsequently developed under the Gender Equality Directorate within the framework of the project 'Combating Sexual and Gender-based Violence', implementation of which is financed by the government of Norway. The original draft, written by two consultants, was strongly critiqued by NGOs – for its limitation exclusively to domestic violence, and the framing of it as a social pathology. A coalition, the Network of Women Against Violence (WAV), and other NGOs, lobbied strongly and submitted new proposals, including to draft a new Strategy on VAW at no cost to government. The new version was completed in September 2010, with participation of ministries, institutions, the network of WAV and other women's NGOs, coordinated by the Gender Equality Directorate under the above-mentioned project. This draft addressed all forms of VAW and contained a number of specific measures, including for legal reform. The final version was the one adopted by government in April 2011, and it differs markedly from the September 2010 draft. It is entitled '*National Strategy for Prevention and Elimination of Violence Against Women in the Family and in Intimate Partner Relationships*'. The narrowed focus is evident from the title and many of the specific proposals made by NGOs, including almost all of those for legal reform, were removed. Many women's NGOs recognise the adoption of the Strategy as an improvement but regret that their struggle to include all forms of VAW was not endorsed by the government.

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## TURKEY

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### RECENT LEGAL AND POLICY DEVELOPMENTS

Turkey has a number of laws understood to constitute gender equality legislation, although they are not officially listed as such. Many of these were introduced within the processes of preparing for accession to the EU, albeit that there had been considerable activity by feminist NGOs on VAW prior

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<sup>23</sup> Responses of the Serbian government to the questionnaire of the European Commission, Chapter 23.

<sup>24</sup> It is unclear what is meant by this but there has been some re-emergence of FGM within a very small part of the Muslim community in a particular part of the country – there are no data - and it may also be making reference to the practice of selling brides as this is mentioned once.

to this. The Law on the Protection of Family dates from 1997 and includes among its main provisions removal of a violent spouse from the family home and protection orders; in both cases, complaints can be initiated by third parties. This was further amended in 2007 to extend the scope of its provisions to cover ex-spouses and other family members. A constitutional amendment in 2001 established equality in the family (Article 41) and, at the same time, the civil code was amended to the same effect. Additionally, the concept of 'head of the family' was abolished with its derivative consequences, such as child-related decisions. The limited legal capacity of women was similarly abolished and provisions were introduced mandating the equal division of marital property on divorce. Finally, the minimum age for marriage was raised and equalised at seventeen years for women and men. A number of changes were introduced in 2003 to labour law provisions to ensure equal pay for work of equal value, to prohibit gender discrimination at work, including sexual harassment, and to mandate maternity-related provisions, including maternity leave and pay. A further constitutional amendment was introduced in 2004 to obligate the state to ensure gender equality in de facto terms, and to establish the superiority of international law instruments over domestic law. By virtue of the Law on Municipality of 2004, all municipalities with more than 50,000 inhabitants are obliged to have shelters for women victims of violence and, in the same year, the penal code was amended, locating sexual crimes as crimes against the individual rather than as 'public morality' crimes, and recognising marital rape. Sentence reductions in cases of custom (honour) killings were outlawed and virginity tests without court order were criminalised (Acar & Göksel, 2008).

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#### NPA

Turkey introduced its first NPA *Combating Domestic Violence Against Women*, under the auspices of the Directorate General on the Status of Women, for the years 2007-2010. It was the first NPA to address any form of VAW in Turkey, and was prepared within the framework of Combating Domestic Violence against Women Project, and implemented by the Directorate General on the Status of Women with the financial assistance of the European Union and technical assistance of the United Nations Population Fund. Whilst the Plan makes references to VAW generally and recognises this as a violation of fundamental human rights, as the title suggests, it focuses on domestic violence with honour based violence a second theme. The women's NGO sector was consulted and had a voice in the drafting of the NPA because they were considered by government to be the experienced actors in this field. However, not all of the considerations women's NGOs brought to the table were included within the action plan, and the NPA has been critiqued for its family-centred approach.

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## UNITED KINGDOM

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### RECENT LEGAL AND POLICY DEVELOPMENTS

Unlike many other European countries, the UK does not have a codified system of civil or criminal law, or a written constitution. Instead, the law derives from different sources, notably statute law – laws passed by parliament – and common law or judge-made law, whereby judges in the higher courts establish legally binding precedents through their interpretation of the law and the intentions of parliament. Moreover, the UK does not have a unified system of law as the country in fact consists of four nations – England, Wales, Scotland and Northern Ireland – with different law and policy-making powers. Hence, this section is primarily concerned with England and, to some extent, Wales.

There have been a number of legislative changes of note during the past decade pertaining to crimes of and protections from VAW. The Sexual Offences Act 2003 completely overhauled the law on sexual offences and introduced a number of new offences, such as paying for sex with a child. It also broadened the definition of rape which is consent-based and, for the first time, provided a statutory

definition of consent, as well as creating a specific offence of trafficking for the purposes of sexual exploitation. The Female Genital Mutilation Act (FGM) also entered into force in 2003, restating the provisions of earlier law criminalising FGM, but extending the reach of those provisions to give them extra-territorial effect. The Domestic Violence (Crime and Victims) Act 2004 strengthened protection orders by making breach of an order a criminal offence and, by virtue of s12 of the Act, further extended the powers of courts to impose orders on perpetrators under the Protection from Harassment Act 1997, regardless of any conviction for an offence. In 2011 an as yet not implemented clause, giving police the power to remove perpetrators, is being piloted in three areas. The Forced Marriage Act 2007 provides for protection of victims or potential victims of forced marriage and the Policing and Crime Act 2009 introduced the offence of buying sex from an exploited woman. The Equality Act also entered into force in 2010 creating a Public Sector Equality Duty, requiring all public authorities to undertake impact assessments of all policies; this, however, weakened the previous Gender Equality Duty.

## NPA

Until 2009 there was no NPA, however, the Labour government (1997-2010) introduced a number of separate strategies and action plans on domestic violence, sexual violence and trafficking – each of which had a series of specific actions, were inter-ministerial and had budget lines attached. Despite considerable lobbying from the NGO sector, the government was reluctant to introduce an integrated NPA. However, around 2004/5 a critical shadow report was submitted to the CEDAW Committee, detailing the absence of an integrated NPA and the neglect of sexual violence. Minority women's groups also sought the inclusion of FGM, forced marriage and honour-based violence in efforts to de-marginalise and de-culturalise these forms of VAW. The Women's National Commission (WNC), an official independent advisory body giving the views of women to government<sup>25</sup>, played an important role in this process, but it was not until the establishment of the End Violence Against Women Coalition (EVAW) that sustained pressure, and some political will, combined to focus attention on creating an integrated NPA. Important steps in this process were the UK government appearing before the CEDAW committee, which had been lobbied by NGOs, and EVAW publishing a template integrated strategy in 2008 (Coy, Lovett & Kelly, 2008). A three-month consultation was held between March and May 2009, before the NPA was completed and published in November 2009 (Home Office, 2009). Uniquely and importantly this included focus groups with over 300 victim-survivors of a range of forms of VAW. The NPA also integrates girls into its provisions.

The Labour government was, however, voted out of office before the NPA could be implemented, and a new, Conservative-Liberal Democrat coalition government took power in May 2010. EVAW, however had already worked with and lobbied both Conservatives and Liberal Democrats whilst in opposition so that, shortly after taking office, the new government published its own NPA (Home Office, 2010). Whilst the new NPA covers most forms of VAW, trafficking and prostitution have been removed to be covered by a separate document. Whilst the focus on prevention and many policy directions have been retained, as have the framing in terms of gender equality and human rights, the new NPA suggests a shift back to culturalising some forms of VAW and has new emphasis on an international focus. The promise of successive governments to implement a sustainable funding strategy for specialised NGOs has yet to be realised, and many face cuts, if not suspension of their entire services, over the next 12 months.

## COMPARATIVE ANALYSIS

The heart of this analysis is the process by which NPAs are developed and their content. But that lens alone will produce misleading findings, since the wider context in which apparently similar

<sup>25</sup> This important and influential body was abolished by the new government in late 2010.

outcomes are present is very different. Tables are included in each section that deals with one of the indicators noted in the methodology section. We have included data here on NPAs which have either recently expired or where there is a dispute between government reporting to the CoE and our experts: to indicate the status of these claims they are placed in italics and brackets.

Whilst deep analysis of the cultural, historical and socio-political contexts of eight states is beyond the scope of this project, it is necessary to begin this section with some comment on the profound differences there are between some of the countries, especially their understandings and practices of democracy and participation alongside the development of civil society. This was made most visible in our visit to Serbia, where the process of producing the NPA was new for all parties, and the NGO sector whilst vibrant is fragile. Other variations across Western Europe are evident in the extensiveness of the networks of specialised NGOs working on violence – especially whether there are groups focused on sexual violence – and/or the availability and depth of established routes to engagements with the state and state agencies. It is, therefore, with some caution that we compare the NPAs, since what appears similar in form and content may, in philosophy and/or practice, be different.

In this section we compare the eight states across the key indicators, noted earlier, with respect to the NPA process, its content and implementation. The comparisons are presented as tables, with an accompanying commentary.

## THE NPA PROCESS

The development of an NPA is considered most effective where:

- there is a lead group or agency which ‘owns’ the process and strategy;
- it engages cross-ministerial input and endorsement;
- it is cross-sectoral in terms of state agencies;
- NGOs and civil society are consulted.

We present the findings across these indicators in Table 1.

*Table 1: the NPA process across eight countries*

Country	Current NPA	Lead agency	Cross-ministerial	Cross-sectoral	NGO consultation
<b>Bulgaria</b>	No	<i>(Advisory Council for Gender Equality*)</i>	<i>(Yes - under Council of Ministers)</i>	<i>(Unclear)</i>	<i>(Partial - Attend but are not full members)</i>
<b>Finland</b>	Yes	National Institute for Health and Welfare	Yes - Interior, Justice, Social Affairs and Health, Foreign Affairs	Yes	Yes - Involved in framing and implementation
<b>Germany</b>	Yes	Federal Ministry of Family Affairs, Senior Citizens, Women and Youth	Yes	Yes - current emphasis on health and education	Yes - Established mechanisms at Federal and Lander levels
<b>Italy</b>	No	(Ministry of Equal Opportunities)	<i>(Unclear)</i>	<i>(Local government)</i>	<i>(Partial - basis for selection unclear)</i>
<b>Netherlands</b>	No		<i>(Previously Yes - Safety and Justice, Health, Welfare, Sports, Interior, Education)</i>	<i>(Previously Yes, especially police, prosecutors, probation and local government)</i>	<i>Previously (Yes - Involved in framing and implementation)</i>

<b>Serbia</b>	Yes	Gender Equality Directorate within Ministry of Labour and Social Policy	Currently Unclear	Currently Unclear	Partial - submitted a draft, which was substantially revised and many have refused to endorse the final version
<b>Turkey</b>	No	<i>(Directorate of General Status of Women**)</i>		<i>(Yes)</i>	<i>(Yes)</i>
<b>UK</b>	Yes	Home Office facilitating a cross departmental 'delivery group'	Inter-Ministerial Group	Yes	Yes - plus consultation with victim-survivors

\*italics indicate the bodies which were involved in previous NPAs or are responsible for developing current policy

\*\* Recently the Ministry for Women and Family Affairs has been replaced by a Ministry of Family and Social Policies

Revealingly four of the case study countries are regarded by national experts to not have a NPA, which questions their designation in existing studies and datasets. In two instances (Netherlands and Turkey) a NPA expired during the research, and was not renewed. In two other cases whilst governments claim to have a NPA this is not concurred with by NGOs: in the case of Bulgaria there are programmes on domestic violence and trafficking; in the case of Italy a draft NPA (with an attached budget) has yet to be formally adopted. This indicates a need to develop more searching monitoring questions, rather than simply is there a NPA asking if one is currently 'formally adopted by government' and 'in force' and 'being implemented'. This could be further sharpened by a clear and concise definition of minimal requirements of a NPA.

The most likely lead agency for NPAs is located within national gender equality mechanisms, whilst this is appropriate in many respects, depending on the status and resources of the agencies it may be a recipe for marginalisation. The extent to which all relevant Ministries are part of the process, and thus have some commitment to addressing VAW is also not consistent: Justice, Interior, Education and Welfare ministries are the most common participants followed by Health and Foreign Affairs. Only Finland has substantial 'buy-in' from Defence, with Urban Planning, Culture, Environment and Rural Affairs rarely noted by any country. In terms of cross-sectoral engagement the most likely to be involved are local government (and regional where the state is federated) followed by the criminal justice agencies of the police, prosecutors and probation. Health sectors (doctors, nurses etc) appear slower to join the process.

How NGOs are consulted, and the extent to which their views are heard varies considerably across the eight countries: with relatively formal and extended processes in Germany and the UK and concerns expressed about the depth and impact of the process for Bulgaria, Italy, Serbia. We see a range here between an engagement, exchange and recognition that is intended to produce the best outcomes for women to, at other end of the spectrum, what appears to be little more than an exercise in fulfilling an obligation. To be rooted in gender equality is a necessary but not sufficient condition for understanding the issues at stake – but without this the practice based knowledge which is embedded in NGOs is insufficiently appreciated and drawn on. Some experts recounted experiences of having some of their ideas used, but their location in a different discourse meant that their meaning and intention was undermined. Similarly, there is a crucial difference between not having all proposals from NGOs accepted and a process of 'consultation' in which virtually all are ignored/deleted. The challenge in some countries for NGOs to have their voices heard in public and by policy makers remains considerable. However, even where the participation of civil society is

accepted, *which* NGOs are in fact heard and, then, the extent to which they are able to voice independent views may be queried. In several countries there has been a noticeable marginalisation of NGOs retaining strong feminist commitments and which are willing to ask critical questions of government policy directions and the framing of issues in terms of gender neutral concepts of family violence. Building strong networks and coalitions, most developed in UK under the End Violence Against Women (EVAW) campaign, seems to be one route for retaining a feminist position.

### IS THE NPA COMPREHENSIVE AND INTEGRATED?

These are both key UN indicators, but at issue here is what counts as ‘integrated’ or ‘comprehensive’. One reading of this relates to an issue dealt with previously, the extent to which all relevant ministries are involved. For this project we are also defining it as the extent to which all forms of VAW are covered in the NPA. In terms of current knowledge and awareness this means: domestic violence; rape and sexual assault; sexual harassment; stalking; trafficking and sexual exploitation; forced and early marriage; female genital mutilation (FGM/C) and honour based violence. We also assess whether the strategy is explicit about the inclusion of girls; these issues are covered in Table 2.

*Table 2: The comprehensiveness of the NPA across eight countries*

Country	Current NPA	All/most forms of VAW	Some forms of VAW	Family violence	Domestic violence	Girls
Bulgaria	No	(No)	(Programmes on domestic violence and trafficking)			Unclear
Finland	Yes	Yes – but with a focus on repeat DV				(Unclear)
Germany	Yes	Yes				Unclear
Italy	No	(emphasis on stalking)				
Netherlands	No	(No)		(Violence within the domestic circle)		(Unclear)
Serbia	Yes		Yes – but main focus is DV			No
Turkey	No				(references to HBV)	
UK	Yes	Yes				Yes

There is a strong difference here between those comprehensive NPAs which are clearly seeking to address all forms of VAW, regardless of the context in which they occur (Finland, Germany, UK, with Italy if the NPA is formally adopted), and those which are focused on the family/domestic sphere. Even with respect to the latter, this can be wider – as in the lapsed NPA from the Netherlands, which included references to FGM/C and HBV – or narrower with a clear emphasis on violence from ex/current intimate partners or limited definitions of ‘family members’. It is worth noting that for the three countries with comprehensive NPAs, this is the second plan and in each case the successor plans have built on and developed the first.

At least two NPAs make reference to ‘other forms’ of VAW or GBV, but the content then focuses almost entirely on a single form: Serbia, domestic violence; Italy, stalking. In the case of Serbia, it is considered important that they have a NPA, albeit that the process (see earlier) was less than ideal. The interpretation of why Italy should, unlike any other country, choose to focus on stalking is thought to reflect the current government’s ‘pro-family’ position, and in this context is seeking to de-emphasise violence in the private sphere. Clearly stalking is thus viewed as public violence, albeit that in many countries existing legislation has been used most frequently to regulate ‘post-separation’ violence.

An increasing separation of trafficking into separate NPAs was also evident, with the exception of Finland which continues to integrate prostitution and trafficking into its current the NPA whilst making links with a more detailed 2008 National Plan of Action against Trafficking in Human Beings.

In some instances violence in the workplace, and through this sexual harassment is covered primarily in equality laws (e.g. Finland, UK and Germany), which in turn means that sexual harassment outside the workplace is rarely addressed (European Commission, 2010).

Only the UK has a substantial emphasis on sexual violence. Many countries justify the emphasis on domestic violence as the most common form of VAW. It is undoubtedly the most researched, with the majority of prevalence studies including a substantial number of questions on it. The recent French and German studies, which included a set of questions on sexual harassment, found that this was in fact more common in women’s lives (European Commission, 2010). The only recent dedicated survey on sexual violence in child and adulthood was undertaken in Ireland (McGee, Garavan, de Barra, Byrne & Conroy, 2002), and found rates very similar to those for domestic violence (32% reported some form of sexual intrusion over the life course).

### THE FRAMING OF THE NPA

International law and UN documents locate VAW as a ‘cause and consequence’ of gender inequality and as violations of human rights. One might expect, therefore, that NPAs would be framed in terms of their underpinnings in terms of these principles. Table 3 summarises our findings here.

*Table 3: Framings: gender equality and human rights across eight countries*

Country	Current NPA	Gender inequality explicit	Human rights explicit
Bulgaria	No	(No)	(No)
Finland	Yes	Ambiguous	Yes
Germany	Yes	Yes	No – but fundamental rights a basis
Italy	No	(No)	(No)
Netherlands	No	(No)	(No)
Serbia	Yes	Yes	No
Turkey	No	(No)	(Yes)
UK	Yes	Yes	Yes

Only four NPAs contain explicit references to gender equality, and even here in Finland the actual content is gender neutral; suggesting a shift away from gender analysis within government perspectives on VAW. There is a crucial difference here between the Western European countries which have up to 40 years experience of contemporary women’s movements, including NGOs

working on VAW, and to greater or lesser extents government commitments and machineries on gender equality, and the two Eastern European countries and Turkey where there is just a decade of such developments. At the same time the priority accorded to gender equality waxes and wanes, depending on the government in power. Finland, Germany and the Netherlands have witnessed a waning of attention in recent years, and the new UK government whilst retaining explicit references to gender inequality in their recent NPA does not have a strong social justice commitment.

Only three NPAs are framed in terms of human rights (Finland, Turkey and UK) with Germany drawing on the linked concept of fundamental rights. This means that of the eight countries it is only the UK where there are explicit framings consistent with international law; with Finland and Germany arguably close to this requirement.

## INTERSECTIONALITY

There is increasing recognition that the position of marginalised groups can affect not only the forms and extent of violence they encounter, but also their access to protection and support. The concept of intersectionality (Crenshaw, 1991) is increasingly used to refer to this, and means something more complex than multiple discrimination. It is not that being located in several inequality structures ‘adds up’, but that each position changes the others – it is a different experience of being a woman if one is disabled, a lesbian or a Roma: the dimensions of inequality ‘intersect’.

UN policy documents have specifically named certain groups which states should pay particular attention to – namely migrant and rural women – but the relevance of other differences, especially sexuality and disability are important. Similarly, racism can be experienced by marginalised communities who are not migrants but ostensibly full citizens, such as Roma and established black communities.

Table 4 presents findings on whether the position of different groups of women is addressed, which groups are specified and whether specific actions are envisaged in relation to them.

*Table 4: Intersectionality in the NPA across eight countries*

Country	Current NPA	Different groups of women recognised	Which groups	Actions attached
<b>Bulgaria</b>	No	(Yes – vulnerable groups)	(Not explicit, but understood to include Roma and Muslim)	(No)
<b>Finland</b>	Yes	Yes – vulnerable groups	Migrant, disabled, sexual and gender minorities, women in the sex industry	Yes
<b>Germany</b>	Yes	Yes	Migrant/minority, disabled, separated, girls	Yes
<b>Italy</b>	No	(No)		
<b>Netherlands</b>	No	No		
<b>Serbia</b>	Yes	Yes – vulnerable groups	Not specified	No
<b>Turkey</b>	No	(No)		
<b>UK</b>	Yes	Yes	Age, disability, ethnicity, religion, sexuality, culture	Yes

To some extent these variations are connected to wider equality politics in respective countries and the extent to which these have been recognised and raised consistently by women’s and other social movements. Which groups of women are specified varies considerably, in part due to the characteristics of marginalisation in the respective countries, and the status of intersectional politics. It is also worth noting that in many countries the issue of discrimination has been transposed into a question of ‘vulnerability’.

One key issue here is that of ‘culturalising’ forms of violence, locating them in specific cultures and in the process disconnecting them from an overall understanding of VAW. Germany has been especially conscious of avoiding this, and arguably the first UK NPA was too. A shift backwards is evident with the new government which has reopened debate on whether to have a new criminal law on forced marriage and explicitly refers to ‘culture’ as one of the differences to be attended to.

There is a neglect across most NPAs of some groups which research has long documented as having a higher likelihood of difficult legacies of VAW, including histories of re-victimisation across child and adulthood – those with mental health problems and women offenders, especially those in prison.

## PREVENTION

The goal set by the UN is nothing less than the elimination of violence against women, and this has also been reiterated by the Council of Europe and the EU. In this context prevention should be a core goal of NPAs, hopefully accompanied by specific primary prevention actions. Here we define primary prevention as efforts to prevent violence happening in the first place; it is different from awareness raising and interventions which seek to stop violence which is already occurring (secondary and tertiary prevention). Table 5 presents our findings in this respect.

*Table 5: Prevention at the core of NPAs across eight counties*

Country	Current NPA	Primary Prevention at core	Specific measures
<b>Bulgaria</b>	No	(No)	(No)
<b>Finland</b>	Yes	Yes	Yes – in schools, young men and in the military
<b>Germany</b>	Yes	Yes	Yes – for children and young people but family violence focus
<b>Italy</b>	No	(No)	(Awareness raising on stalking)
<b>Netherlands</b>	No	(No)	(Awareness raising on seeking help for DV)
<b>Serbia</b>	Yes	In part – refers to but no measures	No
<b>Turkey</b>	No	(No)	(Some awareness raising)
<b>UK</b>	Yes	Yes	Yes – campaigns aimed at young people on abuse in their own relationships and sexual consent, plus mobilising communities

It is only the three countries which have the most comprehensive NPAs – Finland, Germany and the UK which place prevention at the core which in turn leads to clear primary prevention interventions. Whilst both Finland and Germany plan to do systematic work in schools, the devolution of management of schools makes this difficult to mandate in the UK and Germany. This is in part the reason why government organises its own campaigns. The limitation here, however, is that these have to date not been sustained, but relatively small scale timed to coincide with November 25<sup>th</sup>. Most of the prevention work – with the exception of the UK – appears to be aimed at violence that

takes place in the family. Only the UK NPA makes transforming gendered attitudes a key to the elimination of VAW, although the means remain relatively weak. In Germany a more general recognition of necessary structural changes could be read as having this implicitly.

The other activities which are reported can more accurately be termed secondary prevention – since they are intended to encourage those currently experiencing (and in some examples perpetrating) violence to seek help.

Where prevention is not at the core, it becomes possible for governments – such as the Netherlands – to argue that since the actions in a NPA have been implemented there may not be a need for a further one.

## IMPLEMENTATION

The term ‘action plan’ has an explicit assumption that there will be actions specified, that require implementation. Here we encounter a tension between specifying impressive aspirational goals and more limited, but potentially achievable, actions. Table 6 summarises the actions specified in current and recently lapsed NPAs, in terms of whether there are delivery mechanisms, if these are national/regional/local and if legal reforms are included.

*Table 6: Implementation of NPAs across eight countries*

Country	Current NPA	Delivery of measures	National/regional/local	Legal measures
Bulgaria	No	(No)	(No)	(No)
Finland	Yes	Yes		Yes
Germany	Yes	Yes	Yes – negotiating harmonisation	
Italy	No	(No)	(No)	(No)
Netherlands	No	(Yes)	(Yes)	(Yes)
Serbia	Yes	Yes – although much is vague	No	No
Turkey	No	(Somewhat*)	(No)	(No)
UK	Yes	Yes	Yes**	Yes

\*Most of the legal reforms, including requiring local areas to provide shelters, predate the NPA

\*\* The Welsh Assembly in 2011 required all local authorities to develop integrated VAW strategies

We found little evidence that NPAs are effective in ensuring existing and new laws are implemented; albeit that in Germany, given the federal structure, they have established mechanisms that promote harmonisation of law across the three levels of government.

Where the NPA is couched in vague general terms there can be an evasion of implementation, suggesting that it is preferable to opt for specific and achievable goals over the short and medium terms, which are in turn connected to movement towards more long term ambitions. Implementation will always be difficult to achieve if NPAs have time lines of less than 4-5 years.

## RESEARCH AND MONITORING

Research is considered a necessary element in NPAs in order to establish the extent of violence and through this assess whether there is any reduction over time. This is coupled with a need for evaluation research to assess the extent to which new laws and policies are effective in protecting women from violence and/or enabling them to overcome its legacies. Monitoring is a more internal process – of the NPA in general and of whether the changes in policy and practice it envisages can be

traced within agencies. The findings on how NPAs address these three areas are summarised in Table 7.

*Table 7: Research and monitoring NPAs process across eight countries*

Country	Current NPA	Research and data gaps identified	Research/evaluation programme attached	NPA monitoring mechanism
<b>Bulgaria</b>	<i>No</i>	<i>(No)</i>	<i>(No)</i>	<i>(No)</i>
<b>Finland</b>	Yes	Yes – stalking, evaluating perpetrator programmes, vulnerable groups	Unclear	Unclear
<b>Germany</b>	Yes	Yes	Yes	Set of national indicators in preparation
<b>Italy</b>	<i>No</i>	<i>(No)</i>	<i>(No)</i>	
<b>Netherlands</b>	<i>No</i>	<i>(No)</i>	<i>(Yes)</i>	<i>(An evaluation of the now expired NPA)</i>
<b>Serbia</b>	Yes	No	No	Plan for common national database
<b>Turkey</b>	<i>No</i>	<i>(No)</i>	<i>(No)</i>	<i>(No)</i>
<b>UK</b>	Yes	Yes	Yes	Yes

Only the UK has all three within the NPA – research gaps include a study on false allegations in rape cases, a pilot of a different version of the interpersonal violence module in the British Crime Survey and a research programme funded by the Department of Health. Alongside this new interventions – such as the pilot of ‘go’ orders – will be independently evaluated. A cross-departmental working group meets every month to monitor the implementation of the NPA. Both Germany and Finland had large scale research programmes attached to their first NPAs, and In Germany a national representative sample prevalence study on the experiences of women with disabilities with all forms of VAW is part of the current NPA.

The low priority given in many countries to research and monitoring suggests that implementation is currently deemed less important than actually having a NPA in place. In the two Eastern European countries most research on VAW has been funded by international donors, and there is an under-developed evaluation culture.

Calls for common databases and data collection seem to be common in initial NPAs – for example, in Italy there is request to Ministries of Justice and Interior to create one on sexual violence, domestic violence and stalking related homicides, and a separate section referring to hospital emergency departments. However, the terminology is inconsistent and there is no mechanism for an agreed methodology, leading to concerns that an uncoordinated approach will continue. A similar ambition, albeit far less specific, can be found in the Serbian strategy. In neither case is there any awareness of either how complex this is to achieve, nor of the fact that agencies actually need to collect different kinds of information, since their roles and responsibilities are not the same. Several experiments with shared databases in the UK proved unsuccessful, suggesting that the German approach of national indicators – or a set of core data requirements – is likely to be both more cost and practice effective.

Far too little cognisance is paid in these discussions, which are in part about information sharing, to women’s privacy rights under European data protection law. Guidelines mindful of this are currently being developed for UN Women in an online module on developing co-ordinated responses to VAW.

## ACCOUNTABILITY

It is only possible to hold governments to account for the commitments they make if they attach a time line to it – otherwise there can always be a future date at which it will take place. Similarly there must be resources allocated for implementation and some outcome/indicator measures. The latter can be relatively simple – such as enactment of an intended law reform or the creation and adoption of guidelines or protocols. Other ambitions are more complex – how is one to assess increased reporting (distinguishing it from more accurate recording) or increasing women’s access to justice? The most accountable and transparent NPAs, therefore, are those where government and stakeholders have decided upon the indicator/outcome measures whilst developing the plan. These issues are covered in Table 8.

*Table 8: Accountability of NPAs across eight countries*

Country	Current NPA	Clear timelines	Attached resources/funding	Indicators/outcome measures	Responsible ministries/agencies identified
Bulgaria	No	(No)	(No)	(No)	(No)
Finland	Yes	Yes	Yes	Yes	Yes
Germany	Yes	No*	Yes**	Yes – but several working groups that not co-ordinated	Yes
Italy	No	(No)	(Yes)	(No)	(To some extent)
Netherlands	No	(Yes)	(Yes)	(An evaluation)	(Yes – but little cross government linkages)
Serbia	Yes	No	No	No	Yes
Turkey	No	(No)	(Unclear)	(No)	(No)
UK	Yes	Yes	Yes	Yes	Yes

\* Setting clear timelines in a federal state is close to impossible.

\*\* Some resources are attached, but the range of activities envisaged traverses ministries and levels of government with decentralised budgets.

As with some of the other issues, the greatest accountability and transparency is found within the most comprehensive NPAs – Finland, Germany and the UK. The latter two countries also have highly developed structures for stakeholder engagement, but in Germany the lack of an overarching coordinating body has led to practical difficulties between the various committees.

## NGOS AND SUPPORT SERVICES

All UN documents and most of those from the Council of Europe emphasise the important role of women’s NGOs – both in terms of having the most expertise on the issue of VAW and providing support services based on empowerment and enabling women to regain control of their bodies and lives. We explore these themes through whether the contribution and expertise of NGOs is fully recognised, which includes a philosophical commitment to the support services they provide – and many, many women choose to use – and whether there is a national funding mechanism to support them.

Table 9: NGOs and support services in NPAs across eight countries

Country	Current NPA	Full recognition of contribution	Commitment to NGO support services	National funding mechanism
Bulgaria	No	(No)	(No)	(No)
Finland	Yes	Yes	Yes	No*
Germany	Yes	Yes	No**	No – complex issues between state Lander and municipalities
Italy	No	(No)	(No)	(No)
Netherlands	No	(Yes)	(Yes)	(Yes – for shelters)
Serbia	Yes	No	No	No
Turkey	No	(No)	(In part)	(No)
UK	Yes	In part	In part	No – despite CEDAW calling for this in 2008, although funding to increase rape crisis centres

\* Application to Ministry of Finance for budget 2012-2015 yet to be decided.

\*\* Constitutionally not possible, but there is commitment to fund national network co-ordination and a national helpline.

This is perhaps the most disappointing and revealing of our tables, since no country fulfils these three criteria: the Netherlands came closest, but its NPA has lapsed and cuts in funding over the last six months have been reported. Indeed it appears that as the state takes up the issue of VAW the central role of women's NGOs lessens. A number of experts noted that whilst NGOs were consulted, and even relied upon for knowledge and implementation of the NPA, they were increasingly fragile in terms of financial support; a situation which has undoubtedly worsened with the economic crisis. This is taking place at a point in time when few countries can claim to have sufficient geographical spread of services to ensure equity of access, especially with reference to sexual violence and rural women, with even more limited availability of services meeting the needs of marginalised women. In Bulgaria, Serbia and Turkey independent women's NGOs are mostly funded by international bodies and donations, and this is increasingly project based, making sustaining basic support services increasingly problematic. In the case of Serbia sustainability is even more tenuous, since staffing in state funded bodies (or civil servants) are political appointments (also requiring post holders to be members of political parties), and thus subject to the vagaries of which political party is in power.

## CONCLUSIONS

In terms of the set of indicators that the project set out to assess no country met all of them in terms of a current or recently lapsed NPA. That said, those which are the most comprehensive and integrated – in terms of the forms of VAW covered and the cross-departmental engagement – met more of them.

The disparity between claims made by states to CEDAW and the Council of Europe monitoring and the views of our experts suggest that the criteria for assessing whether states have a NPA need to be made more explicit and testing. At minimum they must establish:

- whether a NPA is currently 'formally adopted by government' and 'in force' and 'being implemented';

- a clear and concise definition of minimal requirements of a NPA, including covering all relevant forms of VAW.

We also commend:

- consultation with victim-survivors in the development of new NPAs and having reference groups involved in monitoring implementation;
- associated implementation/delivery plans, which can be organised around specific forms of VAW;
- development of responses to sexual violence;
- use of the UN definition ‘violence that is directed against a woman because she is a woman or that affects women disproportionately’.

We make the final recommendation because many other definitions in use tend to conflate forms of violence and conducive contexts, which has a strong tendency to result in an over-focus on violence taking place within the family. This definition also foregrounds the discriminatory basis of such violence. We also recommend using the term ‘violence against women and girls’ rather than ‘gender based violence’, as is increasingly the case in recent UN documents, since the translation of ‘gender’ in some languages can result in confusions and lack of clarity: for example in Serbia the word can also mean ‘kin’.

The increasing exclusion of trafficking from NPAs on VAW appears to be an unintended consequence of tensions between UN treaty remits and reporting processes. The danger here is that sexual exploitation in commercial sex industries which is not linked to trafficking will fall through the gaps.

The lobbying skill and experience of NGOs and importance of strategically placed feminist policy makers has been important in the three countries with the most comprehensive and integrated NPAs – Finland, Germany and the UK. But these advantages are far less possible in countries which are still building democracies and civil society, especially where the positions of civil servants and staffing in state funded NGOs are ‘politicised’. New strategies will emerge in such contexts, and international funders, including the EU, need to be more cognisant of these complexities.

The financing of NPAs has been a contentious issue, and will be even more demanding in the age of austerity budgets. This makes it even more vital that all relevant ministries literally ‘buy in’ to the NPA and that there are well-developed mechanisms which link national policy and the other layers of government in federal systems. In particular, budget lines and funding mechanisms need to be carefully constructed if they are to be effective and implementable across national, federal/regional and municipality boundaries.

Whilst the capacity to respond by key professional groups – police, prosecutors, judges and magistrates, doctors, nurses, midwives, social workers and lawyers – has been expanded in many countries, none can claim yet to have the comprehensive training programmes that repeated UN and European policies have recommended. Still less can any one of the countries in this case study show that it has developed a core curriculum on VAW that is integrated across professional training. Whilst inter/multi-agency working is necessary, it is not a panacea, and is only as good as the policy and practices within each individual agency. Ensuring that professionals have the knowledge and skills to respond remains a challenge to be met.

We noticed an increased emphasis on information sharing in many recent NPAs, but with little if any reference to women’s privacy rights, and in some instances at the cost of ensuring minimum standards in the responses to women and children. Plans for national databases – to track cases –

are too frequently planned and commissioned before the sensitisation of staff or the development of specialised support services. In our opinion these should be prioritised before integrated data systems. Moreover, whilst these can appear superficially attractive, there are practical and ethical issues which require thoughtful consideration. Agencies have different roles and responsibilities, and thus their information needs can differ substantially: what is necessary for a successful prosecution is very different to that needed by health and/or social workers, and similar variations exist across state and NGO agencies. A better strategy might be to agree a common core set of anonymised data to be collected by all agencies. This would also address the ethical issue of sharing sensitive personal data about individuals, which they may not have consented to or even know about.

Overall, we conclude that whilst in some European countries NPAs have harnessed political will and current knowledge to further policy and practice on VAW, their potentials have yet to be fully realised. In addition, in relation to some key issues – especially the provision of support services and funding mechanisms – national governments may have limited powers where these functions belong to different levels of government. This suggests that policy responses need to be explored in greater complexity than has been the case to date, which in turn may reveal forms of response that offer considerable promise.

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## CHAPTER 3 - PROTECTION, PREVENTION AND EMPOWERMENT: EMERGENCY BARRING INTERVENTION FOR VICTIMS OF INTIMATE PARTNER VIOLENCE

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### INTRODUCTION

Protection against intimate partner violence (IPV) is increasingly acknowledged as an urgent social problem and is steadily climbing on the political and policy agenda within the EU (Krizsan, Bustelo, Hadjiyanni & Kamoutis, 2007). The vast numbers of women (and children) seeking refuge in shelters to protect themselves from domestic violence also underline the need to find alternative and more effective responses from the State. This becomes even more urgent considering at the extent and severity of (post-) separation abuse and more generally of domestic killings of women and their children.<sup>26</sup> This has fuelled the call for more effective *protective*, *preventive* and *support* measures, particularly to develop integrated multi-disciplinary interventions which can address the complex needs of victims and children as well as the responsibility of perpetrators to refrain from further violence.<sup>27</sup>

This case study focuses on *emergency barring interventions* as an innovative tool to offer immediate protection. The first emergency barring order law was launched in Austria in 1997. In allowing the police to take the perpetrator of domestic violence immediately out of the home for a limited time, and in offering state support measures to victims, it exemplifies an innovative approach of the State to actively take responsibility to protect the victims who are under threat. The main goal of the barring order is threefold: to hold perpetrators directly accountable for their violence at home, to provide more immediate protection to victims and their children against the violence by removing the perpetrator from the joint home (for a specified period of time), and to support and empower victims in the process towards a future free from partner violence. The police based barring measure is widely seen as a promising practice which has since been implemented, in one way or another, in another eleven EU Member States (the Czech Republic (CZ), Germany (DE), Denmark (DK), Finland (FI), Hungary (HU), Ireland (IE), Luxemburg (LU), the Netherlands (NL), Slovenia (SI) Slovakia (SK) and in England and Wales (part of UK), and in six non-EU countries (Albania, Bosnia-Herzegovina, Switzerland, Iceland, Liechtenstein, and Norway). Spain (ES) has a hybrid judicial version of this kind of barring order.

We selected this topic for the case study for several reasons: it is internationally a popular yet so far under-researched measure. Barring an aggressor as a way to protect victims of IPV reflects a paradigm shift in approach compared to the more common practice of victims having to leave their homes and move to a shelter, and/or prosecuting the perpetrator. It projects the message that the perpetrator is held accountable immediately for his behaviour<sup>28</sup> and that the victim of IPV is entitled to immediate protection. The measure aims to foreground the core needs of victims of IPV (immediate safety and support) instead of focusing on more time-consuming and often ineffective criminal prosecution of the perpetrator or of offering civil legal measures to victims. In the 2010 Feasibility Study (FS) (European Commission, 2010) we concluded that the emergency removal measures can be considered as a promising practice. It was recommended as a measure that merits implementation across EU MS (European Commission, 2010, par. 6.3.6). From a human rights based

<sup>26</sup> See data assembled in the PROTECT-project of WAVE (Women Against Violence in Europe): <http://www.wave-network.org/start.asp?ID=23477&b=151>

<sup>27</sup> UN Handbook for legislation on violence against women. (May 2009) [http://www.un.org/womenwatch/daw/vaw/handbook/Handbook for legislation on violence against women \(advance\).pdf](http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women%20(advance).pdf)

<sup>28</sup> Given the fact that the overwhelming majority of barring orders are issued against males who engage in violent or threatening behaviour towards women (usually their partner), and/or to their (step-)children, we use the masculine when referring to the barred person, and the feminine when referring to the victim.

perspective, emphasising that States have a due diligence duty when providing protection and prevention as part of an integrated approach to support and empower victims, these emergency interventions offer an interesting example. States implement protective measures at their initiative (mostly via the police or the judiciary) without the victim having to request it. This however opens up a series of new questions, some of which we aim to address in this case study focusing on how the realisation of the different goals in order to realise women's rights works out in the different measures.

## A NOTE ON TERMINOLOGY

The term **emergency interventions** serves in this report as an umbrella term for the measures under study. It comprises two constitutive elements. The first is the legal measure *per se* regulating the barring of the perpetrator. In most countries this element consists of a binding order which can be issued by a State authority (either by the police, the court or an administrative Authority). The terminology varies (e.g. barring order, go order, banning order, domestic violence prevention notice (DVPN) and domestic violence protection order (DVPO) or other linguistic equivalents). In all cases where the law allows for a perpetrator to be *de facto* removed on the spot from the home, we use the generic term **emergency barring order** (EBO).<sup>29</sup> The second element consists of **support and intervention measures** which are usually offered as soon as a barring order has been issued. Throughout the data collection and analysis we have distinguished between these two elements of the emergency intervention.

When addressing the violence that women can suffer from a partner or ex-partner we use the concept *intimate partner violence* (IPV) as the overarching concept, meaning all forms of physical, sexual, psychological violence or threats of such acts, including rape and marital rape perpetrated against women by regular or occasional partners or ex-partners, spouses or ex-spouses, cohabitant or non-cohabitant, same-sex or different-sex partners.<sup>30</sup> When referring to the violent partner, we use the terms barred person, evicted person, perpetrator or aggressor interchangeably, without implying any criminal legal responsibility.

In various national laws or national policy documents the use of the term *domestic violence* (DV) is the preferred term (or its linguistic equivalent: *häusliche Gewalt* (DE), *huiselijk geweld* (NL), *domácínásilí* (CZ)). The term domestic violence indicates either violence between partners or ex-partners, or it extends to *all* forms of violence in the home, usually limited to persons sharing the household. Spain generally does not use a specific term for IPV or DV but prefers the generic concept *violencia de género* (gender based violence). In the interests of consistency we use the terms IPV or DV, unless the national meaning of the term requires a different concept.

## CONCISE OVERVIEW OF THE CONTEXT: STARTING POINTS

### PROTECTION AND PREVENTION OF IPV: CHALLENGE AND OBLIGATION UNDER INTERNATIONAL HUMAN RIGHTS

A criminal legal response to IPV as well as civil legal protection measures have been well developed by States over the past decades across Europe. However, both face serious limitations when it

<sup>29</sup> Art. 52 of the Council of Europe *Convention on combating and preventing violence against women and domestic violence* (2011). See: [http://www.coe.int/t/dghl/standardsetting/violence/defAT lt\\_en.asp](http://www.coe.int/t/dghl/standardsetting/violence/defAT lt_en.asp) (last checked September 5, 2011).

<sup>30</sup> Definition as used in FS (European Commission, 2010). See Appendix *Research working definitions*.

comes to their effectiveness. Criminalisation as such is neither a sufficient nor an effective response to prevent revictimisation. When addressing prevention it is important to distinguish between primary, secondary and tertiary prevention. *Primary prevention* refers to actions to prevent violence before it occurs. *Secondary prevention* refers to activities intervening immediately after the violence has occurred and focuses on prevention of recidivism. *Tertiary prevention* comprises activities that occur over time, well after the violence begins, and include support and empowering measures to survivors to address the long-term effects of violence. They can include rehabilitation efforts, such as batterers' intervention and treatment programmes. The boundary between secondary and tertiary prevention is not always clear cut and activities can qualify as both (Browne-Miller, Hoffman & Garske, 2006).

The primary preventive impact of criminal law with respect to IPV is generally considered low. Most of the violence is after all historically criminalised but has had a very limited preventive impact in society as well as on an individual level (if at all). The secondary or tertiary preventive impact of criminal legislation and criminal justice-based interventions on recidivism of individual domestic violence offenders is generally low as well (Coker, 2001; Dugan, 2003; Hilton, Harris & Rice, 2007). Criminal justice-based interventions are essentially *ex post facto*, repressive and in most cases they focus on the punishment of the perpetrator, granting limited attention to victim's needs.

Measures to support and empower victims are uncommon to most criminal proceedings, even though victim support within the criminal justice system is receiving increasing attention, certainly in policy based measures (Brienen & Hoegen, 2000). In a 2006 review of criminal justice based interventions and services to victims of violence in the home in six European countries, the limitations of criminal justice system based interventions were brought forward: high rates of attrition, low conviction rates and problems of wide spread gender stereotypical attitudes among criminal justice system's actors. Research into the investigation and prosecution of rape and sexual violence confirms these problems (Lovett & Kelly, 2009; Humphreys et al., 2006). The FS concluded that these systemic problems inherent in the criminal justice system, and the fact that criminal law is a blunt instrument to deal with the complexities of IPV, are major obstacles undermining the effective implementation of existing laws and provisions.

Conversely, the court ordered civil protection order is an important legal tool for victims to apply for at their request, without being dependent on the criminal justice system to achieve legal protection and prevent recurrence of domestic violence. Over the past three decades, a range of civil legal protective measures have been made available across various Member States in the EU to victims. Virtually all EU MS offer protection to victims in the form of protection orders (either through civil or criminal law).<sup>31</sup> The effectiveness of protection orders is in practice often limited for two reasons (Shannon, Logan & Cole, 2007). First, it does not provide immediate protection since the application procedure for protection orders always takes a certain amount of time. Even under the best of circumstances, there is a lapse of time (usually of at least 24 hours to a few days) between the application, the court hearing and the granting of the order. Second, it is hard to enforce effectively. Many abusers refuse to comply, and victims of IPV continue suffering violent and abusive control, threats and harassment by the ex-partner. When the police arrive the perpetrator has usually disappeared.

The need for *prevention* and for more effective *protection* of women against IPV is increasingly echoed in international legal standards. The UN Convention on the Elimination of all Forms of Discrimination Against women (CEDAW), and notably General Recommendation No 19, contain core

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<sup>31</sup> The range of protective legal measures has expanded and is labelled differently, depending on the kind of violent and/or abusive behaviour it aims to prevent (such as: protection order, injunction, order of protection, restraining order, eviction order).

obligations, underlining that violence against women is a form of discrimination against women and, as such, a violation of the fundamental human rights of women. This puts the obligation on States to punish and prosecute all forms of violence, protect and assist victims (including the provision of adequate services) and effectively prevent violence. According to international human rights standards<sup>32</sup>, States have the obligation to take *effective* action in response to domestic violence. In light of the limitations of available criminal and civil legal measures, this puts the pressure on States to find answers to tackle a pervasive and serious violence problem in the home.

The European Court of Human Rights has recently held that States' due diligence obligation implies the obligation to prevent and protect women from violence committed by a domestic partner in cases where the public authorities knew or ought to have known that the victim is at serious risk (Opuz-case, 2009).<sup>33</sup> The concept of due diligence is gaining prominence on the international human rights agenda<sup>34</sup>. The ECtHR explicitly addresses these obligations, drawing on a range of sources of international human rights law (CEDAW, Views of the Committee, the Council of Europe as well as jurisprudence from the Inter-American Court of Human Rights) notably with respect to the State's responsibility to *protect* women against violence from private actors and to *prevent* VAW.<sup>35</sup> The Court's ruling in the Opuz-case is a striking example of a development towards explicitly articulating the responsibility of States when they fail to prevent violence against women from private actors and to protect known victims of IPV (i.e. failing to protect their right to life, and their right to equal treatment before the law due to discriminatory police practices).

The Council of Europe *Convention on combating and preventing violence against women and domestic violence* (which entered into force as of September 1, 2011)<sup>36</sup> is the most recent international legal framework which positions VAW as a gender based form of violence and a human rights violation. Art 5.2 obliges states "[T]o exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors." Subsequently the CoE Convention addresses in detail measures which are deemed necessary to prevent VAW (Chapter III) and to protect and support victims (Chapter IV) as a State obligation. The Council of Europe Convention contains in Article 52 the specific obligation to

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<sup>32</sup> See the Report of the Secretary General In depth study on all forms of violence against women. United Nations General Assembly, Sixty-first session. A/61/122/Add.1 Available from

<http://daccessdds.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>

See also: UN Special Rapporteur on violence against women - Ertürk, Y., (2008), *Indicators on violence against women and state response. Report of the Special Rapporteur on violence against women, its causes and consequences*. Distr.General A/HRC/7/6, 29 January 2008.

<sup>33</sup> Opuz v. Turkey, Application no. 33401/02, European Court of Human Rights, 9 June 2009. "For a positive obligation (to prevent that risk from materialising) to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk." (ECtHR, Opuz v. Turkey, para 129).

<sup>34</sup> *The Due Diligence Standard As A Tool For The Elimination Of Violence Against Women*, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk (E/CN.4/2006/61), 20 January 2006.

<sup>35</sup> Due diligence will be one of the core subjects to be addressed in the forthcoming 2012 report of the UN Special Rapporteur to the UN SG on VAW (Rashida Manjoo).

<sup>36</sup> Council of Europe, *Convention on combating and preventing violence against women and domestic violence*. See: [http://www.coe.int/t/dghl/standardsetting/violence/defAT It\\_en.asp](http://www.coe.int/t/dghl/standardsetting/violence/defAT It_en.asp) (last checked September 12, 2011). Council of Europe MS who signed the Convention (Austria, Finland, France, Germany, Greece, Iceland, Luxembourg, Montenegro, Portugal, Slovakia, Spain, Sweden and Turkey). The Convention went into force on September 1, 2011.

make *emergency barring orders* available to victims of domestic violence.<sup>37</sup> Furthermore the Convention stipulates (art. 7.1) that it generally calls for “*comprehensive and coordinated policies*”.<sup>38</sup> We can conclude that international human rights law increasingly articulates positive State obligations to prevent VAW in general and to provide integrated comprehensive support and protection measures in order to comply with the duty to fulfil these rights with due diligence.

## INTEGRATED HUMAN RIGHTS AND GENDER BASED APPROACH: PROTECTION AND EMPOWERMENT

From a human rights based perspective, States need to develop an integrated and comprehensive approach when addressing interpersonal violence in order to meet their obligations under international human rights standards (protection, prevention and punishment, the so-called three-P approach).<sup>39</sup> Integrated approaches aim at realising a coherent and consistent balance between the three obligations: strengthening fundamental rights (notably the right to health and to life) through effectively preventing violence; protecting and supporting victims; and providing justice by penalising and prosecuting violations. Integrated approaches are slowly but increasingly developed in the area of IPV (and, interestingly, only rarely to rape or sexual assault). It is argued that notably the obligation to fulfil women’s human rights with *due diligence*, calls for provision of this kind of integrated intervention (Ertürk, 2010). This is a challenge since it requires bringing together a variety of actors and agencies, coming from different institutional and professional cultures, responsible for a range of very different interventions such as implementing sanctions, providing protection and victim support, as well as addressing perpetrators.

In some EU MS the law has laid out detailed guidelines or protocols to enhance the coordination of the provision of support and/or intervention measures (as the second element) after the barring order has been issued. A particular challenge in the provision of adequate support is the intersection of IPV with child abuse and neglect. In cases of abuse of the mother, any child is invariably at risk of harm and this should be taken into consideration when making decisions regarding the risks of IPV and the needed protection and prevention measures.

A related question is how an integrated approach, focusing on protective and preventive (and punitive) measures, addresses the underlying gender based nature of partner abuse. This is a crucial requirement if the measure is aiming at empowering victims. When we use the concept empowerment in the context of victim protection and support we refer to measures which enhance women’s access to and control of personal or social resources which enable women to protect themselves (and their children) and lead a life without being structurally vulnerable to suffer violent abuse or control from a partner (e.g. access to and control of social and economic-financial resources, education, vocational training, employment) (Kabeer, 2010).

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<sup>37</sup> Art. 52 Council of Europe (2011) *Convention on combating and preventing violence against women and domestic violence* (Ibid): “Parties shall take the necessary legislative or other measures to ensure that the competent Authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.”

<sup>38</sup> Art. 7.1 Council of Europe (2011) *Convention on combating and preventing violence against women and domestic violence* (Ibid): “Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women”.

<sup>39</sup> See Feasibility Study (European Commission, 2010), chapter 6, notably recommendation 1.

When taking a human rights based approach as a starting point, it implies that the measures should recognise IPV as a violation of fundamental women’s rights and notably as a form of gender based violence which affects women disproportionately and which is intricately related to gender based discrimination and inequality. From the acknowledgment that IPV is a manifestation of deeply entrenched gender power inequities, it can be argued that it is necessary to provide a wider set of social and economic support measures in order to effectively empower victims and help protect them in the long run from being trapped in abusive relationships.

In this respect profound differences emerged in the way EU MS have developed support and protective measures in the field of VAW more generally. Rather than placing women’s or children’s human rights at the heart of legislation and policy development, we observed in the FS a widespread tendency to take the protection of family life as the defining perspective, making little or no reference to gender-based discrimination of women that affects women’s vulnerability, notably in the family. The limited acknowledgment of the gendered nature of IPV was identified as an obstacle to the full recognition of the discriminatory nature of the violence. The focus on IPV as a crime and safety concern, de-contextualising it from its discriminatory roots, can affect the scope and target category to be protected by the measure (gender neutral and primarily a legal measure that is oriented towards protection of the family, i.e. men, women, children, or gender-based legal measures, focusing on women).

A human rights perspective on VAW positions the prevention and protection against VAW within an integrated set of measures to support and empower victims. The emergency intervention raises various questions and therefore provides an interesting measure to examine more in-depth.<sup>40</sup> How do the two elements of the intervention - barring to protect and support to empower - relate to each other? Is the emergency intervention always provided in a comprehensive and integrated way? What does it mean for States to fulfil their obligation to “respect, protect and fulfil” women’s human rights (i.e. to life, to health) and taking full cognisance of the gender based nature of the violence when implementing the emergency intervention measure?

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#### LAW ON THE BOOKS, LAW IN PRACTICE AND THE IMPORTANCE OF MONITORING

Even with appropriate legislation to address VAW, or more specifically IPV, there is often a gap between the law on the books and the law in practice. Despite the move to more positive (active) prosecution policies, which aim to be mindful about victims’ needs, even in countries which have advanced protective laws on IPV, the police often continue to treat IPV as a family or private matter. This points to an urgent need to improve the response of the police, prosecutors, courts as well as other relevant state agencies (e.g. social work, youth welfare).<sup>41</sup> Most notably the *limited or inadequate expertise* of professionals with respect to the specific characteristics of VAW and its gender dynamics emerged in our earlier research in Phase I of Realising Rights and the Feasibility Study. It is a recurring obstacle hampering access to justice for victims through inconsistent investigation and prosecution throughout the criminal justice system (police, prosecutors and judges/magistrates). The persistence of stereotyping based on gender, ethnicity and/or sexual orientation, and the minimising of the severity of the reported violence, victim-blaming attitudes or the labelling of IPV as a private problem were regularly reported across countries in the EU.

Binding *guidelines* or protocols on handling the investigation and prosecution of cases of VAW or on implementing legislation can be helpful in steering the process towards more effective and

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<sup>40</sup>See Feasibility Study (European Commission, 2010) par. 6.3.6, notably recommendation 6.

<sup>41</sup>See Feasibility Study (European Commission, 2010), par. 2.3.5.6, par. 3.2.8, and par. 6.2.7 and 6.3, notably recommendation 3.

consistent implementation of the law, provided that professionals have adequate expertise that sufficiently informs an understanding of the aim of the law. However, they risk losing their positive effects if there is neither monitoring nor sanction in the actual implementation of the law, or, alternatively, if rigid standardisation and bureaucratisation does not leave enough room for individual handling of particular cases. In the Feasibility Study we noticed that some Member States made progress, notably with respect to implementing protocols for the police (and to a lesser extent for prosecutors) in handling IPV.

In Member States where *specialised courts* for IPV (UK) or gender based violence (ES) have been established, initial experiences confirm the crucial importance of sufficient specific expertise to handle cases. The establishment of *specialised police units or officers and specialised prosecutors* was one way some EU MS succeeded in realising a more adequate implementation of the law. In the case of the EBO, it is usually the police or, in some MS (ES), the judge who has the discretionary power to decide whether a banning order is appropriate. In practice this has led in some countries (e.g. NL) to the use of standardised protocols to assess the level of risk that the victim of IPV is experiencing before deciding whether or not to issue the order.

In order to evaluate and assess consistency of the implementation of the emergency measure, reliable registration of data is crucial (see also Hagemann-White & Bohne, 2007). In the Feasibility Study it was concluded that the absence or limited validity of registration data was generally impeding the monitoring of the handling of cases of IPV in the criminal justice system.<sup>42</sup>

## METHODOLOGY AND KEY RESEARCH QUESTIONS

### RESEARCH QUESTIONS

The initial data in the FS reveal a range of approaches in the legal regulation of emergency intervention for victims of IPV and the way these measures are implemented.<sup>43</sup> Given the differences in the legislative regulation of the emergency barring measure and in the extent to which the barring is embedded in a wider range of support measures (either legal or policy based measures), this case study aims to contribute to the exploration of the core question of the Realising Rights project: how do similar legal or policy based measures which aim to achieve a similar goal - to fulfil women's fundamental human rights - work out differently across countries with different historical, legal and social contexts affecting the normative approach towards violence against women?

In this case study the specific central question is: *how are the different emergency interventions across countries designed to achieve comprehensive integration of the protection of victims of IPV, the prevention of repeat violence and the empowerment of victims?*

In detail we collected data with respect to the following questions to compare and explore differences and commonalities in the emergency interventions:

*Emergency protection and prevention:* Mapping and analysis of legal characteristics and implementation of the barring of the perpetrator.

- Which authority issues the order to leave the home, and remove the aggressor
- Is there immediacy of protection?

<sup>42</sup> See Feasibility Study (European Commission, 2010), par. 3.2.10 and par. 6.3.8, notably Recommendation 10.

<sup>43</sup> See Feasibility Study (European Commission, 2010), par. 2.3.5, par. 2.7.7, and 3.2.4.

- Can measures avoid a gap in protection after extensions?
- What is the length of ban and extension ?
- What is the legal position of the victim?
- What is the scope of the barring order (gender; nature of violence) ?
- Who can appeal and how?
- What is the consequence of a breach of the order?
- Are any costs implied?
- Which training is provided to those responsible for the implementation of the barring order?
- Are any protocols or guidelines available to support implementation?

*Support and empowerment:* which support or intervention measures are a standard part of the intervention?

- Is the emergency removal measure embedded in an integrated multi-disciplinary support or intervention programme?
- Are different agencies involved?
- Is coordination of multi disciplinary/multi agency work foreseen?
- Which support is provided?
- Who is the target of the support or intervention measures (victim? child? perpetrator?)
- Is there a gender based approach in provision of support/intervention measures?

*Monitoring:* are any data collected to monitor and evaluate implementation?

- Data regarding the barring of the perpetrator.
- Data regarding support measures.

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## METHOD

### SAMPLE: SELECTION OF EU COUNTRIES

Given the available resources for this case study we limited the study to six countries. The selection of countries was dependent on whether or not it was feasible to establish contacts with experts who could provide us with the necessary information in a relatively short time. In the end, six countries were selected that reflect diversity with respect to the following characteristics:

- Having or preparing a dedicated law incorporating EBOs and/or using a variety of legal measures to achieve immediate protection.
- Geo-political background.
- Applicable legal regimes (e.g. administrative law, police law)
- Level of experience with the implementation of the barring measure (ranging from pilot experiences up to 15 years).

- Level of integration of victim and/or perpetrator support provisions and level of women's NGO involvement in the intervention.
- Unified national legislative basis or local/regional legal systems affecting legislation and/or implementation.

This ultimately led to the selection of Austria (AT), Germany (DE) with a focus on two *Länder* that differ in their approach (Berlin and Baden-Württemberg), Czech Republic (CZ), the Netherlands (NL), the UK (i.e. England/Wales) and Spain (ES).

## DATA COLLECTION: MAPPING AND COMPARATIVE ANALYSIS

The case study is practice oriented in its design. Besides conducting initial desk-research, focusing on legal and policy documents on the regulation of the emergency intervention (both the barring and the support provisions), the main focus has been on collecting information from professional experts involved in the implementation of the measures. The goal is to present a first exploration from a comparative perspective on how the intervention measures as foreseen play out in day to day practice across the selected countries. In our conversations with experts from the selected countries the emphasis was to clarify, along the lines as presented in the research questions, where commonalities and differences can be observed in the regulation of the emergency intervention, their experiences so far with how it works and where obstacles and success factors can be identified. The data collection and comparative analysis underlying this case study entailed the following steps:

1. *Identification of national experts (February 2011)* for each of the selected countries we identified a general National Expert (NE), usually a researcher who had knowledge of the general socio-legal or policy context affecting the EBO in that country. The NEs acted as our contact points and provided us with information and feed-back at the various phases of the study. The NE also advised in identifying the appropriate Professional Experts (PE) involved in the day-to-day implementation of the EBO in that country. Per country we selected a legal PE and a PE involved in the support measures offered. This resulted in a total of 18 experts who have been actively involved in the case study. All experts have contributed without remuneration.

2. *Desk research (March– July 2011)* following up on the data collected during phase I of Realising Rights as included in the Feasibility Study, the first follow-up step was to map the legal regulation in detail of the EBO of each of the countries. For each of the countries we studied the national and/or regional legislative measures, as well as the policy based measures that might be part of the emergency intervention measure. This resulted in a first mapping of the main legal characteristics and support measures and a first identification of gaps in available information and remaining questions.

3. *Telephone interviews with experts (April and May 2011)* with the help of the NE we identified the appropriate experts who could provide us with additional information re either the legislation per se or its implementation of the law and/or the support programme. Semi-structured telephone interviews were conducted with these experts to collect specific missing information. A total of 13 telephone interviews were conducted. The telephone interviews were recorded and analysed with respect to the specific questions that were presented to the different experts.

4. *Round Table Expert meeting (Amsterdam, June 2011)* based on the data collected during steps 2 and 3 we presented a mapping of the legal characteristics of the EBO per country/region, plus a first analysis of the main issues that seemed to affect the day-to-day practice. This draft analysis and

various questions about the implementation were presented at a Round Table for discussion and feedback with all the (18) Experts (June 23-24, 2011).<sup>44</sup>

Besides the project meeting, a public Expert Meeting was organised to present the case study to a wider audience of Dutch professionals/policy makers and provide an opportunity for exchange and discussion between the International Experts collaborating in the project and Dutch experts involved in the implementation of the Dutch barring order.

5. *Partner meeting with EU regional consultants (August/September 2011)* Building on the feedback and additional information from all experts during the June Round Table/Expert meeting, a second draft report was presented during a partner meeting with Regional EU consultants. During this meeting each case study report was discussed in light of the overarching research questions of Phase II of the *Realising Rights* project (London, September 1-2, 2011).

6. *Video conference with NE (September 2011)* based on the feedback from partners and EU regional consultants the third draft plus remaining questions were presented to the NE and discussed during a video conference (September 16, 2011).

Based on the input during the video conference the report on the barring order case study was finalised to be included in the overall Realising Rights Report.

## THUMBNAIL SKETCHES OF THE COUNTRIES UNDER REVIEW

### PRELIMINARY COMMENT: DIVERSITY IN NATIONAL POLITICAL AND LEGAL SYSTEMS

In order to capture some of the fundamental socio-legal differences within the EU that can also affect the internal legal regulations, in this case of the emergency intervention, and its day-to-day implementation we chose to include in this case study countries that vary with respect to the level of legislative unity within each of the countries. Austria, the Netherlands and Czech Republic operate in a legal context where legislation adopted at national level is binding for the state as a whole, which obviously does not preclude that regional or local differences can occur in its *implementation*. Yet, in some EU member states with a federal structure the level of variation in terms of regulation and/or implementation is more or less structurally built in. Federal countries like Spain (with 17 autonomous regions) and Germany (with 16 *Länder*) are a case in point. The federal state of Germany has 16 *Länder* with a relative autonomous legal system. While Germany has regulated the judicial protection orders in cases of domestic violence at the national level<sup>45</sup>, the *emergency interventions* have been regulated at *Länder* level. To obtain a better understanding of the implications for the local variation in both the legal regulation of the emergency intervention and in its implementation, we included in our study two German *Länder* that have a somewhat different legal regime for the emergency intervention: Berlin and Baden-Württemberg. Without claiming to present an exhaustive analysis of the range of variation within Germany, it aims to illustrate how regional differences within one country can play out.

The federal state of Spain contains 17 'autonomous regions'. The judicial order which aims to offer immediate safety to the victim of domestic violence is regulated at the national level applicable

<sup>44</sup> In collaboration with *MOVISIE – Netherlands centre of social innovation*, and hosted by *ALETTA. Institute for women's history* (Amsterdam). In total 55 professionals and experts participated.

<sup>45</sup> *Gewaltschutzgesetz vom 11. Dezember 2001 (BGBl. I S. 3513)*.

throughout the country, including all the autonomous regions.<sup>46</sup> The multidisciplinary and integrated approach in provision of support measures has also been regulated by a national law, recognising the rights of women to psychological, social and financial support services and establishing a basic structural organisation to be adopted for the provision of such services<sup>47</sup>. In addition, national protocols guiding the interventions are available. Economic and financial support is regulated at national level, with additional programmes and possibilities at regional and/or municipality level in several places. Only in relation to the implementation of some of support provisions for victims (Table 2) can certain variation be found between the Spanish regions, since the particular arrangements with organisations and entities to perform certain tasks (like the provision of psychological support, or shelter arrangements) are matters for the autonomous region. Our study has focused on the provision of services in the city of Madrid (as part of the autonomous region Madrid) since it represents a substantive urban region with extensive experience with the implementation of the Organic Laws and we had access to relevant experts and data.

The United Kingdom (UK) comprises the countries of Scotland, Northern Ireland, Wales and England, and is a special case. The UK allows for substantial legislative autonomy in its countries. Currently, the new law regulating the emergency intervention (a two tiered process: the police-based Domestic Violence Protection Order, DVPO, and the judicial Domestic Violence Prevention Notice, DVPN) will only be applicable in England and Wales. The implementation of the law was piloted as of July 2011 in selected cities, and not generally implemented yet. Since the start of the pilot partially coincided with the data collection for this case study, a unique opportunity to connect ongoing research with the practice of developing legislation emerged. In bringing British experts into this Daphne study, some of whom are directly involved in the piloting of the upcoming legislation, we hope that this EU case study will have offered a relevant learning environment in the spirit of the Daphne programme, aiming to facilitate the exchange of knowledge and practical experiences in the field of VAW and VAC across EU Member States. In focusing on six countries with different legal regimes within and between countries we hope to deepen our understanding of commonalities and differences across the EU.

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#### AUSTRIA (AT)

In AT the approach towards VAW is rooted in the work of the feminist shelter movement, starting in the 1970s. In the early 1990s the Government took a series of concerted legislative and policy measures, in consultation with feminist activists from women's shelters and feminist lawyers. The Austrian approach squarely positions VAW as gender based violence and a violation of women's human rights. It reflects the influence of international human rights discourse, notably the 1993 World Conference on Human Rights held in Vienna leading to the Declaration to End all forms of Violence against Women (DEVAW). AT ratified CEDAW early on (1982) but does not comply with it in all respects. AT was among the first to sign the 2011 CoE Convention on Combating and Preventing Violence against Women and Domestic Violence. Austria does not have a NAP on VAW so far, and research on VAW is limited. There is well developed public discourse denouncing IPV, supported by various awareness campaigns (often instigated by NGOs).

AT has a wide range of legal measures to effectively address forms of IPV (and VAW more broadly). Over the years amendments to the Criminal Code have brought about stronger legal protection against VAW, notably against rape and sexual violence regardless of the marital status of the relationship between victim and offender. Both the criminal laws on stalking (2006) and 'continued

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<sup>46</sup>Ley Orgánica 27/2003, del 31 de Julio (Act 27/2003, of 31 July, regulating protection orders to victims of domestic violence).

<sup>47</sup>Ley Orgánica 1/2004, del 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género (Act 1/2004, of 28 December, on measures for the integrated protection against gender violence).

violence'<sup>48</sup> (2009) capture the persistent and repetitive nature of abusive, controlling and/or threatening acts which often prove difficult to prosecute under existing criminal laws. The implementation of criminal laws is still hampered though by persisting double standards due to which violence in the private realm is often minimised. Treatment programmes for perpetrators figure only marginally in the range of measures to address IPV in AT.

The 1997 Federal Law on Protection against Violence in the family<sup>49</sup> is the core legislation, creating the statutory conditions for fast and efficient protection of victims of domestic violence. The Law is gender neutral and applies to all victims of violence from the partner or ex-partner, regardless of marital status, hetero or homosexual relationship, and whether or not cohabiting. It is not applicable against the parent(s) to protect children (this is only possible in implementing the follow up injunction order). Although the Act addresses the concerns of children as witnesses of IPV, the Austrian legislation and policies more generally on VAW and VAC are on separate tracks.

The 1997 Federal Law introduced the emergency barring order and intervention centres. This act represents Austria's landmark legislation in the field of VAW. It positions the effective protection of victims and the prevention of IPV as a primary State responsibility, which implied a paradigm shift from the dominant prosecutorial and criminal legal approaches towards IPV. It allows the State to use its police powers to create immediate safety for victims in barring the perpetrator from the home and prohibiting any contact. Furthermore, the law secured the interdisciplinary response to IPV. It effectively connects the police (eviction), civil court measures (follow up injunction), social support and (legal) advice for victims through the intervention centres and youth welfare agencies (for children). By 2011, the Austrian law has inspired almost half of the EU Member States to adopt similar measures. Further improvements followed with the amendment of the Security Police Act<sup>50</sup>, effective since 1 January 2000, and the Enforcement Code<sup>51</sup>, effective since 1 January 2004. A comprehensive revision of the legal provisions took place with the Second Protection against Violence Act<sup>52</sup>, in force since 1 June 2009. The latter act represents another important step towards improving the protection of victims of domestic violence in Austria.

## EMERGENCY INTERVENTIONS IN AUSTRIA IN CASES OF DV

The regulation of the emergency barring order has been laid down in section 38a of the Security Police Act, according to which the police are authorised to ban a person from the home and its immediate surroundings and to forbid him from returning. The police can issue the EBO on the spot. However, if the victims ask for protection at a later moment, once the imminent danger has passed, the EBO can still be granted, provided that the police are convinced there is a situation of danger which justifies the measure. In practice though, the threshold of evidence seems to be higher than it would normally be for "in situ" assessments (bruises, witnesses). The duration of the EBO is 14 days. If extended protection is necessary the victim herself can apply for a protection order under the Federal Law on Protection against Violence in the Family before the civil (family) court.<sup>53</sup>

It is possible to impose the order against any person if that person's behaviour suggests that a dangerous attack on the life, health or freedom of an individual is imminent. Neither intimate relation nor cohabitation or sharing a household between aggressor and victim is required. The

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<sup>48</sup>"Fortgesetzte Gewaltausübung", section 107b StGB, covers acts of violence falling within the scope of persistent violent offences – e.g. serious threat of violence, physical violence and duress, as well as maltreatments without resulting bodily injury (e.g. slap in the face) and provides a more severe punishment.

<sup>49</sup>Bundesgesetz zum Schutz vor Gewalt in der Familie, (BGBl. I No. 759/1996.

<sup>50</sup>Sicherheitspolizeigesetz, BGBl. I No. 146/1999.

<sup>51</sup>Exekutionsordnung / EO), BGBl. I No. 31/2003.

<sup>52</sup>Zweites Gewaltschutzgesetz, BGBl. I No. 40/2009.

<sup>53</sup>The relevant regulations are laid down in section 382b and section 382e of the Enforcement Code (EO).

assessment of the need for the imposition of the emergency barring order is done by means of a standardised report with elements of a risk assessment instrument. The chief of police monitors whether or not this report was used in a correct manner. This assessment report is discussed and improved regularly on the basis of comments from the police officers who work with them in practice. After the EBO is issued, the case is referred to a police unit with specialised expertise in handling domestic violence cases.

The authority making the assessment as to whether an EBO is needed is the patrol police officer intervening in the situation, who is also formally authorised to impose the order. In order to ensure that cases of domestic violence are dealt with in a correct manner by the police officers, each police station has to offer specialised police training on how to handle IPV and approach the aggressor. The training during the basic curriculum in the police academy takes three days, but there are also some follow-up sessions of on-the-job training. Each district station is expected to have at least two specialised police officers, but that is not always realised.

After the imposition of an EBO the legal-administrative service must be informed thereof, and examine the order within 48 hours. If it is found that the legal conditions for imposing the EBO were not met, the order must be repealed. This check was built in when the Act on domestic violence was first introduced in 1997, to allow for cases where the police officer on the spot might err in her/his judgment. In practice the number of orders that have been revoked after the initial issue by the police officer, is very small (3.3% in 2010). The person at risk cannot formally request that police issue the emergency barring order but is normally heard. Only the perpetrator has the formal possibility to appeal the EBO (with the Independent Administrative Court; *Unabhängiger Verwaltungssenat*). Any breach of the EBO by the aggressor does not constitute a criminal offence but an administrative infraction, in which case a fine is imposed. In repeated cases the aggressor can also be arrested.<sup>54</sup>

Social support provisions and shelters are widely available and part and parcel of the emergency measure. When Austria drafted the 1997 Federal Act, the establishment of “Interventionstelle” (intervention centres) were integrated in the Act (section 25 (3)). The intervention centres are considered as necessary, alongside the legal barring measures, to realise the protection and support of victims of domestic violence. Originally, the idea of establishing the intervention centres was brought forward by NGOs in collaboration with the government. Most experts agreed that the intervention centres should be shaped as non-governmental organisations (although funded by the government) to maximally guarantee accessibility as well as the independence of the support offered by the organisations. In each of the nine Austrian provinces an intervention centre has been established. The government has separate contracts with each of the intervention centres, defining what their tasks are.

As part of the integrated emergency intervention, following the imposition of the EBO by the police, the (local) intervention centre must be notified by the police without delay, and provide them with the report of the police intervention. The main task of the intervention centres is to reach out to, and initiate contact with, the victim to offer support. The intervention centre also has the task of coordinating the network of the different institutions that may get involved and need to collaborate. This approach to victim support is pro-active, victims do not have to request support. Nevertheless, any person affected by domestic violence can also directly contact an intervention centre without prior police intervention and receive advice and support if needed. The support services are also not exclusively available in cases where the EBO is issued.

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<sup>54</sup>Section 84 Police Act.

The separate agencies providing support in an individual case of domestic violence do not communicate directly with each other but are coordinated by the intervention centre, except for cases of high risk victims. In 2011 the (English) MARAC program<sup>55</sup> is in the course of being piloted in Vienna. This is a program aimed at so-called high-risk victims of repeated and severe violence, where all the agencies involved work together to provide more intensive multi-agency support.

The Austrian approach to emergency interventions in cases of domestic violence, notably the possibility to impose a police based emergency barring order evicting the man from the home, has been adopted in many EU countries to date. In addition, the “intervention centre” model, offering coordination and support, has proved highly inspirational as well.

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### CZECH REPUBLIC (CZ)

Legislative and policy based measures in the field of VAW are fairly recent in CZ. They have all been developed after 2000. The changes have been mainly driven by the accession of CZ to the EU leading to a range of legal changes, notably in substantive criminal law as required for EU membership (particularly in the field of trafficking and victim’s rights) and by pressure from civil society to address domestic violence (women’s NGOs and national victim support organisation). There is no separate legal definition of DV in the Czech legislative measures, but it is addressed as a separate domain of policy based measures. The existence of domestic violence, which was historically minimised, is no longer denied in CZ, but its gender dimension is hardly acknowledged. In governmental policies on gender equality the topic of VAW is addressed only marginally and the perspective on VAW is primarily informed by crime and security concerns. Current legal or policy developments are predominantly based on a criminological approach to VAW. Gender-oriented NGOs play a marginal role in active policy development.

Influence of international law has been mostly indirect – facilitated by the EU. CZ has signed and ratified CEDAW (1993) but does not comply with all obligations, certainly not in the field of VAW. The CoE Convention on combating and preventing violence against women and domestic violence has not been signed by CZ. There is no NPA on VAW in place. In CZ very limited research on VAW is available. Continuing acceptance of VAW and gender stereotypes has been reported as deeply rooted cultural biases hampering effective approaches to VAW.<sup>56</sup> Awareness-raising campaigns are currently not part of the Czech socio-cultural landscape.

Available legal and policy based measures in the field of IPV focus on domestic violence and stalking. Sexual violence receives marginal attention, and the interconnection between VAW and VAC is not explicitly addressed. Domestic violence has been the flagship of legal measures in the area of VAW. Since 2004 “maltreatment” of a person living in a shared apartment or house is also codified under criminal law.<sup>57</sup> While there is no specific definition of what constitutes ‘maltreatment’, the law does provide that maltreatment that is ‘cruel’ or causes ‘grievous bodily harm’ or ‘perpetuated’ is sentenced more severely. The law covers married and unmarried, different-sex as well as same-sex partners but only applies to cohabiting couples. However, systematic training in handling IPV for professionals in the criminal justice system (police, prosecutors, and judges) is virtually absent.

The necessity to address domestic violence from a preventive perspective led to the adoption of Act no. 135/2006 Coll., amending some laws dealing with protection against domestic violence, which came into force on 1 January 2007. The law was inspired by the Austrian approach. Since then,

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<sup>55</sup> MARAC stands for Multi Agency Risk Assessment Conference.

<sup>56</sup> This was explicitly brought forward as a major concern by Czech experts during data collection in the first stage of the data collection.

<sup>57</sup> § 215a, Penal Code.

domestic violence is mainly addressed by police law (emergency barring order), civil procedure (protection order) and social law (intervention centres providing support for victims). The aim of the Act is to provide efficient preventive protection of persons endangered by domestic violence and bring a balance between imposed personal restrictions (banning the aggressor from the home and barring contact with the victim), social support measures (protection and assistance provided to persons in danger in intervention centres), and legal protection provided by the courts (special precautionary measures granting personal protection). In addition, any breach of the barring measures may lead to criminal sanctions. The process involved in protection against domestic violence can be thus described as: police intervention, social support for victims and judicial protection. However, in the context of the legislation on the emergency barring order limited training of the police has taken place. Concerns among women's NGOs persist that the implementation of the law by the police is hampered by widespread perceptions of IPV as private conflicts.

Social and support services have mostly been developed by women's NGOs and focus almost exclusively on IPV. Generally there are insufficient resources for support services in this domain and many state agencies in the field are underfunded and understaffed. Multi-agency collaboration in the response to IPV is relatively new in the Czech Republic (first starting around 2005). The CZ has no established treatment programmes for perpetrators. The support provisions specific to the emergency barring order are mostly channelled through state funded intervention centres.

#### EMERGENCY INTERVENTIONS IN CZECH REPUBLIC IN CASES OF DV

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Provisions on emergency barring orders are laid down in Title VII of the Act on the Police of the Czech Republic.<sup>58</sup> The emergency barring order regulates the eviction of aggressor from the home and immediate surroundings and the prohibition of any contact. It covers all residents of the same household regardless of kinship or intimate relationship. It is normally issued by the patrol police officer on the spot, as an immediate measure aiming at the prevention of the violence.

According to the law, the EBO can be imposed by the police on the basis of well-established facts, in particular with regard to previous assaults, which allow a reasonable assumption to be made that a person may commit a serious attack against life, health or freedom, or an especially grave attack against human dignity. The EBO lasts for ten days. This period may under no circumstance be shortened even where the endangered person might express his/her consent to such shortening. To avoid a gap in protection, the period of the EBO can be extended after the first period of ten days if an application for a civil protection order is pending, until the court comes to a decision on such application. The Court is formally obliged to decide within 48 hours after they received the application for a civil protection order.<sup>59</sup>

A risk assessment instrument (SARA<sup>60</sup>) has been adopted in practice to aid the police officer offering guidance with regard to deciding on whether or not to issue the EBO, although this is not mandatory according to the law. In addition, special methodological guidelines (*Methodik*) and other practical tools for police officers in the field, i.e. instruction cards and information folders, have been implemented as "good practice" in certain police areas. Although it is supposed to be implemented nationally, it is not clear to what extent this is realised. Furthermore, every police station in the Czech Republic is obliged to offer special training to their staff with regard to the correct course of action to be taken in cases of domestic violence. This police training is offered on a regional level,

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<sup>58</sup>Act no. 283/1991 Coll., later replaced by Act no. 273/2008 Coll.

<sup>59</sup>The filing fee for a civil protection order is about 20 euro, which is a substantial amount in the Czech Republic. Victims can request the exemption of payment for lack of means.

<sup>60</sup>Spousal Assault Risk Assessment.

and lasts between 4-5 hours. This (very) basic training is mandatory, although additional training is not and availability differs amongst police stations.

In relation to the specialisation of the police forces on DV cases, different models are used in the Czech Republic: in Brno, a special DV unit takes care of all police tasks concerning DV, while in other regions, the local police station has one specialised officer who is expected to monitor cases of DV being handled by the regular patrol police. The victim has no legal possibility to formally request the imposition of the EBO, and has no legal standing to challenge the decision either. The aggressor who does not agree with the EBO can challenge the order. The police officer must include the perpetrator's objections in the barring notice and communicate, without undue delay, such objections to the Regional Police Directorate. The aggressor can also, within three days of receiving the EBO, raise objections in writing at the competent Regional Directorate. In relation to the enforcement of the EBO, a police officer must, within three days, check whether the aggressor is complying with the order.<sup>61</sup> A minor breach of the EBO does not constitute a criminal offence, but an administrative infraction. Only repeated and serious breaching of the EBO constitutes a criminal offence to be sanctioned by custody.

The provision of support services to victims (and children) by intervention centres is regulated by Act No.108/2006 Coll., on social services, which came into effect on 1.1.2007, simultaneously with the Act on Protection against Domestic Violence. This Act resulted in the establishment of 16 intervention centres throughout the country. In some areas of CZ new intervention centres were created, while in other areas already existing NGOs were contracted to take on the task. Intervention centres provide psychological support, social and legal assistance, and are also in charge of coordinating the institutions involved in protection of persons under the threat of domestic violence.

The provision of services constitutes an important element in emergency interventions in cases of domestic violence. Following the issuing of the EBO, the police officer is legally obliged to inform the intervention centre within 24 hours. Within 48 hours after receiving the notification, the intervention centre is obliged to have contacted and offered help to the victim. In both elements of the emergency measure – the barring order and the support measures - the Austrian model has been adopted in CZ.

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#### GERMANY (DE)

Germany's approach to VAW generally is rooted in social and political changes originating in the early 1970s, with key actors from the feminist movement active in setting up shelters for battered women. This history has translated into an extensive set of gender sensitive measures in the legislative and policy fields of VAW. In its development the German government has been in ongoing consultations with women's NGOs and feminist researchers. DE has a National Plan of Action (NPA) on VAW based on an understanding of VAW as gender based violence. All legal reforms are based on the principles of equality and fundamental rights and are thus extended to all persons, with abuse of a position of vulnerability constituting specific or aggravated offences. This precludes any legal definition of VAW or violence in the family. Nonetheless, VAW is expressly recognised in policy, beginning in the 1980s when attention was first directed at the treatment of rape victims within the criminal justice system. Significantly, a national VAW unit was established in 1981 as a policy unit within government, and still remains as such working with NGOs. In addition, there is a well developed research culture in DE in this field, covering a wide range of forms of VAW. Several campaigns have contributed to a growing public awareness and concern about IPV.

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<sup>61</sup>Section 47, Act no. 273/2008 Coll., on the Police of the Czech Republic.

Although DE in general shows a high level of compliance with international law, human rights frameworks have not directly informed legislative changes regarding gender-based violence. Germany ratified CEDAW early on (1982) but does not fully comply with all its obligations. The 2011 Council of Europe *Convention on combating and preventing violence against women and domestic violence* was immediately signed by Germany.

The legislation in DE does not contain a specific definition of IPV. However, it is understood as a threat to personal safety in the private domain and has been addressed through a range of measures in civil law, family law, social-welfare law, police law and (generic) criminal law. IPV has not been included in German law as a separate criminal offense, although stalking has been addressed in a specific (gender neutral) law (2007). Nevertheless, numerous criminal laws are connected to IPV, many of which have been amended to adequately cover IPV. Almost all forms of IPV are acts which are punishable under the Criminal Code, ranging from insults, threats, coercion, and deprivation of liberty, assault, various sexual offences, and homicide. In connection to these offences, the abuse of vulnerability of the victim by the perpetrator generally constitutes an aggravation of the crime. In addition, all forms of physical and sexual abuse can be prosecuted regardless of the legal status of the relationship or the sex of either victim or perpetrator.

Despite the lack of a specific offence, police must intervene and investigate even without the victim's request since domestic violence is according to prevailing police policy not considered a private matter. The police have been increasingly trained over the years notably to ensure competent implementation of the emergency barring order. Nevertheless, criminal prosecution plays a rather minor role in DE, which is attributed to prosecutors failing to gather independent evidence and being inclined to dismiss the case if the victim does not submit a statement. Civil protection orders are available upon the victim's application.

In Germany a range of support services for victims are well developed. An established network of shelters for victims of IPV, often with adjoining counselling centres, is available (most of them state funded) and considered as key institutions for Germany's response to IPV. Furthermore, a range of welfare provisions are available, either provided by the state or by voluntary organisations and by advocacy organisations engaged in victim support. Multi-agency cooperation in addressing IPV began in the mid-1990s and is implemented in the intervention centres which have been established in most Länder. Treatment programmes for perpetrators are relatively rare in DE.

In January 2002, the Federal Act on the Protection from Violence<sup>62</sup>, modelled after the Austrian model of police intervention and support measures, came into force. The emphasis is on the accountability of the aggressor and provides for the possibility to exclude him from the home and allowing the victim to stay instead of fleeing to a shelter. This became a strong statement against the impunity of perpetrators of domestic violence. As such, the law provides civil legal protection against violence and persecution (prohibition against the offender to make contact with and approach the victim),<sup>63</sup> and facilitates the transfer of the matrimonial home upon separation (temporary allocation of the home for private use)<sup>64</sup>, at the request of the victim before the civil court. In addition, in cases of danger of abuse of children, there are certain measures available that can be requested (these can consist of supervised access, contact and proximity restrictions, but also the reduction or termination of parental rights of the father). As of 2009, civil protection orders are issued solely by the Family Court, setting a framework for coordination between protection from violence and family-related decisions. All civil protection orders are backed by criminal sanctions if the aggressor breaches them.

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<sup>62</sup>"Gewaltschutzgesetz vom 11. Dezember 2001 (BGBl. I S. 3513)".

<sup>63</sup> Näherungs- bzw. Kontaktverbot.

<sup>64</sup>"Zuweisung der Wohnung".

The Federal Act on the Protection from Violence brought about a fundamental change in DE in the response to IPV, actively engaging the police and a range of professional support organisations to address domestic violence as a fundamental safety concern. Nation-wide monitoring or evaluation was commissioned by the Federal Ministry, however there is no regular monitoring in place and no recent evaluation.

In order to properly implement the protection offered by the law, the police are the crucial authority. Within the German federal system this responsibility is consequently regulated at the regional level (*Länder*).<sup>65</sup> In this report we will refer to the specific *Länder* we included in the case study: Baden Württemberg and Berlin. Where findings apply to Germany as a whole we will refer to DE.

## EMERGENCY INTERVENTIONS IN TWO LÄNDER IN GERMANY

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### BERLIN (BE)

In Berlin the barring order (*Polizeiliche Wegweisung*) has been regulated in the Police Act.<sup>66</sup> Besides eviction from the home, it may prohibit access to the immediate vicinity, and might include a prohibition on approaching any other place where the endangered person is at regular intervals. The EBO is issued by the patrol police officer. Although the victim will be heard by the police officer, they have no legal standing to request or appeal the order. Once the immediate danger has passed, getting protection by an emergency barring order seems to be difficult; in day to day practice the victim (or others) can turn to the police afterwards but will have to justify her delay in requesting police intervention.

The EBO can be issued in Berlin for a maximum of 14 days. This period can be shortened due to a negative decision on the victim's civil application for an interim order to release the shared apartment for her sole use. All residents in the same household, regardless of kinship or intimate relationship are protected by the law. Notification to the Youth Welfare/Protection office is needed as soon as children are involved in cases of DV. The violent behaviours that may lead to the imposition of an EBO need to "affect the bodily integrity, health or freedom of a person". No history of violence is required. In order to assess whether there is a danger that merits an EBO, police officers are required to follow certain assessment standards. This is according to the guidelines adopted more generally at the local/*Länder* level. They are elaborated at the level of the police station and can therefore vary, but standardised risk assessment instruments are not common. If the victim does not agree with the imposition of the EBO, she can file an objection at the police station, but this is not a formal challenge to the measure. Upon breach of the barring order the aggressor can be taken in custody.<sup>67</sup>

In Berlin cases of domestic violence are not dealt with by special police units. The "Central Coordination Point for Crime Prevention" is responsible for the overall strategies in the field of domestic violence to enhance the performance of police officers. In addition, special "DV coordinators" are stationed in the six local police divisions in Berlin to coordinate internal and external processes relating to DV cases. A civil association/NGO in the field of VAW is in charge of the coordination of the different institutions involved in domestic violence interventions (such as the police, the judiciary, youth welfare offices, the Senate Department of Health as well as the women's

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<sup>65</sup>"Wohnungsverweisung", or "Platzverweis".

<sup>66</sup>General Law on the Protection of Public Order and Security, Berlin (Allgemeine Sicherheits- und Ordnungsgesetz, ASOG Bln) § 29a- Berlin state law eviction and barring orders for the protection from acts of violence and persecution.

<sup>67</sup>ASOG (Allgemeines Sicherheits- und Ordnungsgesetz - Berlin Police Public Order Code) § 30 (1) No. 3.

refuges and women's advice services). In cases where an EBO is imposed, the concerned woman needs to consent to have her personal data transmitted by the police to the Coordination's advice service, so they are then able to pro-actively contact the victim. In addition, the police officer must inform the victim of the different help and support measures available, the Federal Act on the Protection from Violence and victim's rights. Also, the police must inform the responsible youth welfare office after a police operation on DV if children have witnessed or been indirectly affected by violence.

The emergency intervention provides victims with access to certain support services. The Centre in charge of the coordination of the intervention measures aims to effectively offer a multi-agency approach. It has been officially designated to fulfil this task, while one of its "branches" focuses specifically on the provision of support to the victim, i.e. general advice, legal advice and referral to other appropriate agencies providing special support (psychological, financial, etc).

### **BADEN WÜRTTEMBERG (BW)**

Baden Württemberg regulates the issue of police emergency barring orders through its Police Law.<sup>68</sup> It allows for the eviction of the aggressor from the home and surroundings (*Wohnungsverweis*); and the imposition of a prohibition on approaching the injured or endangered person (*Annäherungsverbot*). The decision to issue an emergency order is taken by the patrol police officer arriving at the scene. The patrol police can issue the barring order for a limited time (maximum of 4 working days) which will allow the Community police (the administrative authority of the Police) to evaluate whether the imposition of the measure is justified, and consequently either extend it (to a maximum of 14 days) or revoke it. Issuing emergency barring orders is in fact the formal task of the community police. The patrol officer will only do it in situations where the community police are not able to confirm (outside office hours) and only for as long as needed in order to have the community police take it over. In those cases, the police officer must inform the administrative police immediately of the actions taken in relation to the incident of domestic violence by means of a standardised form. In addition to the 14 days extension which may be granted by the community police, the EBO can be further extended for up to four weeks if the victim files an application for a civil protection order.

The persons covered by the EBO are the residents of the same household, regardless of kinship or intimate relationship and the imposition of the EBO in B-W aims to avert imminent or substantial danger. No previous history of violent incidents is legally required. There is no formal risk assessment, only general guidelines. After hearing the police officer, the victim and the aggressor, the community police will decide whether to extend the EBO. The double assessment construction (first patrol police, then community police) appears in police-practice as a "double test" or "second risk assessment". Although the victims' desires and concerns will be heard by the police officer, and later by the community police officer, victims have no legal standing to formally request or appeal the imposition of the order. The aggressor can lodge an appeal with the Administrative Court. Legal aid is available, although it is commonly provided by public agencies mainly in connection with civil protection orders.

In BW, cases of domestic violence are not dealt with by special units. In most police stations specialised officers (one or more agents) are appointed as Domestic Violence Advisors, who will be in charge of coordinating interventions, together with the organisation(s) in charge of the provision of support to survivors of violence. When an EBO is imposed, following the (written) consent of the

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<sup>68</sup>The Police Act, Baden-Württemberg, (Das Gesetz zur Änderung des Polizeigesetzes) as amended by the 13th January 1992 (Gazette, p. 1, calcd p. 596, 1993 p. 155) and as last amended by Law of 04.05.2009 (Journal of Laws, p. 195).

woman concerned, the police will contact the women's advice service which will directly contact the victim (pro-active approach). Any breach of the EBO constitutes a misdemeanour and requires a victim's report to the police.

The coordination of the emergency intervention in Baden Württemberg varies from one district to the other. On the one hand, we found civil associations coordinating the provision of support for survivors of IPV appointed to this task specifically, and on the other, regions where multiple organisations are in charge of the provision of services.

The focus of the support measures is clearly the victim; occasionally perpetrator programmes are offered. The regulation of the emergency interventions in cases of domestic violence in both *Länder* relies on immediate protection offered by the police emergency barring order, and a proactive approach in terms of provision of support to survivors of violence, offered by support services organisations.

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### THE NETHERLANDS (NL)

The Netherlands have a history of active State involvement in the field of VAW, notably IPV, dating back to the feminist shelter movement starting in the mid 1970s. During the 1980s and 1990s the focus in Dutch policy was on VAW as a form of gender discrimination and governmental policy focused on intervention and victim support (notably shelters). Since the 1990s a shift towards criminal law and a more active role of the police has developed. The Dutch approach to IPV (as well as sexual violence and stalking) is currently informed by both a crime perspective (safety) and moral-pedagogical concerns (security of intimate family life) but gender discrimination is rarely considered relevant to VAW. Notably in the approach to IPV (as towards domestic violence more widely, encompassing IPV, VAC and elder abuse) a gender-neutral focus dominates, for which the NL have been criticised repeatedly by the CEDAW Committee. The NL has ratified CEDAW (1991) but has not yet signed the 2011 CoE *Convention on combating and preventing violence against women and domestic violence*. The NL does not have an integrated NPA on VAW but had a limited action plan on domestic violence (expired in 2010). The NL has a relatively well developed research culture in the area of IPV. A (state funded) National Centre for Social Development (MOVISIE) provides training and development of professional expertise on IPV as one of its core tasks. Occasionally state funded awareness campaigns on IPV are rolled out which intermittently stimulate public discourse on domestic violence. The dominant public discourse in NL on IPV is distinctly gender neutral.

Legal protection against IPV is provided through a range of civil, administrative and criminal legislative measures. Within civil law (generic), restraining or no-contact orders can be court ordered upon application by victims. Provisions to claim for redress and compensation are available. Criminal law has been adjusted over the past decades to cover all forms of physical and sexual violence, regardless of marital status and hetero- or homosexual relationship. There is no legal definition of domestic or intimate partner violence. The implementation of criminal law in cases of domestic violence is supported by binding Domestic Violence Guidelines for police and prosecutors, containing detailed instructions regarding investigation, prosecution and support for victims of domestic violence. Training for police however remains minimal (and training is virtually absent for prosecutors and court officials). Monitoring of the implementation of guidelines is very limited. A National Help Desk for the police aims to support national policy development for police.

As of 2005 the Dutch Government has set up a network of 35 local Advice and Support Centres on Domestic Violence (*Advies en Steunpunt Huiselijk Geweld*, funded by central government and municipal authorities). There is also a wide network of shelters for victims of IPV and their children. The centres usually coordinate the multi agency interventions that go with the emergency barring

order, although the level of coordination varies locally. In the NL multi-agency interventions, although long discussed, are in practice struggling to overcome organisational (bureaucratic) structures governing the work of separate service providers. Treatment programmes for perpetrators are receiving increasing attention in the context of offender rehabilitation services (focusing on convicted offenders of DV).

The Dutch emergency barring order (2009) finds its basis in administrative law and is (loosely) modelled after the Austrian model. It brought about a surge of police involvement and a profound shift towards more active responsibility of the police as part of a legally and policy based and systemic multi-agency intervention programme aiming to include the victim, perpetrator and children.

### EMERGENCY INTERVENTIONS IN THE NL IN CASES OF DV

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The emergency barring order is regulated in a dedicated administrative law (*Wet TijdelijkHuisverbod*) as of January 1, 2009. It is loosely modelled on the Austrian law, with a few major differences. As an administrative legal measure the law authorises the municipal authority (mayor) to evict the person who is a threat to the safety of others in the home. The implementation of the law is can be delegated to the police (operating under the mayor's authority).The mayor can mandate the decision to issue the barring order to the police fully or partially (in which case the police have to confer with the mayor before issuing the order). In practice in about two-third of Dutch municipalities mayors have fully mandated the police.

The law allows for the eviction of a person on the spot from the home who poses an imminent threat to the safety of others with whom he or she shares the home. As an administrative legal measure the underlying philosophy of the measure has two main components. It provides the State with the tool to protect the 'public order' and directs the measure at the person who poses the threats. The measure can therefore be imposed without the victim's request or consent. The starting point is that it is the State's responsibility and duty to protect the victim. Second, the measure focuses on long term prevention by offering all persons involved (perpetrator, victim and children) a range of support and intervention measures.

Formally the victim cannot request the measure. In practice victims can (and do) but the police will have to follow the protocol devised for deciding on whether or not to issue the order.

The minimum duration of the EBO is ten days. As a standard the question as to whether the victim's safety has been secured sufficiently is assessed after 8 days in order to decide whether the barring measure can be lifted or should be continued. To this end the responsible case manager draws up an advice to the municipal authority. No request for an extension is necessary. If extended protection is considered necessary by the advising professionals, the mayor can extend the order for another 18 days. The evicted person needs to be heard before deciding on an extension. It is not mandatory to hear the victim, although in practice this is usually done. After one extension the victim herself can apply for a civil legal protection order if the threats persist. The evicted person can appeal against the order (the person is entitled to legal aid). The victim cannot appeal and has no right to legal aid. Since March 2011 the victim is entitled to legal advice from the national victim support organisation. No national statistics are available yet but in practice appeals by evicted persons seem to be relatively rare and are usually not successful.

The Dutch EBO is primarily intended to protect against violence from someone with whom the victim shares the home and is intimately related (partner, parent, and child or co-habiting person in the household). An assessment of the threshold level of risk is legally required before the emergency barring order can be imposed. This is done by means of a standardised risk assessment instrument

specifically developed for this purpose. Only senior police officers are entitled to conduct the risk assessment (they have been trained face-to-face in conducting the assessment (on average one day). Basic police patrol officers have been given an e-learning module (one and a half hours) on domestic violence and the barring order. During the basic curriculum in the police academy domestic violence receives limited attention.

Support and intervention services are part and parcel of the EBO measure. After the order is issued the provision of support is legally required to start within 24 hours. The local Support and Advice Centre is immediately informed by the police upon issuing the order. They initiate the contact with the victim and the perpetrator. The case manager coordinates the support if different institutions might need to be involved. The specifics of the implementation of this second part of the measure vary somewhat with local availability of services. Usually a case manager from the local Advice and Support Centres on Domestic Violence is assigned to a case, being responsible for coordinating the measures to be taken, and for preparing the advice on the extension which needs to be delivered on day eight. The support measures explicitly target the 'family system' as a whole, including the barred person, those who stay behind (the policy documents guiding this part of the emergency measures do not use concepts of perpetrator or victim but barred person and the person/s who stay behind); the violence is considered to be the result of a breakdown in the communication in the 'family system' in which all subjects fulfil their role and responsibility.

This pro-active approach during the second stage of the measure does not require victims' or perpetrators' request for support. Although participation is voluntary, the practical situation puts subjects under pressure to participate since unwillingness to accept the support offered can be interpreted as an indication that risk persists and can lead to an extension of the EBO. The support services are not exclusively offered when the EBO is issued. In practice however, the EBO cases will easily gain priority because the law puts the professionals under time pressure (due to the extension advice which has to be issued after eight days).

During the barring order no contact is permitted between the barred person and the partner and/or children who stay behind. Family conferences, where both parents attend, usually only start after the first 10 days. Breach of the EBO by the aggressor, even if the partner has initiated contact and the barred person responded, constitutes a criminal offence.

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## SPAIN (ES)

Legislation addressing gender violence in Spain has been extensively and rapidly developed over the last ten years, particularly by the enactment of Organic Law 27/2003 of 31 July 2003 regulating the protection order for victims of domestic violence, and Organic Law 1/2004 (LO 1/2004) of December 28, on Comprehensive Protection Measures against Gender-Based Violence. The latter is the core piece of legislation bringing a radical change in relation to state protection in cases of violence against women. These laws have enjoyed wide political and civil support, being demanded by social movements, women associations and NGOs dedicated to the defence of human rights. The Women Institutes (at national and autonomous community level) also supported and were involved with the elaboration of these laws. It should be pointed out that the 2010 Spanish Presidency of the EU actively promoted the enactment of a European Order for the protection of the victims of gender violence.

The Organic Law 1/2004 (OL 1/2004) of December 28, 2004 specifically acknowledges violence against women as a manifestation of discrimination, inequality and the power that men exercise over women. Both in the preamble and in the body of the law, this aspect is dealt with extensively. The preamble makes it clear that the law aims at complying with the recommendations of international bodies by defining a comprehensive approach to tackling violence against women.

OL 1/2004 introduced some changes to the Criminal Code aiming at protection against IPV: making the infliction of injuries to the wife, ex wife, or intimate partner (regardless of without cohabitation)<sup>69</sup> an aggravating condition. Three new criminal offences: psychological maltreatment or an physical attack which does not constitute an offence, aggravated by the presence of children<sup>70</sup>; minor threats<sup>71</sup>; and minor coercion<sup>72</sup> when these are committed against the wife, ex wife, or woman who is in or has had an intimate relationship with the perpetrator, even without cohabitation.

The law launched the “Courts for Violence Against Women”<sup>73</sup>, a specialised court system within the criminal justice system. Its competence extends to criminal law, civil law and family law. These courts enquire into cases of violence against women and are have powers to pass sentence in criminal proceedings as well as in related civil lawsuits. Cases heard before the Court involve any violent offence or intimidation, or offence against the rights and duties of the family, where the victim is or was either the wife of the offender, the offender's own descendants, minors or persons lacking capacity, or linked to the offender by an intimate relationship.<sup>74</sup>

In addition, special prosecutors for cases of violence against women appear in criminal and in civil proceedings (regarding annulment of marriages, separation or divorce or regarding the guardianship of under-age children, whenever wife battering or cruelty to children is alleged).

For the police, a national binding protocol guides the interventions of the police in cases of gender violence which must be coordinated with the judicial intervention,<sup>75</sup> and a protocol for the police assessment of the risk of the situation.<sup>76</sup> This protocol was introduced as one of the emergency measures needed in order to effectively implement the provisions of OL 1/2004.

## EMERGENCY INTERVENTIONS IN SPAIN IN CASES OF DV

Law 27/2003 of 31 July 2003 regulating the protection order for victims of domestic violence<sup>77</sup> introduced art. 544 ter in the Code of Criminal Procedure, enabling victims of IPV to obtain precautionary protection orders. These can be issued by means of an expeditious and simple *judicial* procedure. Later, the Organic Law 1/2004 (LO 1/2004) on Comprehensive Protection Measures against Gender-Based Violence, brought a profound change in the protection the Spanish state authorities can offer in cases of IPV (and other forms of gender based violence as well). The law intends to provide the victim with integrated protection measures and gives the judge the possibility to include criminal, civil and social measures. These judicial (precautionary) barring orders allow at the national, regional and local level to apply for the provision of immediate social support measures (as specified in the Law 1/2004).

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<sup>69</sup>Art. 148, Criminal Code.

<sup>70</sup>Art. 153, Criminal Code.

<sup>71</sup>Art. 171, Criminal Code.

<sup>72</sup> Art. 172, Criminal Code.

<sup>73</sup> The law inserted art. 87 *bis* to Organic Law 6/1985 of July 1, the Judiciary Act.

<sup>74</sup>Interestingly, stalking is not considered to constitute gender violence per se, but ordinary harassment.

<sup>75</sup>Protocolo de Actuación y de Coordinación con los Órganos Judiciales para la Protección de la Violencia Doméstica y de Género.

<sup>76</sup> Risk Assessment Protocol for Use of the Police Forces. It establishes four level of risk: 0 (no appreciation of risk), 1 (low level), 2 (medium level) and 3 (high risk). As of level 1 and up, the police must provide information to the victim on how to contact courts and other services, and the police obligations to monitor perpetrators are specified.

<sup>77</sup> Official State Gazette 1, AT gust 2003.

The precautionary protection orders are used in emergency situations in order to prevent violence from (re) occurring, although if a crime is committed, criminal proceedings will follow. These orders are intended to provide quick protection to the victim, although the law allows for a maximum period of 72 hours after the incident is first reported to the authority (police, prosecutor or judge). This means that an initial (preventive) arrest is required if immediate protection through separation of aggressor and victim is required. The imposition of a precautionary protection order is justified when there is an objective risk to the life, physical or moral integrity, sexual freedom, freedom or safety of (ex-) partners, or persons within a similar relationship, even without cohabitation, disabled persons, or any other family member living in the same household. However, with the insertion of the new offences into the criminal code, OL 1/2004 has extended these criteria to include psychological maltreatment, minor threats and minor coercion as well.

Depending on the seriousness of the facts and the need for full protection of the victim, the court may impose one or more precautionary measures (e.g. preventive custody, no-contact order, eviction from the home and an injunction against entering and remaining in the home, requisition of arms, etc.) for an interim period before the judge makes a final decision. It is even possible to issue them “indeterminately” if criminal proceedings will take place in the future. Measures pertaining to civil law, particularly when the couple have children, are provisionally provided for 30 days. Possible measures include allocation of the family home, guardianship, visiting rights and contact with the children, alimony or any measure that is deemed useful to keep minors out of harm's way. After 30 days, these measures can be extended by the civil judge at the request of the victim.

A request for a precautionary protection order is made by means of a simple standard form widely available to the public and may be requested by the victim, by family members or by others who maintain emotional ties with the victim. In addition, a private or public body or organisation providing social services that comes across facts that may warrant a protection order, must apply to an examining magistrate on duty at a Police Court or a public prosecutor in order to start up the procedure to issue a protection order. The form may be submitted at any police station, court or public prosecutor's office, Victim Support organisation, social services or other government bodies providing services to the public or at legal advice centres. The procedure to issue a protection order may also be initiated by a Police Court or by the public prosecutor. Although it is legally permissible for a victim to request the order, in principle, the victim's request and desires are not binding on the judge. However, she will be heard during the proceedings and her testimony will be taken into account.

Spanish law recognises the rights of women victims of gender violence to the provision of a wide range of psycho-social, legal and welfare support measures as important elements of the integrated intervention strategy.

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#### UNITED KINGDOM (UK)

In the UK the approach towards VAW is historically connected to the work of the feminist shelter movement of the 1970s. The vibrant women's NGOs active in the field have since driven much of the UK's developments. There is a growing political will to address IPV (and VAW). The UK has a strong track record of feminist research on VAW. Over the past decade, progress has been made towards more coherence in a National Action Plan on VAW but domestic violence has tended to attract most attention. Across the four nations in the UK approaches toward VAW differ (Scotland, Wales, England and Northern Ireland). Outside Scotland, VAW is located both within a gender equality framework, and as a crime and safety issue. This does cause tensions. The UK ratified CEDAW early on (1986) but has not achieved full compliance. The UK has not yet signed the 2011 CoE Convention on combating and preventing violence against women and domestic violence.

The *End Violence against Women (EVAW)* campaign exemplifies a high profile campaign driven by a strong coalition of women's NGOs, advocating gender equality and a human rights based approach to VAW. This has contributed to the development of more integrated national strategies, putting victims' interests and prevention at its core. Of particular importance is the provision putting gender equality and violence against women and girls on the national schools' curriculum. There remains however a gap between policy and its implementation, notably reflected in the uneven geographical distribution of support provisions, insufficient funding and lack of consistent monitoring. Developments to address issues of VAW and VAC have tended to progress along different trajectories.

The UK has a range of legal measures to address VAW and specifically IPV (such as physical abuse and control, sexual violence, stalking). Several dedicated Acts and amendments provide stronger legal protection regardless of marital relationship between victim and offender or sexual orientation. Core dedicated legislation addresses stalking (1997), sexual offences (2003) and domestic violence (2004). Civil court issued protection orders are available upon application. To enhance the implementation of criminal laws, a national domestic violence delivery plan was introduced in 2005. In the domain of investigation and prosecution important structural provisions have been introduced (notably specialised DV Courts). This has resulted in rising conviction rates for perpetrators of IPV. Stalking legislation is still under-utilised and attrition rates in sexual violence cases remain high, despite efforts to enhance specific expertise in investigating sexual offences. All legislation in the field on IPV is gender neutral and does not include a specific legal definition of IPV/domestic violence. The gendered nature is acknowledged in policy statements and implementation guidelines (for police, prosecutors and court staff) and notably in the Government action plan *'Call to end violence against women and girls'*. Training of criminal justice officials on IPV is limited. Treatment programmes for perpetrators of IPV are available.

Social support provisions and shelters for victims of IPV are available throughout the UK, although rural areas are underserved. Independent DV Advisors (IDVAs) have become part of provisions to support victims. Also a network of Domestic Violence Coordinators (DVC) has been established in every Crown Prosecution Service area. For high risk victims the Multi- Agency Risk Assessment Conference (MARAC) is increasingly used to identify high-risk victims and initiate interventions to reduce the risk.

#### EMERGENCY INTERVENTIONS IN THE UK IN CASES OF DV

A law amending the Crime and Security Act, introducing the police emergency barring order<sup>78</sup> has been recently passed in the UK and is currently being piloted in England and Wales during 2011.<sup>79</sup> It is expected to go completely into effect in 2012. The description below is based on information from the law itself and from the guidelines of the 2011 pilot implementation.

The measure is two-tiered and consists of a police-based Domestic Violence Protection Notices (DVPNs) to be followed up by a court-ordered Domestic Violence Protection Orders (DVPOs), which can last from 14 to 28 days. A DVPN is the initial police notice of immediate emergency protection, evicting the perpetrator from the home for 48 hours. Besides the possibility to issue this DVPN immediately on the spot, it can also be imposed when the alleged aggressor is to be released from custody without any conditions. A DVPN can only be issued by a police officer of the rank of Superintendent or above; lower-ranking police officers need to get approval. A filled in DASH risk

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<sup>78</sup>Domestic Violence Protection Notices, sections 24-32 of the Crime and Security Act 2010.

<sup>79</sup>More precisely, in the policing areas of Greater Manchester Police, West Mercia Police and Wiltshire Police.

checklist<sup>80</sup> is expected to be part of the information that needs to be provided when seeking approval for the issue of a DVPN.

The persons protected by the DVPN/DVPO are “associated persons” (AP), most importantly the residents of the same household regardless of kinship or intimate relationship, other than business like forms of cohabitation (like tenant/lodger; for a full list see Appendix 2). The authorising officer may issue a DVPN when the person has been violent towards, or has threatened violence towards an associated person. The officer must consider the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN (whether or not that person is an AP). The DVPN may consist of the eviction of the aggressor from the home, prohibition to come within certain distance and prohibition of molestation.

The victim has no legal standing to formally request a DVPN, or challenge its imposition. The aggressor cannot challenge the decision of the police to impose the DVPN, although it is possible to appeal against the (court ordered) DVPO. A breach of a DVPN is not a criminal or recordable offence. However, if the police have reasonable grounds to believe that there has been a breach of the DVPN it is possible to arrest the aggressor for a maximum of 24 hours during which he must be heard by the magistrates court.

Regarding support measures, the pilot guidelines make clear that while the power to issue a DVPN and subsequent application for a DVPO lies with the police and ultimately the Criminal Justice Service (CJS), the partnership work with other agencies and organisations including those that contribute to Multi-Agency Risk Assessment Conferences (MARACs) and service providers for Independent Domestic Violence Advisors (IDVAs) will be crucial in order to grant an effective intervention. In relation to this, where a DVPN/DVPO is imposed in a case that has been assessed as being of high risk, the case is taken to a MARAC. The provision of support services for other victims as part as the emergency intervention seems to be more limited.

## DISCUSSION OF KEY ISSUES

### MAIN CHARACTERISTICS OF THE LEGAL REGULATION OF THE BARRING ORDER

In light of the distinction between the barring order and the support and intervention measures, this section focuses on the emergency barring order as such and the way it is legally regulated in the countries under study. The orders in the different countries all allow for the immediate removal of the aggressor of IPV from the family home for a specified period of time. This makes the perpetrator the recipient and legal subject of the measure, not the victim. The barring of the aggressor allows the victim to remain in the shared home (at least in the short run) and entitles her in most countries to receive specific support. In some cases, the EBOs consist also of a general prohibition on the perpetrator contacting the victim and/or children. The barring from the home is a far-reaching measure. Its legal underpinnings in the countries differ substantially. Below we address the most important issues that emerged in which the regulation reveals both commonalities and differences. The analysis of the main characteristics is based on the concise comparative overview of the characteristics as presented in the comparative matrix (Table 1, see Appendix 2).

<sup>80</sup> Domestic Abuse, Stalking and Harassment Checklist; for the UK, see especially Laura Richards (2010). <http://www.dashriskchecklist.co.uk/uploads/pdfs/V-DASH%202010.pdf>

## LEGAL REGIME

The legal regimes under which the EBOs are regulated and the type of prohibitions they include vary among the countries and regions under study. Five countries have a *dedicated* law regulating the EBO as a specific police-based measure (AT, DE (Be and B-W), NL, CZ and UK). In the case of Austria, Berlin, Baden Württemberg and Czech Republic, the legal provision regulating the EBOs as police intervention is included (after recent reforms) in the Police Law. In the Netherlands, it has been addressed by means of a specific national Administrative Law. Besides the removal of the aggressor, additional prohibitions may be included as well: the prohibition on returning to the shared household within the agreed period of time (AT, BW), the prohibition on contacting the victim in any way or form (Be, BW, NL, CZ), and the prohibition on going to places where the victim regularly is, like the work place or school (Be). In the UK it is part of a dedicated Act on various security concerns.<sup>81</sup>

Spain does not have a dedicated law on the EBO but has chosen a different approach, focusing on a judicial trajectory instead of a primarily police based order. It introduced a national law by amending the Code of Criminal Procedure<sup>82</sup> which allows for expeditious judicial barring orders in cases of domestic violence. It allows not only the victim, but also her family, the police, the prosecutor or any relevant professional to request before the (specialised) Court on Gender Violence an EBO from the judge. This will take the form of an interim measure until there is a final decision in criminal proceedings, where it will become a barring sentence. A separate law on integrated protection orders, this time for cases of gender violence in general, was passed,<sup>83</sup> regulating the multi-sectoral and integrated protection measures which are attached to these orders to support the victim. Compared to the rest of the countries under review, the role of the police in the Spanish approach to EBOs is more limited: either to arrest the suspected perpetrator or, in relation to the enforcement of the order (removing the aggressor from the home and follow-up of the situation).

The United Kingdom is currently in the process of piloting the EBO in three different areas in England. Depending on the results of the evaluation national implementation will probably follow. The legislation is a hybrid form between the police EBO as found in AT, Be, BW, CZ, NL and the Spanish judicial barring order. The police still have the primary responsibility in that they are the gate keepers that can issue the EBOs in case of domestic violence that last for maximally 48 hours. Once that period of time has expired the Court needs to decide whether the EBOs will be prolonged, i.e. changed into a longer lasting protection order that includes the eviction of the aggressor from the home.

## AUTHORITY RESPONSIBLE FOR ISSUING THE EMERGENCY ORDER

One of the differences found among the countries and regions under review relates to the authority which is in charge of issuing the order to evict the aggressor from the home, and the authorities in charge of actually implementing/enforcing the order. In most cases (AT, Be, CZ, UK) the *police* are in

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<sup>81</sup> **Austria:** The Security Police Act (Federal Law Gazette no. 566/1991 as amended by Federal Law Gazette I no. 146/1999); **Berlin:** General law on the protection of public order and security in Berlin (General Safety and Planning Act - ASOG Bln) § 29a - Berlin state law eviction and barring orders to the protection of acts of violence and persecution; **Baden Württemberg:** § 27 a (3) of the Police Act, Baden-Württemberg, as amended by the 13th January 1992 (Gazette, p. 1, calcd p. 596, 1993 p. 155) as last amended by Law of 04.05.2009 (Journal of Laws, p. 195); **Czech Republic:** Act no. 283/1991 Coll., later replaced by Act no. 273/2008 Coll. on the Police of the Czech Republic. **The Netherlands:** Wet TijdelijkHuisverbod (2009). Staatsblad (2008), 421. **England/Wales (UK):** Crime and Security Act 2010.

<sup>82</sup> Ley Orgánica 27/2003, del 31 de Julio (Act 27/2003, of 31 July, regulating protection orders to victims of domestic violence).

<sup>83</sup> Ley Orgánica 1/2004, del 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género (Act 1/2004, of 28 December, on measures for the integrated protection against gender violence).

charge of the initial decision to issue the order. In the UK and the NL this discretionary police power is restricted to senior ranked police officers (UK: at a minimum a superintendent, in the NL: a senior police officer who acts in her/his capacity as assistant DA).

According to the Dutch law on temporary eviction orders, the administrative authority (i.e. Mayor) is responsible for issuing of the order. This means that formally the administrative authority needs to approve or reject the proposal from the police to issue the emergency order. Although in practice, certainly in larger urban areas, the Mayor usually mandates this responsibility either to senior police officers – so-called full mandate – or to civil servants within the local administration, the so-called partial mandate.

In the case of Baden Württemberg, the administrative police ('desk police' who usually do not go out to the crime scene) are formally responsible for issuing the EBO. In practice the regular patrol police can issue the order but only when the administrative police are not operative (i.e. during the night and weekends). In those cases, the police officer must inform the administrative police immediately of the actions taken in relation to the incident of domestic violence by means of a standardised form. The administrative police will then review the case and decide whether to extend or to suspend the order without follow up. In many cases the decision is taken after holding hearings with the victim and the perpetrator. The order is then enforced by the police. Expert comment this in fact creates a "double test" or "second risk assessment" and the initial uncertainty of the status of the EBO is confusing for the victim.

In the UK the first (short term) barring decision is taken by the police as well when issuing a Domestic Violence Prevention Notice (DVPN), which then needs to be followed up by a Court decision whether or not to issue a Domestic Violence Protection Order (DVPO). Some of these decisions will be made by Special Domestic Violence Courts. Victims can apply for different kinds of protection order (in case the DVPO is denied). It is mandatory for the police to inform the DV court that they issued a DVPN, which then needs to hold a hearing within 48 hours. This period of time can be extended if necessary.

Spain does not have a dedicated barring order law. It is not the police who issue the order but the judges belonging to the specialised Courts on Gender Violence who decide on the kind of protective order to be issued in emergency situations of domestic violence. Short term and immediate protection can be secured by an arrest in cases where the victim is under threat and the immediate safety of the victim needs to be secured. This creates a potential gap in protection.

Although there are different authorities formally in charge of taking the decision to issue the order, in day to day practice the police act as the gate keepers in all countries under study. This means that in actual practice the patrol officer is in charge of initiating the decision making process (or deciding to arrest the aggressor, as in Spain) which then can lead to the imposition of the order. The police are also responsible for the initial implementation of the order, taking the man either from the home or bringing him to the home and allowing him to pack basic belongings. We will address the implications of this responsibility in more detail when discussing implementation.

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## SCOPE

### PROTECTED PERSONS

Regarding the range of persons or relationships that can be covered by the emergency measure, all countries except Austria require regular co-habitation of the aggressor and the victim. Austria allows for the issuing of EBOs regardless of any cohabitation or personal relation, making it an instrument

that can be used to intervene immediately in cases of stalking, provided that the stalker is caught in the act.<sup>84</sup>

The criterion that is most commonly used to specify the level of association is that of *cohabitation or sharing the household* without specifying that it should be an intimate (sexual) relationship (Be, BW, CZ, NL, UK). This then implies that the EBO can be issued in cases of other forms of violence than partner or ex-partner violence, like abuse against any member of the household (including elder abuse, child abuse). Some countries qualify the cohabitation requirement: the Dutch barring order law requires “*more than incidental*” cohabitation. The UK Law Commission when discussing who belongs to the category of “associated persons” specified that “*the test is [the] degree of community life which goes on*”, meaning that one has to live together in more than merely a business-like relationship with a tenant or lodger (Rights of Women, 2011). In the UK the law specifically includes *sharing parental responsibilities* regardless of any (former) intimate relationship among the parents. Spain is the only country that limits the application of the order to *intimate partner relationships*; residents of the same household (e.g. parents, children) would *not* be covered by the measure.

The extent to which the EBO can be used to protect *children* in the family in cases where a cohabiting member of the household (one or both parents, or any other member of the household) is abusive raises some questions. Spain focuses its measure on abusive partners or ex-partners and so does Germany, explicitly excluding children from the EBO under the police law or the Violence Protection Act, but referring to similar provisions or other measures available for child protection.

The Dutch law, in contrast, does allow for the application of the EBO to protect children (as the law includes any household member), although in practice so far it is virtually exclusively applied in cases of IPV, and in a minority of cases of elder abuse (usually son abusing father or mother).<sup>85</sup> In light of this, discussions are currently underway in NL to consider greater use of the EBO to protect children against an abusive (step-) parent or other abusive family/household member (e.g. an abusive cohabiting boyfriend). Clearly, the EBO may not be an effective tool in cases where, for example, both parents are abusive since it may not always be practical or in the child’s best interests to have a relative or other guardian move into the home where implementation of the EBO requires the parents to be evicted. Practitioners are reluctant for that reason. In the context of political debates on how to be more effective in reducing child abuse, especially policy makers are discussing the potential added value of the EBO to afford a child immediate protection in cases where only one parent or other household member is abusive to the child.

In all countries/regions except Spain, the emergency measures apply to women and men as perpetrators or victims since the law is formulated in gender neutral terms. The law is therefore also applicable to same sex couples. Spain is an exceptional case, being the only country in the EU with a gender specific law on integral protection measures against gender violence<sup>86</sup> specifically focusing on women who are the victim of a male aggressor. IPV is clearly addressed as gender based violence and the result of gender discrimination and inequality as the core features of VAW. However, the emergency measure, originally introduced by the national act on protection orders<sup>87</sup> refers to cases of domestic violence, including other family members under the protection.

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<sup>84</sup> During the Round Table, it was argued that this characteristic of the EBO was meant to make it applicable to cases of Stalking as well.

<sup>85</sup> REF – Regioplan rapport; data Huiselijkgeweld en de politietaak.

<sup>86</sup> Act 1/2004, of 28 December.

<sup>87</sup> Act 27/2003, of 31 July, regulating protection orders to victims of domestic violence.

## CRITERIA FOR ISSUING THE EBO: NATURE AND SEVERITY OF THE VIOLENCE

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With respect to the kinds of violent behaviour that can give rise to the imposition of the EBO, the regulations in all countries require a certain level of severity, usually described in terms of the threat against and/or endangerment of the life, health or freedom of the endangered person. In three countries/regions a qualification of the danger is prescribed: the Netherlands require the presence of a “serious and imminent” danger; Austria refers to the “imminent” risk and Spain refers to a “situation of objective risk”. The existence of a history of violence and/or threats of violence is in the majority of the countries/regions under review an important criterion when assessing the immediate danger of the situation the police encounter. However, a history of violence is not a necessary condition stipulated in the law to issue the order. The mere threat of violence is sufficient. In other words: the EBO can be applied as a primary preventive measure in cases where (severe) violence is imminent, even though it has never happened before in this relationship. This is particularly important when taking the preventive goal of the measure into consideration. Furthermore, some perpetrators display a repeated pattern of abusive behaviour against different victims in subsequent relationships. In other words: there can be a history but not one necessarily attached to this particular victim.

An interpretation of the threshold criteria which focuses primarily on physical violence ignores the pattern of psychological abuse and control that usually is an inherent part of IPV and which can have a seriously damaging impact on the health of the victim. Note that the CoE *Convention on combating and preventing violence against women and domestic violence*<sup>88</sup> explicitly includes psychological and economic violence as part of its definition of ‘domestic violence’. Even though national legislation often does not contain a specific *legal* definition of IPV or domestic violence, the policy documents guiding the implementation of legislation do, and often explicitly include psychological violence in the definition of domestic or intimate partner violence (NL, UK). Recent case law in the UK (*Yemshaw v Hounslow London Borough Council* 2011) underlined this once more in rejecting the notion that protection from domestic violence should only apply in cases of physical violence.

*“Violence” is a word very similar to the word “family”. It is not a term of art. It is capable of bearing several meanings and applying to many different types of behaviour. These can change and develop over time ... The essential question ... is whether an updated meaning is consistent with the statutory purpose - in that case providing a secure home for those who share their lives together. In this case the purpose is to ensure that the victim of domestic violence has a real choice between remaining in her home and seeking protection from the criminal or civil law, and leaving to begin a new life elsewhere (Rights of Women, 2011)*

It is clear that the legal criteria for severity of violence leave a wide margin of interpretation. Experiences discussed during the Round Table indicate that the overwhelming majority of barring orders are issued in cases with a known history of physical violence. Given that the assessment of the severity of the situation is in practice left to the police, they are left with a wide margin of discretionary powers in the day to day implementation of the law (see also section on implementation).

## TYPE OF PROHIBITION

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In all of the countries under review (AT, DE [Be, BW], CZ, ES, NL), the EBO consists of the factual eviction of the aggressor from the shared home, usually combined with taking the keys of the shared

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<sup>88</sup> See Art. 3b of the CoE (2011) Convention on combating and preventing violence against women and domestic violence : “ ‘[d]omestic violence’ shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”

home (in most countries), and a prohibition on returning to the home during the period of the barring order, with the general prohibition on contacting the person at risk (*or approaching within a certain distance*). In the UK, the EBO (DVPO) has one added element: besides eviction from the home and the prohibition on contacting or approaching the person at risk, it also specifies a prohibition on molesting the person who stays behind and/or damaging any property. In the case of Berlin, the police law explicitly prohibits an aggressor from attending the workplace or educational institution, school or certain other places where the injured or endangered person is likely to be at regular intervals. In Spain, the order can be issued in combination with an electronic ankle bracelet as a way of monitoring the aggressor and enforcing the order.

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## PROTECTION: IMMEDIACY, CONTINUITY AND LONG TERM PROTECTION

### IMMEDIACY

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All the *dedicated* emergency barring orders under study effectively regulate the immediate separation of the aggressor from the victim. The dedicated EBO can be issued on the spot by the police in five countries/regions (AT, Be, BW, CZ, NL and UK), based upon a relatively quick risk-assessment (see below).

Only Spain, not having a police-based but a judicial order, has a two-tiered process. This means that the immediacy (and continuity) in protection depend on two factors:

- whether the police indeed *arrest* the aggressor upon arrival (as a way to effectively separate aggressor and victim)
- whether the Courts can issue a barring order quickly, i.e. within the span of time that the aggressor is held in custody.

Only then is it possible to provide immediate protection without a gap between arrest and barring order. However, potentially gaps in protection remain in either one of these stages. The police may not arrest the perpetrator, for example, when the behaviour of the perpetrator is not considered severe enough to meet the threshold criteria for an arrest. Second, even though the Courts are obliged to conduct the hearing within 72 hours after the first report by the victim, the hearing in the Gender Violence Courts might only start after the arrest has expired. During the Round Table it was emphasised that in practice, in the city of Madrid the required immediate protection can be provided. The Madrid police observe national binding protocols<sup>89</sup> according to which it is a standard police policy to prioritise responding to cases of gender violence and effect an arrest if any risk for the victim is involved. There is a widely supported police culture of zero tolerance towards IPV. Under these circumstances, police tend to preventively arrest the aggressor (after using a brief risk assessment tool). The Spanish Gender Violence Court system is scheduled to be on call around the clock in order to guarantee that emergency orders can be issued on short notice. In the city of Madrid, two Gender Violence Courts are on call (24/7). However, it is not clear whether this is equally the case in rural areas. This could mean that gaps in the protection might arise under the Spanish system, notably for rural women.

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<sup>89</sup>Protocolo de Actuación de las Fuerzas y Cuerpos de Seguridad y de Coordinación con los Órganos Judiciales para la protección de la violencia doméstica y de género (Protocol for the performance of the Police Forces and Bodies for the Coordination with Judicial Bodies for the protection of domestic and gender violence), made of compulsory use by Act 1/2004, of 28 December, art. 31.3, see reference supra.

## CONTINUITY: LENGTH OF INITIAL BAN AND EXTENSION

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The initial period of time of the actual EBO is a point of striking differences between the countries under review. It reflects differences in the perception of the amount of time that a victim (and her children) is (are) entitled to have exclusive access to the house as a way to create safety and to decide on how to proceed. Related to the variation in length of time of the initial barring and the level of flexibility, the countries differ in the way the decision to extend the initial order is subject to review. Some countries require the Court to decide about the extension (CZ, UK) whereas others leave it to the police (DE, AT) or the administrative authority (NL). In Spain the initial decision is taken by the Court.

Austria and Berlin can impose the longest initial barring and no-contact period (14 days). Extensions of the EBO as issued by the police are also possible in Austria as an in-between measure to guarantee continued protection, provided that civil protection orders have been requested in Court. The extension is valid up until the Court has decided about the protection order. In the case of Austria this extended period can reach a maximum of 4 weeks. In the Czech Republic and the Netherlands the initial *fixed* barring period is always ten days. This initial period can be extended by the court in CZ with a period of one month up to one year.

In the NL the extension of 18 days is decided by the municipal authority, based on a legally required written advice of the psycho-social case manager whether the safety risk still exists and whether it merits an extension of the order. The wishes of the victim, albeit informally, are usually taken into account. The municipal authority is required to hear the evicted person if the advice is to prolong the barring. In the NL the total maximum barring period is then four weeks.

While Austria, NL and CZ have a fixed initial barring period, in Berlin this is taken as a “maximum period”. In practice, Berlin police officers decide whether or not to issue an order and, if so, how long the order should last, based on the level of danger and/or risk at that moment. From the discussion during the Round Table it emerged that if victims indicate early on that they intend to apply for a civil protection order (as a follow-up measure after expiration of the initial EBO), this feeds into the perception of severity and can lead to a decision to use the maximum period. The question of whether or not the victim applies for a civil protection order (as follow-up to the EBO) is included in the risk assessment instrument used by the Berlin police. This practice, not required by law, triggered a profound discussion about the meaning and interpretation of granting a “safety period” for the victims. Its goal is to provide the victim with a window of time during which she can consider all her (legal) options, and receive the proper support (psychological, legal, etc) to decide which steps to take next, and whether or not to apply for a civil protection order to prolong the period of separation that way. The decision whether the victim will apply for a prolonged period of separation should not be relevant at all at the time of the initial decision on the EBO since it defeats its core purpose: to offer a period of safety and a time of reflection on whether and how to continue the relationship. More importantly, requiring a long term decision at the very beginning actually deprives women of an EBO who are in crisis but cannot make the decision about a final separation at that point in time. After all, many women – at least initially – do not want to separate but want the violence to stop.

In the case of Baden Württemberg, the patrol police will impose the barring for a *maximum* of four days. In practice, the patrol police issue the order for the period necessary for the communal police to intervene in the case, which can be the next morning, or the next working day. The initial period can then, (and usually will) be extended almost by default by the communal police to 14 days, with a maximum of 28 days (4 weeks) if the victim has applied for a civil protection order. After the maximum has been reached the victim can apply for standard civil protection orders.

The shortest initial period of protection by means of the police EBO is found in the UK law: two days (48 hours; Domestic Violence Protection Notice, DVPN). But during this period, the police are compelled to apply to the Courts for the emergency intervention (Domestic Violence Protection Order, DVPO) which can vary between 14 and 28 days at the judge's discretion. In practice, thus, the initial period granted by the police, although apparently the shortest among the countries under review, can be substantially extended by up to a month (comparable to NL). Thereafter the victim who needs to extend the period of eviction in order to be safe can request a civil occupation order.

The Spanish regulation is considerably different. There is no minimum or maximum period specified in the law, but it is up to the judge's discretion to decide the period of the barring order on a case by case basis. The barring order is issued by the judge as an *emergency* measure and functions as an interim and precautionary measure, valid either for a certain period of time, even years, or it can be issued for an undetermined period, in which case it will last until there is a final decision on the criminal proceedings. The initial interim order provides the woman immediately with the formal status of victim of gender violence, allowing her to access all the integrated support services immediately. It was raised by experts during the Round Table meeting that for the victim this distinction is not always clear.<sup>90</sup>

#### MIDDLE AND LONG TERM SAFETY: FOLLOW UP AFTER THE BARRING ORDER

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In the case of AT, CZ, and DE, the victim of domestic violence can decide to request a long term civil protection order before the Court, as a follow-up to the EBO without having a gap between the two orders. The EBO, even without having a formal probative value, is in practice often regarded by judges as a convincing element when deciding about the severity of the risks at stake when the victim applies for a follow up civil protection order. In the proposed UK regulation the length of the court ordered DVPO is decided on a case-by-case basis. A similar situation exists in Spain where the length of the period of the final barring order is decided by the judge. In Spain there is in principle no maximum length to the final barring order.<sup>91</sup>

That leaves only the NL with a potential gap in long term protection. There is no legal provision that guarantees that after the extended EBO runs out (total of 28 days) an expedited civil protection order can be provided to victims in cases where the risk of violence persists. Civil courts' case loads might cause delays in the hearing and lead to a gap in protection.

#### BREACH OF THE ORDER

In all of the countries/regions under review breach of the EBO is punishable, making it possible to either fine or arrest the aggressor (not as a criminal offence). In the case of Austria, Berlin, Spain and the UK, the applicable sanctions have been specifically included in the law. In the rest of the countries, sanctions follow according to other generally applicable principles (often requiring a complaint of the victim). Conversely, in The Netherlands and Spain, breaching the order automatically constitutes a criminal offence. In Czech Republic only *severe* violations constitute a criminal offence, punishable with a prison sentence. In the case of Spain, electronic monitoring (via ankle bracelets) are widely used as a way of keeping track of sentenced perpetrators, and they are regularly used in cases of a breach of the protective measures. They can also be used in severe cases as an enhanced protection measure.

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<sup>90</sup> This is on the one hand caused by the two-tiered process leading up to the order (pre-trial leading to the interim order and the trial deciding on the final order; see thumbnail on Spain.

<sup>91</sup> Act 1/2004, of 28 December, art. 33. The final decision in the criminal proceeding might be a prison sentence, with a barring sanction or with acquittal. In addition, the eviction from the home and the prohibition of contact, and also compulsory perpetrator programmes, can be ordered as condition to suspend the prison sentence

A recurring phenomenon is the breach of the order by the woman who initiates contact with the abuser, either incidentally or by resuming cohabitation within the period that the EBO is active. This does not preclude that the banished person is violating the EBO and remains punishable.

## POSITION OF THE VICTIM

Generally the authorities decide on whether or not to issue the EBO. In most countries under study the victim cannot *formally* request the barring order (except ES). In all countries the victim will be heard in the process leading up to the order, but in the end it is the police, judge or municipal authority who decides. The victim's approval is not required and the victim cannot appeal (except in ES). This implies that in those cases the order can theoretically be imposed against the wishes of the victim. In those situations, the victim is literally the object of protection of the State. After various protests from NGOs and researchers, the NL has allowed for limited provisions for legal advice to the victim who wishes to appeal the EBO. However, overall the approach across most countries reflects that the victim is not positioned as a legal subject or rights holder in relation to the EBO who is *legally entitled* to either request or protest against the imposition of the order. The victim can informally voice her preference for or protest against the order. This approach reflects the underlying philosophy that it is a State's responsibility to take pro-active measures when many victims of (repeated) domestic violence are extremely afraid of their abuser. Requiring a request or approval from the victim for an EBO might put her in a position where she can be held responsible for the EBO by the perpetrator, which might increase the risk of retaliatory abuse against her.

The positioning of the victim as the object and not the legal subject or rights holder of the EBO can be seen as a consequence of positioning IPV as not just a violation of the rights of the woman but as a breach of the peace as a *public offence* (and possibly a criminal offence). It then becomes the State's responsibility and duty to protect its citizens. It reflects, *inter alia* that the first element of the emergency intervention measures, the barring, is developed as a State intervention focusing on the perpetrator, aiming to stop him from breaking the law and from violating women's (and children's) rights.

The restricted agency of the victim usually only lasts for the length of the first initial order (in most countries 10-14 days). In countries like AT, CZ and DE, the expectation is that the initial barring period provides a time of transition during which the victim can recover, and receive support and advice, in order to make her choice whether to resume living together or to continue on a trajectory towards prolonged separation. In the latter case this would usually require requesting a (civil) judicial protection order (and possibly divorce, allocation of the home, custody, etc). All of these civil legal remedies are available only at the request of the victim (or her legal representative). In the UK, the NL and Spain the authorities have decisive powers on an extended barring order. In the UK only the perpetrator needs to be heard; in the NL both victim and perpetrator need to be heard. In Spain the (criminal) judge issuing the EBO can also determine temporary civil legal measures, although their extension (if needed) will depend on the victim's formal petition before the civil judge.<sup>92</sup>

As previously indicated, in Spain, the judicial EBO usually lasts longer than the average EBO in the other countries. Hence, breaches of the orders by the perpetrator, but sometimes also by the victim wishing to resume cohabitation, are not rare. Notably if a period to provide "immediate safety" to the victim is imposed against her will, and if the period is prolonged (sometimes even indefinitely) by the judge, it can fuel resistance of victims (and perpetrators). In a (pending) case before the

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<sup>92</sup> These are valid for 30 days, extended automatically for 30 more if the victim formally applies (civil court).

European Court of Justice<sup>93</sup> the female partners of two barred perpetrators formally appealed against the imposition of prolonged protection orders against their will. The Advocate General in the pending case before the ECJ recently argued in the opinion presented to the Court, that the opinion of the victim must be taken into consideration when considering changing the duration of a barring order issued by the Court. The ECJ is expected to give its judgment later in 2011 or 2012. It seems important to acknowledge that the position of the victim in the relationship, notably her negotiating powers, might shift profoundly and that even a short emergency order can be empowering for victims, since it signals that, even if he is not criminally prosecuted, violence no longer implies impunity for the perpetrator.

The reasons for the victims resuming contact with the perpetrator while the protection order is in place are complex and not always straightforward. At this point in time there is hardly any systematic research data on women's responses to the EBO if they disagree with the measure.<sup>94</sup> What in practice can be observed is a mix of victims' motives to oppose the barring: on the one hand many ties still usually bind victims to the perpetrator. They might feel sorry for the aggressor when he is facing limited options for alternative accommodation. On the other hand, some perpetrators put pressure on their partner to allow them to return, tapping into the mixed feelings of some victims towards the barring. Some victims face new challenges due to the lack of social and economic resources, like limited availability of day care for the children, or housing limitations. These complexities underline the urgent need to integrate support measures for victims (and if possible for perpetrators too) in the first stage right after the implementation of the EBO. In cases where the victim wants to resume the relationship, access to legal protection measures can be crucial to strengthen her position (like non-molestation orders in the UK).

Women initiating resumed cohabitation or contacting the perpetrator after an EBO are formally breaching the order. This seemed to be not unusual in all countries under review. It was signalled during the Round Table that police officers issuing EBOs at times feel uncomfortable with subsequent requests of the victim to revoke the order, which can have a discouraging effect on the issue of barring orders in the future. Ambivalence about the separation is a common response among many victims of IPV (most victims initially just want the violence to stop, not necessarily the relationship). This is crucial to address in police training as part of a typical response pattern after prolonged victimisation, and not as an indication of victims' willingness to accept violence or refusal to accept police protection. The question whether decision making powers should be granted to the victim, when there seems to be a continuing risk of violence that could justify the barring of a perpetrator, touches on a very complex issue. IPV is a public offense and a violation of the fundamental human rights of women, hence it is a State obligation to act with due diligence and prevent, protect and prosecute. Some have pointed at the risk of an inverse relationship developing

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<sup>93</sup> Spain was accused of violating Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1). Mr. G. and Mr. S. S. were convicted of mistreating their respective partners. They were the subject of injunctions restraining them from approaching the victim or communicating with her for a period of 17 and 16 months respectively. Some days after their conviction, Mr. G. and Mr. S. S. resumed cohabitation with their partners. By reason of the failure to comply with the protection orders they were both arrested and convicted. Both appealed against their conviction before the AT diencia Provincial de Tarragona (Spain) (Provincial Court, Tarragona, Spain). In those appeals, the female partners of the two accused consider themselves to be indirect victims of Spanish legislation. The two women argue that they have voluntarily pursued their relationship with their partner, without being compelled to do so, in the absence of any economic necessity, and that they initiated the resumption of cohabitation. Advocate General Kokott has been critical in the opinion on the case as provided to the ECJ. See: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-05/cp110048en.pdf>

<sup>94</sup> Some evaluative research has been conducted (In Austria, see: Haller, Liegl & Auer (2002), also, Gearing & Haller (Eds.) (2005); for Germany, see: Helfferich & Lehman (2004); for the Netherlands: Schreijenberg, de Vaan, Vanoni & Homburg (2010); see also: Van der Aa, & Römken (2011))

between how seriously States take prevention of domestic violence and the seriousness with which the victim participation is taken in those measures (Kohn, 2008). If it is the State's duty to protect victims against IPV and sanction its perpetrators, it is also important to address the question when, and under which conditions, the State is justified to issue measures to protect women against their will (Cf. Mills, 1999; Römken, 2001; Stark, 2004).

#### ACCESS TO EBO FOR IMMIGRANTS AND ASYLUM-SEEKERS

In principle non EU-nationals without an independent residence permit and who are victims of IPV (asylum seekers, immigrant victims) qualify for receiving protection under the EBO. Having been granted protection under an EBO could be relevant in the process towards applying for an independent residence permit. Several countries allow victims of IPV who have not lived long enough in the country of destination to have an independent residence permit, to apply for one, in order to allow them to leave the violent relationship without losing their right to reside in the country (AT, DE, ES, NL and UK).

#### APPEALS STRUCTURE / LEGAL AID

Most countries (AT, BW, CZ, NL, ES) do have legal provisions allowing the barred person as a rights holder to appeal and be heard by a court since he is being deprived of certain rights (property, family life, etc). In the UK, only the judicial domestic violence protection order (DVPO) provides for such possibility. Legal aid is also made available for aggressors in all the countries under review (AT, Be, BW, CZ, ES, NL, UK).

The regulation of the provisions of legal aid for victims varies between countries. Spain is actually the only country that does allow for the victim (as well as the public prosecutor) to formally appeal the order and apply for legal aid. The NL provides limited legal *advice* to the victim via the national Victim Support organisation. In Germany, AT and CZ free legal aid for victims is provided for in Court, but only kicks in during the stage after the barring period when victims wish to apply for a follow-up civil protection order (or if they use the possibility in Germany to join criminal proceedings as auxiliary prosecutor). In the case of BW, the victim can oppose the order issued by the communal police by application to the Administrative Court.

It is only in the UK that legal aid is not available to the victim (only to the aggressor).

#### FINANCIAL COSTS OF THE BARRING ORDER

In the majority of cases (AT, NL, ES, UK), no costs for the victims (or perpetrators) are attached to the EBO or its extension (appealing the order is a different question though; that does incur legal fees for which legal aid usually is available in most countries under study). However, it is not clear in the case of Berlin or Baden Württemberg whether the EBO as such costs anything. When applying for a (follow-up) civil protection order in CZ, NL and UK, a certain fee is to be paid by the victim (in NL women can apply for legal aid, in CZ women can apply for a waiver which will be decided upon on a case-by-case basis). Options for financial support seem absent in the UK which makes the picture in the UK look more grim since victims have very limited access to free legal aid (depending on their income).

Putting the burden of financial costs on the victim, even if it is only during the second stage when they need to rely on civil protection measures, goes against the spirit of the measure. It notably puts low income women in a position that hampers equal access to justice.

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## KEY ISSUES ARISING IN THE IMPLEMENTATION OF THE ORDER

Given the differences in formal responsibilities and authorities involved in issuing the EBOs, as well as the discretion that the police have in deciding whether the situation meets the legal criteria for issuing an EBO, there is ample variation in the way these orders are implemented across the countries/regions. Having said that, in all countries the police play a pivotal role in implementation since they are the first ones to enter the violent scene. Even though the formal responsibility may lie elsewhere, in the day to day implementation the police act *de facto* as the ‘gate-keeper’. They play the decisive role in whether or not to guide individuals towards the emergency protective measure, either through issuing the initial order (AT, CZ, DE, NL, UK) or in arresting the perpetrator and/or referring the victim for an emergency order to the Gender Violence Court (ES). This means that the level of professional expertise and knowledge of the police about the law, its goals and more specifically professional knowledge on domestic violence, is crucial for successful implementation. As noted in the introduction, it is at this point a gap between law on the books and law in practice is often found. Notably a form of violence like IPV is regularly met with attitudes condoning the violence, considering it a private matter or minimising its severity. Our earlier findings identified three main factors: lack of adequate specific expertise due to limited training, notably of the actors in the criminal justice system, lack of specific guidelines to support and structure the implementation, and lack of monitoring. Below we compare how this plays out in the six countries under study.

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## POLICE EXPERTISE AND TRAINING

According to the experts present during the Round Table, the average level of police expertise and support for the EBO measure seems to have increased, certainly in countries with a longer history of the EBO (like AT, DE and more recently ES). However, experts from all countries still noted that among the police, perceptions of domestic and intimate partner violence as a private problem are still widespread which can hinder a proper immediate response. The impact of such perceptions can defeat the purpose of laws. Notably the preconception that any police intervention in IPV, including the EBO, is only effective if the woman is willing to permanently *leave the relationship*, seems very popular (as reflected in the observed tendency among some police to consider an application for a long term civil protection order as a sign of severity of the situation and therefore enhancing the chance that an EBO is issued). This puts the pressure on the victim and in fact prevents the issuing of the EBO in cases where police have not been called for help before. It underlines the need for proper basic training on the subject and the goal of the law.

As could be seen in the thumbnail sketches, the countries under study vary substantially with respect to the socio-political and historical context of legislative changes in the field of IPV. In countries with a longer history of active engagement of civil society in lobbying governments for social and political changes, notably countries with women’s NGOs active in the field of domestic violence (i.e. AT, DE, UK and to some extent NL), there is a stronger social and cultural support base to implement the EBO than, for example, in a relatively young EU Member State like the Czech Republic where IPV became a subject of State concern fairly recently and largely under the influence of EU accession dynamics. That said, experts from all countries report the persistence of attitudes towards IPV as a private problem that only in extremely serious cases (the qualification of which varies substantially) merits police intervention.

Basic police training on domestic violence is reported as mandatory in all countries under study except for the UK. On the other hand the UK has increasingly developed special units within their police force to address domestic violence.<sup>95</sup> During the Round Table it was concluded that structural

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<sup>95</sup>FS (European Commission, 2010), p66.

police training programmes on IPV are rare. To a large extent average police training on IPV across countries is still rather basic and takes up a marginal part of the basic curriculum of the police. Sometimes it is an add-on training ‘on the ground’ (as in CZ), provided by third parties, which are often the organisations providing social support. In these cases, the initiative to train police often varies from one police station to the next, depending on the chief of police in charge.

In some countries, however, the implementation of the EBO sparked concerted “in-house” training of the police, specifically focused on the EBO (AT, DE, and NL). Where guidelines are developed at the level of the local police station, not every new police officer will receive the appropriate course after her/his arrival.

The experts did not agree on whether having specialised police officers or units to handle IPV was beneficial since their tasks varied across the countries under review. Only two countries have specialised *units*: Spain, which introduced (mandatory) specialised units on gender violence in their police bodies, and the UK. Some of the other countries have specialised police officers (AT, Be, BW) or a police section focusing more on the “prevention” aspects of violence in general (AT) or specifically domestic violence (Be). In the NL this varies; on a local or regional level there usually is a special contact police officer on domestic violence, but in the day to day police work no police officers are specially trained to handle IPV. In the case of Austria, the police specialists deal mostly with follow-up of the cases, although during the Round Table it seemed that this is not regularly the case in more rural areas outside Vienna. In the case of Berlin, each district station has a special “directorate” which is mostly in charge of coordinating policies, but not involved with concrete IPV cases in a direct manner.

The importance of improved training for police officers who are in direct and daily contact with IPV was a common concern during the Round Table. In light of the high case load of domestic violence for the police in most of the countries under study, the need for adequate general training for *all* police officers persists even with specialised units. Such general training is particularly needed where the special units only engage with certain cases, such as ‘high risk’ or ‘follow up’ cases after interventions by regular patrol police. In those circumstances, the ‘average’ IPV case will still have to be dealt with by regular police officers.

#### PROTOCOLS OR GUIDELINES SUPPORTING THE IMPLEMENTATION: “RISK ASSESSMENT”

The use of a protocol or instrument providing police with guidelines on how to respond in cases of domestic violence, and when issuing an EBO in particular, is common in all countries/regions (AT, Be, BW, CZ, NL, ES, UK). Its formal status and level of detail varies though. In the case of Baden Württemberg, this set of general guidelines is not a serious risk assessment but intended to support structuring the practical steps which need to be taken as soon as the decision to bar the aggressor has been made (i.e. taking the keys from the aggressor, guiding him out of the house or taking him to the house to pick up essential belongings, and in most countries the evicted person is requested to inform the police about his temporary contact address). In the NL the law has specified the criteria that should be included in the risk assessment<sup>96</sup> and the police have an internal webpage providing guidance and information on the EBO and on the protocol. The Dutch government also launched a public website on the barring order which provides a host of information on the elements of the EBO, the support measures, and information about relevant legal documents and research. AT, NL and DE also distribute brochures on the EBO to the wider public, often in various languages in order to reach minority groups.

<sup>96</sup>Besluit Tijdelijk Huisverbod. *Staatsblad*.2008, 422 (stipulating the issues to address before issuing a barring order).

Central to the police protocol in most countries is the assessment of the severity of the risk that the perpetrator's behaviour causes for the victim. All laws under study contain some definition of the kind of violence and/or its impact as criteria which the police need to take into account (see Table 1, Appendix 2). However, in practice the way the police reach their decision whether the actual situation meets these criteria and whether the EBO needs to be issued, varies quite a bit. In the case of Austria, Berlin, Czech Republic and the Netherlands, the use of some kind of standardised risk assessment instrument is mandatory. However, the level of standardisation and whether it is based on validated risk assessment instruments differs.

The NL and AT use a more or less comparable (non-validated) form to assess the risk and have provided limited basic training to all police on how to use them. The NL uses a fairly elaborate risk assessment questionnaire, based on a compilation of elements from existing instruments. In Czech Republic, the instrument developed, based on the SARA,<sup>97</sup> is mandatory, but only some regions implement it as standard.

Among the German *Länder* the assessment protocol is less clear and seems to vary profoundly. For example, in the case of Berlin, an instrument is developed at district level by police stations, but was not available to analyse for this project. In Baden-Württemberg formalised assessment is not at all part of the police procedure and experts indicate that this actually might explain the vast local differences in the numbers of barring orders being issued.

In Spain, police officers are obliged to use an assessment tool when they are called to a situation of domestic violence in order to decide how to continue. Note however that the police are not in charge of issuing the EBO (only after referral of the victim to the Gender Violence Court can the judge issue the order, without any formal assessment instrument). Nevertheless, following national legal requirements, psycho-social teams are incorporated into the judicial decision making process within chambers, having received the task of providing reports on specific cases at the request of the judge. These reports, although non-binding on the judge, provide additional information prior to deciding which protection orders are suitable to the case.

It is beyond the scope of this case study to engage in a detailed discussion of the nature and quality of the risk assessment instruments. It is important to note though that while the domain of risk assessment has rapidly developed over the past decade, many questions are still unresolved, in particular around the validity of the assessment, and its predictive value is rarely the subject of debate (Campbell, 2005; Römkens & van Poppel, 2007; Baldry & Winkel, 2007). Its wide use within the domain of police work implies its own challenges given the limited expertise of average police officers in these domains. The question how risk assessment plays out in the implementation of the EBO is directly affected by the level of specific training and expertise of the police on IPV in the countries under study. Most instruments so far tend to focus on physical violence, leaving aside forms of psychological and sexual abuse, and more generally patterns of coercive control (the Dutch questionnaire does include some of these elements).

Apart from the limitations with respect to validity and predictive value of the instruments themselves, the main problem is how they are used in practice. Several concerns were raised during the Round Table. First, the need for assessment tools to decide on issuing an initial emergency barring order was questioned. Some experts argue that risk assessment tools are a burden since most police make their assessment on a more intuitive level anyway, and the assessment form is a way to validate an initial decision. Others, notably coming from situations where the police have no standardised protocol and their local implementation of the EBO varies widely, emphasised that protocols or assessment forms might nonetheless help to professionalise the decision making

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<sup>97</sup>Spousal Assault Risk Assessment. See: Campbell (2005).

process.<sup>98</sup> If necessary at all, experts agreed that the forms need to be concise and police-friendly. They could function as the basis for a first “quick and dirty” assessment with the clear aim of providing an *emergency* response in a situation of potential danger. A follow-up, in depth assessment of the risks of future violence in order to adopt any further protective and support measures should be provided soon after by specialised professionals.

Second, the level of required expertise to make an adequately informed interpretation of the situation, even when using a standardised set of questions, was a recurring concern. As indicated, most experts express concerns about the persisting tendency among police to look at IPV as a maybe serious yet private matter. Notably the notion that women should leave the relationship and file for divorce reflects the profound misconception that ending the relationship would end the violence. It misses the point that a victim might initially just want the violence to stop, and not necessarily to divorce the partner. Furthermore, separation is a high risk factor in many cases with a history of abuse. It might not bring the end to violence but instead be the trigger for increasingly severe violence.

Several experts indicated that front line police officers, dealing daily with incidents of domestic violence and the EBOs, often face difficulties when collecting the information to complete the forms. In daily use of the forms, experts reported conflicting responses from police officers. On the one hand police feel reluctant to use forms asking personal questions. On the other hand, some police officers like to hold on to tools which provide a sense of “neutrality” and “objectivity”, allowing them to distance themselves from the specific situation. Both responses actually might illustrate an underlying discomfort when dealing with what many still perceive as a personal and ‘private’ matter.

A third consequence of the use of these tools is that they actually can lead to setting the bar high for the level of risk that merits an EBO. This might lead to exclusion of women from getting a police barring order (Römkens & van Poppel, 2007). Dutch data indicate that in 85 to 90% of all EBOs issued so far, the police only do so in situations where also a criminal arrest was made. This indicates that the police use the EBO mostly in cases where the violence meets a severity level that allows an arrest according to criminal legal standards. The order is rarely issued for serious cases that do not have a police track record yet and where the order might work as a tool for *early* intervention. This turned out to be a concern across countries during the Round Table, especially because the introduction of risk assessment tools seems to gravitate towards a focus on very serious cases and the preventive aim of the emergency orders is marginalised.

The overall conclusion is that in its implementation the assessment protocols often seem to lead to high thresholds and therefore limit the use of the EBO notably in cases to prevent more serious violence from occurring. Some experts advocated that low risk thresholds should always be preferred.

Ultimately the question is what the added value of assessment tools is if their use in practice complicates achieving the preventive goal of the measure and might lead to the exclusion of a group of victims.

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## KEY ISSUES IN THE PROVISION OF SUPPORT AND INTERVENTION MEASURES

When looking at key issues that arise in the provision of support measures, we take the question whether and how they aim to empower victims as a starting point. When using the term

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<sup>98</sup> On the use of a validated risk assessment instrument to professionalize police selection of arrest cases; see Hilton et al (2007).

empowerment we refer to support measures which enhance women's access to and control of personal or social-economic and educational resources which enable them to better protect themselves (and their children), and to regain independence and be free from control and abuse from a partner (Kabeer, 2010).

The comparative overview of the main characteristics of the intervention programmes is presented in Table 2 (see Appendix). In all of the countries under review a range of different (multi-disciplinary) support facilities are offered to the victims after issuing the EBO. Although they are usually offered in the context of local *policy based measures*, in various countries they flow from a legal obligation to provide support to victims in the context of an EBO (in AT, integrated in the law on the *Wegweiseregelung*, NL<sup>99</sup>, CZ<sup>100</sup> and ES<sup>101</sup>). In practice, the agencies involved and the way the support is coordinated, the kind of support, the beneficiaries of the support and the approach towards the nature of the problem of IPV as gender based or gender neutral violence are some of the key issues which vary quite a bit among the countries.

### AGENCIES INVOLVED AND COORDINATION

The regular police officer is virtually always the key professional to open the door for victims to specific support and help. In most cases police are obliged to contact the (coordinating) support agency in order that they (pro-actively) contact the victim, except in Spain. It reflects how the EBO positions the police as a vital part of the measure as a whole. The police are in fact the lynchpin between the two parts of the measure: the actual barring of the perpetrator and the support measures.

In most countries the support measures primarily consist of a series of support and advice services, and not so much a programme. The underlying philosophy flows from community based multi-agency intervention programmes as developed since the 1990s, recognising that IPV often entails multiple problem issues which can bring about a variety of needs for victims and their children (and perpetrator), and which require organisations to collaborate in order to effectively address the needs in a coherent fashion. The actual choice as to which support and/or intervention measure is offered in most countries is made on a case-by-case basis.

The agencies involved with EBO related interventions vary widely between the countries. This clearly correlates with the extent to which specialised services were already in place. Support facilities such as national telephone lines are most often used, either DV help lines (as in NL, UK), or general VAW help lines (as in AT, CZ, DE, and ES). Furthermore, all countries under study have domestic violence shelters and counselling or crisis centres in place, although it was emphasised during the Round Table that capacity is often limited, notably in a country like CZ where women's NGOs opened shelter facilities much later than in countries like AT, DE, the NL or the UK (after 1990). Other agencies which are most often mentioned are youth welfare/youth care, addiction and/or abuse treatment facilities, and mental health care.

In the implementation of the support measures it is important to distinguish the actual delivery of services and the coordination of those services in cases where victims (and/or their children) have complex needs and require different support (e.g. counselling for mental health issues, pedagogical support, treatment of physical injuries), or in cases where victim and perpetrator all receive (parallel) support and/or treatment. As could be seen in an earlier Daphne study on multi agency

<sup>99</sup> Wet Tijdelijk Huisverbod. *Staatsblad*.2008, 421, Art. 2 para 8.

<sup>100</sup> Act No.108/2006 Coll., on social services, Section 60.

<sup>101</sup> Act 1/2004, of 28 December, on measures for the integrated protection against gender violence.

work in cases of IPV (WAVE, 2006), the day-to-day implementation of these services is profoundly influenced by the level of coordination and communication among the different agencies involved in such interventions. All countries under review seem to have some form of coordination dealing with cases of IPV, which then facilitates the actual referral and/or engagement of other agencies on a case by case basis. In most cases (AT<sup>102</sup>, Be<sup>103</sup>, CZ, NL<sup>104</sup>, ES<sup>105</sup>), coordination is provided by one organisation with specialist knowledge in the field of IPV/DV in particular. Austria and Czech Republic have opted for having an assigned “Intervention Centre” (*Interventionsstelle*) working closely with the police in cases of domestic violence and located in each district. The Dutch law assigns formal responsibility for implementation to the municipal authorities which set up local DV Advice and Support Centres. In Germany, overall two scenarios can be found which are reflected within the Länder included in this study. In BW some districts have opted for a unique organisation, while others rely on multiple organisations already operating in the field of psycho-social work for a while. In Berlin the local authority contracted one specialised organisation in the field of DV.

Across countries, experts reported that *local variation* in the coordination as well as in the implementation and provision of services is inevitable and actually varies substantially. The most important factor influencing this difference seems to be the level to which the responsible professional organisations have a history of *specialised* expertise in IPV/DV. Sometimes the contracted organisations are either (relatively) new to the field or are coming from a more general social work background (regularly the case in CZ, NL, DE). In those cases a lack of specialist knowledge on IPV transpires, notably with respect to the underlying gender dynamics, which can negatively affect the day-to-day work (either in delivery of services or in its coordination). The UK does not seem to have included during the piloting stage of the barring order any new organisational structure to coordinate support services in the wake of the DV protection notice and protection order, relying on pre-existing structural intervention programmes for specific groups of victims (MARACs and IDVAs, see UK summary above).

Communication among the agencies providing all these different types of support seems mostly to take place on a case-by-case basis (AT, BW, CZ, ES). In various countries working groups and so called Round Tables for domestic violence have been established, allowing for professionals and police to meet and share their experiences on the implementation of the intervention programmes (AT, DE/[BW, Be], NL, CZ, ES). Again, variation is in this respect profound, and depends on the countries/regions general level of psycho-social services, and whether professionals actually have platforms where they can contact each other and whether they are allowed to share information on clients. In some of the countries/regions, structural channels of communication and coordination have been established.

Although in all of the countries the body coordinating or organising the provision of support is funded by the national or local government, in most cases this task is out-sourced to non-governmental organisations (AT, Be, BW, CZ). They are either formally assigned or contracted with specific requests. The exceptions are Spain and the NL, where coordination is in the hands of a public entity.

With the exception of Austria, where the Intervention Centre is subject to annual monitoring, it is not clear whether other countries have actual monitoring mechanisms in place in relation to the coordination task, and how this could affect the programme as a whole or the coordinating organisation. This can also be said about the countries relying on governmental organisations. In the

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<sup>102</sup> Interventionsstelle gegen Gewalt in der Familie Domestic.

<sup>103</sup> Berlin Initiative to combat violence against women - BIG.

<sup>104</sup> Steunpunthuis elijk geweld.

<sup>105</sup> Punto de Coordinación de ordenes de protección.

case of the Netherlands, for example, the DV Advice and Support Centres are accountable to the funding municipality, which in practice operates as a kind of monitoring with respect to financial aspects and numbers of cases processed, and not so much on the level of substantive results. The majority of the countries do have monitoring mechanisms for the provision of services (AT, ES, NL, Be, BW).

## SUPPORT PROVISIONS

Psychological support and (mental) health services are usually emphasised as an important service in the primary support process to victims after issuing the EBO (AT, Be, BW, ES, NL, CZ). Legal advice is the focus of attention as well (AT, Be, ES, UK), particularly in cases where the EBO operates as a first emergency order which might lead to longer term protection orders if needed, in which case the victim needs to apply herself (usually for a judicial civil protection order). Where this is the case, legal advice is provided by the main support service organisation in place. This does not necessarily mean legal aid in the form of legal representation is offered.

In addition, the provision of financial or other economic support to victims through State welfare is the rule, although with differences between countries. Even in countries where victims can access dedicated financial and economic support measures (Be, NL, ES), it is often only in the margins of the standard support response and sometimes the victim actually needs to request it. The need for a more pro-active approach by professionals to victims in getting financial and economic support in the aftermath of the EBO has been pointed out by several experts.

Support in finding alternative long-term housing can be provided in several countries/regions (Be, BW, ES). In several countries (AT, DE, NL and ES) it is possible to get financial support for living expenses, in the form of subsidy, or receive priority access to public housing, or advice and support to find a job or continue with education (sometimes with financial assistance for education). However, in most cases this is a matter of policy based measures which are not secure. In the case of Spain though, the government has developed a legally based pro-active economic support policy for victims of gender violence in possession of a valid EBO. Apart from having the possibility of getting a financial contribution, employers can benefit from (temporary) tax deductions if they hire women in this situation.

Access to support services can be extended beyond the EBO in all countries under review. In Czech Republic there is a maximum time of one year. In the case of Spain, the duration varies per type of service. Nevertheless, once the services are granted, many can be extended beyond the validity of the order, although on an individual needs basis. This seems to be the case, not only with respect to psychological and mental health support, but also the provision of shelter and some long term accommodation. The exception would be economic and financial support, which will always have a limited duration and cannot be extended. In some countries (Be, BW, CZ, ES, UK) the decision to extend the services is made on a case-by-case basis by the professional after consultation with the victim, and needs no further confirmation or review by any other agency or entity. However, in the Netherlands, the agencies might consult the coordination entity (DV Support Centre).

## BENEFICIARIES OF SUPPORT OR INTERVENTION MEASURES

Even though according to the letter of the law in the majority of the countries the EBO can be applied to a wide range of violent household members (if cohabiting, except for AT), in practice the EBO is used mostly in cases of *partner violence*. It is no surprise then that the support measures focus mostly on female victims.<sup>106</sup>

<sup>106</sup> In NL the EBO is issued in 3-4% of all cases so far for parental abuse (usually the son abusive toward the parent) and less than 1% concerns women (abusive toward partner or daughter to parent).

The presence of children in the home can lead to the involvement of different agencies in most countries (Be, BW, CZ, NL). Witnessing IPV, and notably being present during an incident of IPV, renders the children victims of the violence. In those cases the public agency in charge of child welfare or child protection (or sometimes specific child abuse centres) has to be informed. The Dutch order explicitly allows using the order also in cases of child abuse, protecting the children from the parents. In practice though, this is so far not implemented to that end.

Conversely, in the case of Spain, despite a valid barring order, the children are *not* automatically included in the prohibition of contact. The suspension of the father's parental rights (*inter alia* visiting rights, etc) need to be addressed separately by the judge since contact between the violent parent and the child(ren) is a parental right. Given that the Spanish judicial barring order can last much longer than the 14 days commonly granted by the police EBO, in Spain "coordination points for visiting rights" are a key service which can be provided in the context of the barring order. They may serve as a mere "pick-up/bring back" place, or meeting point, or they may provide supervision during the meetings, depending on the conditions imposed by the judge in the barring order. However, the capacity of these "coordination points" is limited and in practice long waiting lists are a serious obstacle in the implementation of this service.

Perpetrator interventions programmes are not common, and are usually provided either on a voluntary basis, or as a mandatory condition to suspend prosecution. This evoked heated debates during the Round Table. Some experts foreground research data on the limited effectiveness of treatment programmes and the need to prioritise support to victims in light of limited resources. Others argued that focusing solely on the victim, and expecting her to overcome the violence, might unintentionally reinforce a conception of IPV as if it were beyond the perpetrator to change, because it seems to be regarded as not feasible anyway. Neglecting perpetrator treatment would then not address the dangers that the male aggressor can pose to future partners. From that perspective, treatment programmes should be regarded as a tool to hold men responsible for their behaviour and an ingredient for long term prevention. In Austria the police – as a matter of policy – try to structurally implement a more active follow-up in their monitoring of the perpetrator by contacting him (by telephone) a few days after the EBO has been issued. The aim is to send the signal that the police pay attention and to check how he is responding to the order that he should refrain from any contact and violent behaviour. It seems though that this is not standard yet in rural areas.

The fact that a (very few) perpetrator programmes are however offered in the margins of support and intervention programmes following the EBO (sometimes as part of rehabilitation programmes), or as more or less 'free standing' interventions, often leads to lack of communication and coordination. It was reported during the Round Table that regularly these agencies do not inform the coordinating agency of the ending of the programme or about its result. The lack of communication can have a negative impact on the victim, who is often facing ongoing manipulative and controlling behaviour of the perpetrator, notably when the perpetrator is the father of her children.

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#### APPROACH: GENDER BASED OR GENDER NEUTRAL

One of the main points for discussion is whether a gender-specific approach is needed, looking at IPV as a form of violence rooted in gender inequality and discrimination. In practice it was noted that in some countries, gender neutral analysis of IPV as a family-based problem is emerging, unrelated to gender inequality. In both these positions attention to the (usually) male aggressor might figure as relevant or not (see above under 'Beneficiaries'). In this regard, three perspectives can be distinguished when looking at the countries under review.

Spain, as described before, is the only country to adopt on a national level a clear gender specific approach, focusing on women as victims of gender based violence and conceptualising IPV as such, directly influenced by gender inequality and discrimination against women. After being barred, the aggressor is rarely the subject of intervention as far as government support is concerned (he might be the subject of criminal prosecution). Support services focus exclusively on women (and children). Flowing from the perspective on IPV as a manifestation of gender inequality, the Spanish support measures cover the widest range of support measures from all countries under study (from individual counselling for victims to structural economic incentives for employers to hire former victims of IPV).

Most other countries deploy a gender sensitive approach (AT, UK, DE and. to a certain extent, CZ). In Austria, it is widely agreed by professionals involved in the emergency intervention measure that a support and intervention programme should not only use a gender based analysis to address the structural factors of gendered inequalities that impact the position of the women (and children). The intervention should also provide for support from professionals who can unequivocally represent the “victim’s side”. The starting point is that the woman/victim is usually victimised for a prolonged period of time and is entangled in a relational dynamic that has profoundly undermined her self-confidence. She therefore needs professional support from a person whom she can trust and who can represent her interests. Experts agreed that it is vital that professional support is provided from a perspective that is independent and does not identify with a certain position or interest of the authorities involved in the implementation.

In contrast to this deliberate support of a victim’s position which is widely preferred, a gender neutral approach seems to be increasingly preferred in the Netherlands. The official governmental policy, as presented in public information material holds that intervention in domestic violence calls for a “family centred” approach, since victims and perpetrators are all part of the ‘family system’, and the victim and perpetrator role are actually considered to be complementary. Hence attention needs to be paid to the victim (primarily) and the children, but also to the aggressor. In practice the interventions are focused on supporting women primarily since they are the majority of the victims. Although the goal of the EBO is to empower the female victims, the NL approach considers the larger context of discrimination and inequality between men and women as marginally relevant when designing their intervention activities. The focus is on the relationship and the violence problem is approached from a psycho-dynamic (system theory based) perspective.

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#### PRO-ACTIVE SUPPORT AND VOLUNTARY PARTICIPATION

During the Round Table, the practice of pro-actively initiated interventions and the limitations these might impose on women’s agency was discussed. The uncontested starting point shared by experts is the urgent need to provide the victim with support services, including legal aid, psychological support and other social (welfare type) help was clearly stated. The question is what the position of the victim is when making decisions about which support is necessary and acceptable.

Some experts emphasise that respecting a woman’s agency is a core value and in fact a necessary condition when aiming to empower a victim of IPV, and therefore should never be compromised. They question whether women who are in the process of separating from a dominant relationship can indeed benefit from another dominant instance which imposes support measures where her agency is to some extent limited. On the other hand, it was questioned to which extent signing a form of consent to enter a process of professional support when the person is in a crisis situation can be the result of clear understanding and free consent. From that perspective it is argued that a pro-active approach that does not require prior consent can still be helpful and empowering.

The different states and regions have taken different positions on this issue, which likely reflect socio-cultural differences in a wider sense regarding how and under which conditions the State and professional organisations may intervene and share information when aiming to provide supportive measures. Austria and Germany require the victim's (written) consent before any communication about her case between professional support organisations is allowed. This was labelled as an "active approach". The woman is an active agent in her process of recovery and should be consulted prior to the start of the process itself. Police officers must present the victim with the consent form for her to sign, before they can contact the support services.

In the Netherlands, Czech Republic and Spain the intervention programme is labelled as pro-active: as part of the package offered with the emergency order which does not require the victim's consent (not in the issuing of the EBO nor in the start of subsequent support and intervention measures). Czech legislation requires the police to inform the Intervention Centres within 24 hours about the report the victim made, so the Centre can reach out. In the NL the law requires that within 24 hours the victim is contacted by a case worker from the DV Advice and Support Centre for a first intake meeting. The victim enters the support system as a direct consequence of having an EBO in place and on day eight of the initial barring period the case worker from the Centre will advise, based on her/his assessment of the victim and perpetrator's response to the support measures, whether or not to extend the EBO. Refusal by the victim to collaborate can result in extension of the EBO against the wishes of the victim (and perpetrator).<sup>107</sup> Currently the UK already has a pro-active multi-agency intervention programme in place for a high-risk category of IPV victims (MARACS). As in the NL, the victim is identified by police and other professionals as 'at risk' and in need of intervention and the ultimate aim is to better protect the victim. It is not clear yet how the other victims will be approached. It seems most likely that the Independent Domestic Violence Advisor (IDVA) or other DV support workers will be the first to contact victims. During the Round Table and in some of the interviews with professionals, social support and police officers alike emphasised that a pro-active approach could be empowering nonetheless. In their experience it can provide the woman with the push to support her in the separation and/or recovery process, in a way that she might not be able to achieve without external support. For that reason they considered this the preferred approach.

The first Austrian evaluative studies on the implementation of the EBO support this. Several victims, who were initially opposed to the actual barring from the home of the partner, indicated that the issuing of the order and the subsequent support that was offered helped to create distance and gain a better perspective on what was going on. In hindsight many women acknowledged that they needed the external push and support to be able to make the steps towards a permanent solution to end the violence (often a divorce)(Haller et al., 2002; Dearing & Haller, 2005).

## PRIVACY PROTECTION

Related to the former issue is the victim's right to privacy. It is protected in all countries under review. However, protecting a client's privacy through confidentiality can lead to several dilemmas. On the one hand, confidentiality protects the professional relationship with the victim, while on the other, it may hinder contact with the police or other agencies whose help or intervention might be needed in situations that present grave risk for the victim. In only three countries has this been addressed in a dedicated protocol allowing the professionals to share information in cases where this is deemed necessary to protect victims (NL, ES, UK), although in the Netherlands, this is possible only in relation to high risk cases. These protocols of communication are also intended to allow the sharing of information among the agencies themselves (NL, UK.) In Germany there is generally a prohibitive approach towards sharing of information on clients between professionals.

<sup>107</sup> In practice most victims collaborate. An enforced extension is possible but will be exceptional. See Schreijenberg et al (2010). Also Van der Aa, S. & Römken, R (2011).

## MONITORING

States have the responsibility to monitor whether their legal frameworks that aim to provide safety and protection to victims, in this case of IPV, are properly implemented.<sup>108</sup> It can be considered as part of the due diligence requirement of States to see to it that protection is effectively assured. Administrative data are key tools for bench-marking, assessing effectiveness and measuring whether any progress is being made. Below we address the question to which extent these data are available for the EBO and the support measures provided. Note that administrative data serve primarily the purpose of assessing effectiveness and trends within the organisation and maybe within the country (e.g. for national police data). They remain hard to compare internationally due to differences in definitions and different institutional contexts which can affect the numbers. For some of the data we refer to, see Appendix 2.

## AVAILABILITY OF DATA ON IMPLEMENTATION OF THE EBO

The difficulty of gathering administrative data in connection with the number of orders issued in situations of domestic violence is a common concern in all the countries under review (Hagemann-White, 2010). In some cases, the lack of reliable registration of cases of DV is related to the lack of a specific domestic violence or IPV offence. In countries where this type of violence constitutes only general violence and is registered under generic criminal offences against the person (AT, DE, NL and UK), statistics are not self explanatory, since DV cases ‘disappear’ under these categories. In the NL, police have implemented a registration system on ‘domestic violence’ as a special category since 2005. However, problems in the consistent implementation of the registration system persist, leading to a lack of available data on DV incidents generally over the most recent period (2009, 2010).

Some countries have made an effort to consistently register the number of EBOs (AT, NL, and ES). To the extent that countries have data available on the number of EBOs the rising numbers over the years illustrate that the order is a popular instrument. It underlines that the initial reluctance of the police to issue the order is part of the learning process. Police need to become familiar with it and incorporate it in their toolbox (see table 2 in Appendix 2). During the Round Table many of the police experts underlined that their experiences are generally positive (in seeing the impact it notably has on victims) which is motivating them to use it.

In the case of Spain, the Division of Equality of the Ministry of Health, Social Justice and Equality, together with the State Observatory on Violence against Women are in charge of gathering data on gender violence.<sup>109</sup> While the data and reports seem to be very clear and useful in the Spanish context it is still not easy to establish a clear cut comparison with other EU countries. The Spanish reports do not seem to disaggregate the type of violence comprised within the concept of “gender violence”. They do distinguish police reported cases, and also cases denounced to helplines and other institutions as well.

During the Round Table, all experts agreed that appeals initiated by barred aggressors were generally rare. In AT the barred persons rarely contest the order or its legitimacy; since the law went into effect in 1997 the estimated percentage of appeals is about 0.5%.<sup>110</sup> One could take the low

<sup>108</sup> FS (European Commission, 2010), para. 6.3.8 and Recommendation 10.

<sup>109</sup> For the latest 2010 English version of this report, see: <http://www.migualdad.es/ss/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobheadername1=Content-disposition&blobheadervalue1=inline&blobkey=id&blobtable=MungoBlobs&blobwhere=1244655166379&ssbinary=true>

<sup>110</sup> No exact statistics were available. The information is based on estimates as provided by the Austrian Ministry of the Interior (personal communication with Hofrat Dr. Walter Dillinger – Federal Police Department of Vienna. September 12, 2011).

number of appeals as an indication that barred persons tend to accept the measure. This might be read as an initial indicator of short term effectiveness of the measure. However, only data on the prevention of recidivism would provide convincing evidence of long term impact: how many of the barred perpetrators refrain from further violence? No data is available as yet.

#### AVAILABILITY OF DATA ON PROVISION OF SUPPORT AND IMPACT

Overall most organisations involved in the provision of services in the countries under study aim to keep track of the kind of services provided in the aftermath of the EBO but data vary in level of detail, reliability and consistency. It is also difficult to gain public access to administrative data. Spain stands out in the high quality of its available data in this field. They keep detailed statistics which are shared with the Coordination Point and Collected by the Secretary of Equality (*inter alia* on support services, such as financial help, housing arrangements, and employment incentives). In addition, the creation of a structure to collect data and coordinate policies at the national level (the observatory on gender violence), with local points in all communities, seems to offer an important stimulus for local organisations to collect data.

In the countries where provision of services is regulated at a local level (DE, NL), data collection on the cases seems to take place at different levels which makes them hard to compare, even within the country. In DE, the different *Länder* present their data in annual reports.

In the NL the local DV Advice and Support centres collect administrative data. The problem here is that within the NL, local definitions vary and some of the Centres do not disaggregate statistics according to gender. This makes it impossible to establish a reliable perspective on the gender distribution of services provided. In Austria, the (local/regional) Intervention Centre is in charge of the registration of support services as well.

At this point in time there is virtually no systematic research on the effect of support measures and on their empowering impact. Exploratory Austrian research indicates that the EBO does help women to ultimately separate from an abusive partner and that women do feel strengthened by the impact of the barring order on the aggressor (effectively setting limits on him). Women indicate that they feel particularly empowered by the support measures provided to them.<sup>111</sup>

## CONCLUSIONS AND RECOMMENDATIONS

The central question in this case study is: how do different emergency interventions to bar the perpetrator of IPV from the home aim to achieve the *protection* of victims of intimate partner violence, the *prevention* of repeat violence and the *empowerment* of victims? First we will present the general conclusion with respect to the central question, following on to address in more detail the strengths and the obstacles that emerged with respect to protection and tertiary prevention and support and empowerment of victims. The monitoring of implementation of the emergency barring measure is briefly addressed. Our emphasis has been on a systematic comparative analysis of the legal regulations across six countries.

### OVERALL CONCLUSION

All the emergency barring interventions in this study contain two components: the barring order (sanctioning the perpetrator's abusive behaviour) and the support and/or intervention measures (aiming to support victims and to enhance the realisation of a non violent future). The relative

<sup>111</sup>Haller et al., (2002), Ibid.

weight of these two components varies between countries. All emergency barring interventions reflect an effort to offer an *integrated intervention* to simultaneously realise related core goals: protection of the victim (and her children) in preventing repeat violence and supporting and empowering victims to establish a life free of violence. In the context of this latter goal some countries also offer treatment programmes for the perpetrator. This approach comes close to an integrated human rights based approach towards violence against women as stipulated in the 2011 Council of Europe *Convention on combating and preventing violence against women and domestic violence*.

Although these different goals intersect at the various stages of the measure in different ways, it is too early to conclude that an integrated intervention measure is fully realised. During the first stage (the barring), the emphasis is obviously on immediate *protection of the victim* in *preventing* the perpetrator from committing any further violence by removing him from the home, which usually leads to short term protection. The actual barring of the aggressor also implies empowering elements for the victim: on a practical level she continues to have access to a vital resource like accommodation and, for women with young children, continuity in access to schools. The measure signals that it is the victim and her needs that deserve priority. She can stay in the home and is entitled to support while the perpetrator is *de facto* held accountable for his behaviour and has to face the consequences (removal). During the second stage, the support and/or intervention measures aim to strengthen the victim's access to personal, social and economic resources in order to strengthen her capacity to protect herself from further abuse, and whether, and under which conditions, she might want to continue the relationship. Structural empowerment of the victim is necessary to achieve long term protection. Treatment of the perpetrator, which in some countries is one of the available interventions during this second stage, can contribute (if effective) to mid to long term prevention.

Despite the similarity in underlying goals to integrate protection and empowerment, the countries vary substantially in the extent to which they succeed in realising these goals, in particular during the second stage. The barring as such is rather unequivocal and the urgent need to provide safety to the victim is the guiding principle. The removal of the perpetrator is in all countries in the hands of the same organisation: the police (even where the formal authority to confirm the barring lies elsewhere, like the judge or the municipal authority). The procedural rules regarding issuing barring orders are, in all countries, firmly established in the law, though the legal regimes vary.

In comparison to the barring, the subsequent supportive component is a much more complex part of the intervention, both from the victim's and from the professionals' perspective. Unlike the implementation of a standard barring procedure, at this stage a case by case analysis is required of the victim's needs beyond the immediate protection. The required range of professional services is not immediately evident and usually involves multiple organisations. That makes the regulation of the provision of services not only complex and time-consuming, but the regulation or coordination it is not always clearly anchored in law. Even if the coordination of service provision is assigned to a separate organisation or centre (as is done in most countries), it takes time to establish well functioning and effective intervention practices.

In this respect the attention paid to the regulation and the implementation of the two elements of the emergency barring intervention, are not always in balance. It appears that in legislative practice IPV is rarely positioned as a human rights violation. Increasingly the violence in the intimate domain is approached from a safety and crime control perspective. The lack of an underlying consistent human rights framework might contribute to the somewhat imbalanced if not fractured approach that could be observed in most countries.

The repressive component – the barring – is generally more clearly anchored in the law and secured in terms of available professional investment than the supportive component (good practices of a reasonably balanced approach are established in Austria and the Netherlands). During the second stage of the emergency intervention the perspective on IPV as a form of violence that is impacted by gendered inequalities in power is foregrounded in some countries (i.e. Spain) and gets diluted in others (i.e. the Netherlands). The lack of a consistent human rights based approach and gendered analysis underlying the emergency barring intervention goes against international binding legal standards. It can hamper the extent to which the program is capable of offering an integrated approach and notably realising the empowerment component.

#### RECOMMENDATION

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In order to realise an integrated emergency barring measure, and equally realise the right to protection, secondary or tertiary prevention and support to victims of IPV, the provision of a human rights based analysis that calls for clearly defined support and intervention measures needs to be firmly secured in the law as well. Budgetary provisions should be secured in order to guarantee the actual provision of support and intervention measures. It is vital to recognise international binding standards to address IPV as a form of gender based violence.

#### PROTECTION AND PREVENTION

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The removal of the aggressor from the home by the police brings about the separation between aggressor and victim (and her children). Any (further) violence in that moment is prevented, the immediate safety of the victim (and possibly her children) is secured and the perpetrator is held accountable for his behaviour. The unique protective and preventive value of the EBO is that it allows the police to issue on the spot, without any delay, a binding order to the aggressor to vacate the joint home. The EBO as a police based order is an effective means to provide immediate short term protection. This is also reflected in the fact that the measure is increasingly implemented across Europe, both in EU and non-EU countries. It furthermore provides a crucial tool to start up longer term protection and prevention.

#### RECOMMENDATION

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Experiences with the police-based emergency barring intervention indicate that it is a promising practice to provide immediate short-term safety to victims of IPV and can offer a basis to establish middle to long term protection, a form of tertiary prevention. It is a measure that merits implementation in other countries.

#### GAPS IN PROTECTION: LEGAL ASPECTS

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In some countries weak spots have been identified in the legal regulation, which can imply risks for the immediate protection and safety of victims. In the recommendations it is indicated how this can be avoided.

The emergence of a two tiered system creates the potential for a gap in protection. Only the police based barring order which can be issued on the spot guarantees immediacy in protection. The (Spanish) two tiered system, where after an initial arrest an expedited judicial order is required, potentially leaves gaps in protection since it depends on

- whether the police indeed arrest;
- whether the judge is indeed able to issue the order in time (before the period of arrest expires).

In urban areas this is not a problem, but in rural areas it is not always clear whether these time conditions can be met.

#### RECOMMENDATION

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When launching an emergency barring intervention it is preferable to devise it as a *police* based intervention measure with the judiciary in a *reviewing role*. Only then can immediate and seamless protection be guaranteed in emergency situations.

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#### GAP IN CONTINUITY OF PROTECTION

In the majority of countries under study the barring order is automatically extended if the application for a protection order is pending, in order to avoid a gap in protection once the barring order ends. Only in the NL is this provision lacking and no seamless continuous protection between barring order and standard civil legal protection orders is guaranteed. This can create a gap in safety for the victim if the hearing before a civil court takes place after the initial barring order has expired.

#### RECOMMENDATION

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Barring order laws should include a provision stipulating that a pending application for a follow-up civil protection order as a rule extends the validity of the barring order until the court has issued its ruling on the protection order within a certain time limit.

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#### VICTIM AS RIGHTS HOLDER

Currently victims cannot formally apply for an EBO in the majority of countries under study since they are not the rights holder. Not all victims are capable of calling the police in an emergency situation. This option would provide women the legal basis to access *immediate* protection that regular (civil) protection orders usually cannot provide since the court process can be lengthy. It could be argued that the recognition that IPV is a violation of the human rights of women obliges the State to grant women/victims not only the negative right - to be free from violent victimisation - but also a positive entitlement to protection.

#### RECOMMENDATION

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In order to strengthen the position of the victim as a rights holder who can use the EBO to formally request protection, they would need to be provided with the right to apply for the EBO, and possibly also the right to appeal when the order is issued against their will.

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#### FREE LEGAL AID

At the initial stage of the barring period, the question emerges for many victims whether or how they wish to continue the relationship with the perpetrator. Access to free legal advice and free legal aid for low-income women (to ensure legal representation) is a crucial element to effectively achieve access to justice for all women and realise their right to protection, to effectively provide support and to empower women during that transitional stage.

#### RECOMMENDATION

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Low-income victims should have access to free legal advice and if necessary, free legal aid, from the very beginning of the EBO.

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### FREE ACCESS TO PROTECTION ORDERS

If it is the State's duty to protect women with due diligence against IPV as a form of gender based violence, this duty arguably should include the State carrying the costs. Currently the EBO is available without any financial costs. This however is not always the case for follow-up protection orders. Making victims pay to access protective measures particularly impacts low income women and jeopardises equal access to justice and safety.

### RECOMMENDATION

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Follow up protective measures after the EBO should be made available for free in light of the State's responsibility to protect victims of gender based violence with due diligence.

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### GAPS OR OBSTACLES IN THE IMPLEMENTATION

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#### LIMITED EXPERTISE ON IPV

In all the countries under study the experts indicate that police training on the nature and severity of the violence and the dynamics of control, manipulation and abuse is limited, notably for the patrol officer who needs to provide an initial response. Although in most countries the launching of the EBO has been accompanied by some intensification of training among the police, persisting tendencies to uphold stereotypical attitudes about IPV were not uncommon according to experts. Experts' opinions were mixed about the value of a specialised police unit to counteract this tendency. Even though the expertise in that unit is guaranteed, it could also hamper the efforts to get to a more professional approach in the police organisation as a whole. Given the limited capacity of a specialised unit it ultimately would still deprive many victims of IPV in emergency situations who still will be seen by regular police units.

#### RECOMMENDATION

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Regardless whether a country has set up specialised DV units within the police, it is recommended to provide adequate training for all police officers since IPV interventions constitute a substantial part of the regular case load of every police officer.

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#### RAISING THE THRESHOLD FOR ISSUING THE EBO

The organisational structure and professional culture of the police is historically focused on crime control among men in the public domain (with its concomitant repressive *modus operandi*) rather than on prevention of violence (notably not gender based violence in the home). Assigning a core responsibility for the implementation of the EBO to the police inevitably implies fundamental challenges, notably regarding the realisation of the protective goal of the measure. This created obstacles, especially in the ways in which the police tend to raise the threshold for issuing the EBO.

- *Selective inattention to using the EBO for early protection:* the EBO is intended as a protective tool through prevention of further violence. In all countries under study the EBO is currently rarely implemented in cases to provide *early intervention*, even though none of the laws under study require a known history of violence before an EBO can be issued. However, in day to day practice a history of violence is a standard prerequisite. In doing so it is ignored that a violent history is not necessarily known to the police since most victims do not immediately report to the police when the abuse starts and might not even reveal a history when they first turn to the police for help. Furthermore, some perpetrators display a history of abusive behaviour across relationships, and a first incident (with a new partner)

could still be a risk marker for future violence. The focus on repeat violence which has already escalated (within a relationship) implies that the EBO mainly achieves at best the goal of secondary (or tertiary) prevention. Although this is important, the problem is that it implies the tendency to *selectively exclude cases where no known history of physical violence* against this victim seems to exist but which do qualify for intervention. To the extent that our case study allows for the drawing of any conclusions on the reasons for this selective implementation of the EBO, two factors emerged. First the legacy of a traditional crime-culture within the police seems to enhance a tendency to gravitate towards selecting cases of severe physical violence that 'fit' the familiar crime concept. Secondly, and related to the first issue, the use of the risk assessment forms is fairly new to the police force that never uses these when assessing the severity of public violence (see below). Their use implies new challenges and uncertainties. Some police experts indicated that this seems to strengthen the tendency to focus on *very severe* physical violence to be 'on the safe side'. Together these factors lead to a practice in which the bar to implement the EBO is raised higher than the law essentially requires. This threatens to subvert the law's purpose.

- *Risk assessment as a tool for professionalisation or as a tool to raise the threshold for issuing the EBO:* the increased use of risk assessment forms has a profound impact in two different directions. On the one hand experts emphasised that, as intended, it structures the police response towards DV/IPV and obliges the police to make more in-depth and systematic assessment of cases of IPV in a way they might not have done without these instruments. On the other hand, it also has the unintended consequence that it tends to exclude cases that are not immediately recognised as potentially dangerous forms of IPV. Experts reported that the police often remain uncomfortable in using relatively detailed instruments containing personal and sensitive questions out of fear of being intrusive in cases that might not qualify for an EBO. Some experts raised the question whether the level of detail in some of the risk assessment forms was proportional to the aim of the EBO: to issue a *temporary* barring order which is subsequently often the subject of review (by superior police officers) or can be appealed. Several experts pointed out that the concept of *risk assessment* might be the core problem. It suggests a conceptualisation of domestic violence as a social problem that brings about measurable and manageable risks, caused by the perpetrator. It was argued that in both respects the characteristics of the problem are often too volatile to capture in a quasi-objective measurement by professionals whose discipline does not equip them very well to begin with to make this kind of assessment.
- *Application for a protection order as a condition for issuing the EBO:* in implementation some police organisations have developed the practise of routinely requiring the victim to file for divorce or for follow-up civil protection orders before issuing a barring order. In none of the countries under study was this according to the law and it actually defeats the law's purpose (providing safety and a window of time that allow the victim to subsequently make mid to long term decisions). This practice deprives women of protection who are in danger yet at that moment unable to decide about long term separation. It illustrates an approach in which police fail to distinguish between a victim's wish to end the violence and the wish to end the relationship.

## RECOMMENDATION

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Thorough training of police on IPV is necessary to ensure adequate implementation of the barring order law as intended: to protect victims and prevent further violence. Using some form of risk assessment instrument by the police can only be useful if it is limited, concise and focuses on core characteristics. It should support the police in making a first responsible assessment of the severity in the emergency of the situation. Only in the middle and long run

a more elaborate assessment is necessary, preferably to be made by trained clinical professionals or other service providers. Nonetheless, police need sufficient training in how to conduct the first initial assessment, when to issue the EBO and to which end (prevention). More attention is to be paid to the preventive goals of the barring law and how a concise assessment of the level of danger is feasible without unnecessarily excluding victims who are in need of early intervention. A history of physical violence within the relationship, or a decision of the victim to apply for a long term protection order should never be used as a criterion to issue the EBO.

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### REGIONAL VARIATION

In all countries under study, implementation of the EBO can vary substantially within the country (notably manifested in varying numbers of orders issued). This is structurally built in since local or regional police organisations are ultimately responsible for the implementation and can prioritise differently. Experts indicate that notably in rural areas this can translate in gaps in protection for victims either because police implementation is less well organised (and police received less training), or because the range of available services is often more limited in rural areas. Some experts indicated that the structural implementation of some form of protocol to assess the danger when issuing the EBO (risk assessment) could reduce the regional and local variation in implementation of the EBO.

### RECOMMENDATION

To ensure equal access for all victims of IPV to protection through the EBO, State governments need to create conditions on a national level which facilitate equal implementation of the emergency barring intervention across the country. Adequate training of the police in standardised implementation procedures is crucial to achieve this goal.

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### LIMITED OR NO MONITORING OF COMPLIANCE OF THE PERPETRATOR

The factual barring is clearly regulated in the law. Most countries have addressed how to sanction the breach of the order (by the barred person). What is less clear is how the police monitor the perpetrators' compliance with the order. In some cases the police are developing a protocol to contact the perpetrator after a few days to check how he is complying. Except for Spain (where the perpetrator can be obliged to wear an electronic monitoring device, the 'ankle bracelet') no country has as yet a systematic monitoring system in place. Electronic monitoring seems a promising practice to prevent recidivism and protect victims.

### RECOMMENDATION

To enhance the perpetrator's compliance with the barring measure and effectively realising victim's right to protection, a monitoring system for the police is necessary to assess perpetrators' compliance.

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## SUPPORT AND EMPOWERMENT

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### GENERAL CONCLUSIONS ON STRENGTHS AND OBSTACLES

The provision of support and intervention measures is an important element of the emergency barring intervention to empower victims. The aim is to provide access to psycho-social, financial, and legal support that encourages women to make their choices on whether or how to continue the

relationship with the barred partner and how they can effectively protect themselves from further violence. Empowerment of victims is a crucial step towards realising mid and long term protection of women (and children). In most of the EU countries under study, dedicated support structures (support and advice centres, intervention centres, Independent Domestic Violence Advisors (IDVA) etc) have been established to coordinate and/or provide support. Some countries with a high level of service provisions mostly rely on pre-existing support structures (i.e. Baden-Württemberg/Germany). Few countries include treatment programmes for perpetrators as part of the support and intervention measures. As pointed out in the overall conclusion, this second component of the measure is generally less clearly defined and organisationally established than the barring itself. The professional response necessary to provide support ultimately depends on availability of a range of professional services, and on how their provision is organised. The implementation of the second element of the emergency barring intervention varies widely between the countries under study, due to variation in infrastructure of available support services, in funding structures, in the expertise level of support and welfare providers, and in availability of specialised domestic violence services. This ultimately also impacts on the extent to which empowerment can be achieved. Countries with a longer history of specialised support and intervention programmes, notably when it has been co-developed by women's NGOs, seem to provide a generally higher and more dedicated level of support during the second part of the emergency intervention measure.

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## GAPS AND OBSTACLES

### LIMITATIONS IN RANGE AND LEVEL OF INTEGRATION OF PROVIDED SERVICES

The support measures which are offered to victims vary across countries in scope (range of measures available) as in level of organisation. When aiming to offer an integrated intervention it is essential to provide a range of support measures: in the area of physical and mental health of women (and their children), as well as social and economic support. Three gaps were identified in several countries: First, the extent to which provisions for children's well being and health are part and parcel of the range of support measures. Given that children in situations of IPV are inevitably at risk of harm, children's support needs to be addressed in the interventions. Second, economic support measures to help women regain financial and social resilience (support in vocational training, finding employment, preferential access to public housing etc) are often underdeveloped. There are good examples (Spain) of how, for example, tax measures can work as incentives for employers to stimulate the hiring of women re-entering the labour market. Third, treatment programmes for perpetrators focusing on treatment and behavioural change in the perpetrator are also important to achieve tertiary preventive goals. To enhance the chance of prevention of future violence against the partner, perpetrators need to learn how to take full responsibility for their past behaviour and refrain from committing further violence. Currently, most support and intervention measures in the countries under study foreground victim support. To the extent that perpetrator treatment facilities are offered they are not always connected to the victim support measures or without effective communication regarding results.

### RECOMMENDATION

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States need to offer a full range of basic psycho-social, financial, economic services and legal advice necessary to offer support and achieve long term empowerment which enables women to become self sufficient in a sustainable way. Provision of support for children should be part and parcel of the support package offered to women victims of IPV with children. State's efforts to provide financial and economic support measures to victims require more attention when aiming to achieve structural and effective empowerment of women. Lastly, to achieve long term prevention perpetrators need to learn how to refrain from violence. It is essential that perpetrator programmes are integrated in the wider support programme for victims (and

children) and coordinated accordingly to ensure that they can enhance victim's support and empowerment.

### INSECURE FUNDING

Experts of all the countries under study indicate that available resources for services to victims of IPV are tight and structural funding is not always secured. The fact that many support and intervention programmes are policy based measures makes them vulnerable to be discontinued in times of financial constraints. Even in countries where both the infrastructure of professional services and a wide range of provisions are fairly well developed, experts pointed to insecure funding structures. Particularly when State's responsibility for the provision of services is decentralised to regional/local authorities, funding becomes dependent on regional/local (political) prioritisations and therefore more fragile.

### RECOMMENDATION

In order to effectively guarantee the realisation of support measures, budgetary provisions need to be secured. Establishing a legal foundation to the State's obligation to provide support to victims of IPV is essential to enforce the provision of support measures.

### STATE INTERVENTION AND POSITIONING WOMEN AS AGENTS AND DECISION MAKERS:

In some countries a pro-active approach is chosen when implementing support measures. Some experts pointed out that women can be put under pressure (or forced) to participate in interventions. This level of constraining women's agency when entering support services can defeat the purpose of empowerment of victims. There is a potential dilemma between the recognition of the State's obligation to provide for protection and support to IPV victims on the one hand and recognising the victim's right to self determination and respect when protection is offered.

### RECOMMENDATION

To avoid the unintended consequence of undermining women's empowerment it is essential that support measures are implemented after taking full regard of victim's wishes and preferences.

### GENDER NEUTRALITY AND ITS IMPLICATIONS FOR SUPPORT MEASURES:

Domestic violence has been positioned in binding international legal standards as a violation of women's human rights and as a form of discrimination, rooted in gender inequality. This underlying perspective affects the content and form of support measures for victims and interventions, as can be seen in most of the countries which explicitly work from a gendered analysis of the problem of IPV/DV. However, a gender neutral analysis of IPV, i.e. as a "family-system" based problem, unrelated to gender inequality or discrimination, is emerging in some countries. This is in violation of the UN CEDAW Convention and of the 2011 Council of Europe *Convention on combating and preventing violence against women and domestic violence*. While recognising that men can be victims of domestic violence, the Council of Europe Convention explicitly underlines that domestic violence against women is a form of discrimination which disproportionately affects women.<sup>112</sup> The

<sup>112</sup> Art. 2 para 1 and Art. 3 sub d of the Council of Europe (2011) *Convention on combating and preventing violence against women and domestic violence*. Ibid.

Convention also explicitly calls for gender sensitive policies.<sup>113</sup> It is unlikely that support measures and treatment intervention which are developed from a gender neutral approach, can fully capture the gender based inequalities that notably hamper women when facing the consequences of violent abuse from an intimate partner. Within the EU good examples are available how an analysis of IPV as a gender based form of violence can translate into an integrated range of measures when devising support programmes (e.g. Spain), although experts pointed out that the implementation still reveals gaps.

#### RECOMMENDATION

In order to develop effective support and intervention measures to victims (and perpetrators) of IPV, States should comply with binding international and European standards. This obliges States to address the impact of gender inequality and discrimination when offering support measures in the context of the emergency barring intervention (and to victims and perpetrators of IPV in general).

### MONITORING AND EVALUATION

#### GENERAL CONCLUSION

Without exception, all experts indicated that availability of reliable administrative registration data is limited in most countries under study. Most countries have police statistics on the number of barring orders which have been issued, but they are not always publicly accessible and not in all countries are statistics disaggregated by sex. Evidence based evaluation of the impact of the barring order intervention is an important tool to assess its effectiveness and identify gaps or weak points. Reliable registration data are necessary not only on the number of barring order issued, but also on follow-up police interventions, such as, breaches of the order, recidivism, number of appeals. Currently this information is rarely registered. Data on the provision of support measures are virtually unavailable in most countries. Overall, the available evidence base rarely allows for drawing reliable (generalisable) conclusions at this point on the impact or effectiveness of the barring measure. Spain offers a good example of a registration system. It illustrates that a well designed national structure overseeing and monitoring the registration of local administrative data is crucial.

#### RECOMMENDATION

Police and professional organisations should register the core data on the implementation of the barring order and related support measures. In order to ensure valid and comparable data that allow monitoring and evaluation on a national level, it is important to devise consistent registration systems.

<sup>113</sup> Art. 6 “Parties shall undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women.” Council of Europe (2011) *Convention on combating and preventing violence against women and domestic violence*. Ibid.

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## CHAPTER 4 – INSTITUTIONAL AND LEGAL RESPONSES TO CHILD MALTREATMENT IN THE FAMILY

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### RESEARCH QUESTIONS

Through the UN Convention on the Rights of the Child (CRC) state parties (including all member states of the EU) agree to the principle that in all actions concerning children, “**the best interests of the child** shall be a primary consideration” (art. 3 para. 1 CRC). The CRC further obligates state parties to both **protect children** from violence and maltreatment, and to **support families** by providing any necessary support for the child and those who have the care of the child (art. 19 para. 2 CRC). Moreover, the child should have the **right to be heard** in any judicial and administrative proceedings affecting the child (art. 12 CRC). In actual child protection cases and policies, however, these principles may be in tension, especially between protection and support. Throughout the countries considered for the purposes of this report, their fulfilment is approached differently and more or less successfully.

In addition, how the key concepts are understood and what they imply about appropriate methods and tools both in overall policy and in practice “on the ground” vary considerably. Historically based differences between national cultures influence taken-for-granted ideas about the family and childhood, as well as the degree to which the state can and should intervene. Correspondingly, institutions entrusted with securing the welfare of children and ensuring their protection from harm have developed along different pathways, with resulting diversity in procedures and competencies.

Through the detailed questionnaires completed in phase 1 of “Realising Rights?” (data collection from October 2009 to February 2010) a great deal of information was compiled about the legal frameworks in the 27 EU Member States as well as the EFTA and candidate countries and the Western Balkans. The questionnaire data were further reviewed and augmented by National Reports during the FSL study for the EU Member States (finalised in May 2010). Among the main results of this work was the recognition, on the one hand, of great diversity among the different countries and, on the other, a lack of European-level knowledge on the structures and outcomes of different child protection systems, and the need for an integrated approach across all forms and fields of violence (European Commission, 2010).

The formal regulations do not give a sufficient understanding of how child protection is organised and what the concepts of “best interests of the child”, “supporting families” and “children’s right to be heard” mean in practice. For example, while all States in the study criminalise child maltreatment, this does not reveal when and how criminal prosecution is initiated or preventive and protective interventions preferred. Obligations to report suspected child maltreatment to authorities also leave the threshold open to question. The intersection between violence against women and violence against children was a further important aspect that could not be clarified through just compiling information on legal frameworks. Since there has been far less European level discourse and activity on child protection than on addressing violence against women, this case study required meetings with experts in person, and in some cases country visits. We needed to talk to key actors and experts within the overall system of child protection, who could tell us more about what happens when a professional working with children or with families perceives a child to be at risk of harm through possible maltreatment, or due to violence in the home or elsewhere.

With the aim of a deeper understanding of how common principles of children’s rights are implemented in diverse institutional, cultural and legal frameworks, the present comparative study

of child protection focussed on the point of intersection between the state's duty to protect and the rights and responsibilities of families. This intersection is crucial because of children's dual right to grow up within the family whenever possible, and to be well cared-for and safe from violence or other harm. Research on child maltreatment also predominantly locates assessment and treatment within the context of the family (Scannapieco & Connell-Carrick, 2005), whether because abuse or neglect occurs within the family, or because families are unable to protect a child from abuse or endangerment elsewhere. However, it should be emphasised that physical, emotional or sexual abuse happens in schools, residential care institutions, sports and music clubs, churches or other locations, as recent waves of disclosure have revealed in a number of countries, including Austria, Belgium, Germany, Ireland and the United Kingdom. Institutional responses share some aspects with those centred on the family, but in many cases procedures are fundamentally different, for example in case of commercial sexual exploitation of children. It was not possible in the present study to explore this wider field of child protection, especially since comparative research in this field is only beginning. Thus, a caveat must be made clear: protection measures in case of child maltreatment in the family were taken as the common denominator across countries, from which a first overview of frameworks, institutions, measures and services could be developed. Further research will need to study how maltreatment outside the family is dealt with.

The "Realising Rights?" study focussed on the recognition, emerging in international law in recent decades, that interpersonal violence is a human rights violation with ensuing obligations of protection, intervention and penalisation by the state when such violence rests on the abuse of a structural power differential. Gender inequality and the dependency of children on adult care are two central sources of disproportionate violence addressed in the "Daphne" program of the EU, where this study was located. Thus, the study does not address issues such as youth delinquency, violence among or between young people or children beyond parental control.

Experts were interviewed from the following countries: **Bulgaria** (modernised legal framework with implementation lagging behind), **Estonia** (moderately high levels of child protection, prevention, strong link to prosecution and criminalisation), **Greece** (low level of regulation and implementation of child protection and social welfare law), the **Netherlands** (sophisticated and highly trained systems of family and child welfare), **Romania** (recent progress in implementing qualified child protection law, including social welfare); **Sweden** (tradition of strong empowerment of state authorities for interventions, tradition of rarely hearing the child in court), **Turkey** (mandatory reporting of child abuse to police, traditionally strong family concepts) and the **United Kingdom** (highly developed system with in depth regulations and guidelines for child protection proceedings); in addition the child protection system for **Germany** was analysed based on knowledge of the research team.

This selection of countries ensured a wide range of diversity along the following dimensions:

- Longstanding and well developed systems (Germany, Netherlands, Sweden, United Kingdom) vs. recent responses to international obligations and standards, in part related to EU expansion (Bulgaria, Estonia, Romania);
- emphasis on the investigation of suspicion (Bulgaria, Estonia, Greece, Turkey) and/or on criminal prosecution (Estonia, Greece, Turkey) vs. focus on prevention and support for families (Germany, Netherlands, Romania, Sweden, United Kingdom);
- prime actors are statutory agencies (Sweden) vs. major role of NGOs and voluntary sector (Germany, Greece, Netherlands);
- implemented system of mandatory reporting (Bulgaria, Estonia, Romania, Sweden, Turkey, United Kingdom) vs. promoting referral while securing confidentiality in helping relationships (Germany, Netherlands);

- duty to hear the child directly in court (Bulgaria, Germany, Greece, Netherlands, Romania, Turkey) vs. hearing the child through a representative or a legally appointed body (Sweden, United Kingdom).
- geographical spread with a range of cultural traditions and different legal systems.

Based on our prior knowledge of the ways in which child protection systems may differ, the major issues pursued in the interviews are the following:

- **Who does what when?** When first a suspicion or concern arises that a child might be exposed to violence, which professionals take on the task of exploring the circumstances to find out whether (and in what way) the child is in danger of harm? If the first or front-line professional thinks there may be grounds for child protection action, which other institutions and agencies are drawn into the process of assessing endangerment, what professional skills are called upon, and when does this happen? When does the concern become a “case” and who then makes decisions? When, how and with what purpose are the child and the carers approached? In the interviews this was explored by beginning with a suspicion or concern and looking at how this process is organised.
- **How are parents assisted?** Are services accessible that enable carers to fulfil their responsibilities and make it possible for children to stay in the family? What measures of support are offered on a voluntary basis or following professional advice in order to prevent (further) harm to a child?
- **When does the state take charge?** How is the threshold for state intervention without the consent or the voluntary agreement of the parents defined in practice? Does this happen at an early stage (preventively), are parents then obligated to cooperate with a statutory agency or with family or child welfare measures, or does it not happen until the later stage, when offers of counselling and support have failed and serious harm is imminent?
- **When do children/youth have a say?** Where does the child’s right to be heard, and more than that, the child’s right to participate in processes that affect his or her own life, come into play in practice? During the various stages of investigating possible endangerment, administrative and court proceedings, and the processes of deciding about and implementing measures for support or protection, when and how are children/adolescents empowered to participate and have a real say in what is intended to be their own welfare?

The focus of this study was on building a foundation of information about legal frameworks, institutional structures and typical procedures towards protecting children from all forms of interpersonal violence or maltreatment. Particular emphasis was placed on a process approach to throw light on **how** protection can be implemented. A further step towards in-depth understanding would need to gather comparable empirical data on implementation, for example on assessment practice and case management, as well as collecting data on outcomes. Such further research could address issues arising from the interaction, cooperation, priorities and tensions between criminal justice and social work that could only be touched on here. Understanding diversity would also need to explore underlying philosophies of intervention. What approaches to families/carers of a child at risk of harm have the strongest roots in the “institutional culture” of the country, when agencies act to protect, support and advise them? Is it a primarily instructional approach, aiming to teach parents/carers what to do and lead them in the direction considered best for the child? Is it a more regulatory and directive approach, defining clear obligations and potential sanctions aiming to ensure that the needs of the child are met? Or is it a counselling and empowering approach, emphasising understanding and support for carers/families?

In addressing child protection, our point of departure was the human rights obligation of states to ensure effective responses when there are grounds to suspect possible child maltreatment, for this is where the “due diligence” principle in human rights comes into play. With regard to securing children’s fundamental rights and protecting them from violence by those entrusted with their upbringing, care or education, our study thus focussed on protective intervention and support. It was not possible within the resources of the study to explore the roles of police, prosecutors and criminal courts as well.

From a comprehensive perspective on the rights of the child, including the right to the best attainable level of healthy development, population-wide efforts towards primary prevention are increasingly coming into the foreground of policy and practice, often involving the health care system as well as social work and education. Primary prevention in this broader sense comprises far more than the prevention of violence, but it lacks a foundation in law or policy in many European countries yet. In the present study, the term “prevention” is used in the “due diligence” context to describe measures that may avert an identified danger, risk or need.

## METHODOLOGY

Experts with broad and current knowledge of the law and the practice of child protection as well as awareness of research were sought using “snowball” techniques in the research and practical networks of the lead researchers to locate the best available informants. Where possible, two or more experts from different practical backgrounds were included. Parallel to contacting experts and in part with their help, published comparative or country-specific literature on child protection was compiled.

In order to achieve the fullest input within a very limited time frame (between March and July 2011), two methods for interviewing experts were employed:

- Regional round tables, one in Sofia with participants from **Bulgaria** and **Romania**; and a second in Heidelberg, with participants from the **Netherlands**, the **United Kingdom** and **Germany**. At the round tables, the experts from each country could describe the institutional and practical processes in their own country extensively, but also reflect on how these were similar to or different from the others. The regional focus encouraged such comparative reflection among experts.
- Country visits to interview experts on site, and where possible visit actual child protection institutions, were undertaken to **Estonia**, **Greece**, **Sweden** and **Turkey**. In all cases two members of the research team met with between two and six experts and/or practitioners. Depending on the country and its institutions, they were experts from law and/or social work, from state agencies, NGOs or universities.

For each country the researchers’ notes taken during the meetings were compared and written up, in most cases the country experts were also requested to clarify some points in follow-up e-mails. Where available in English or German, elaborating the notes also drew upon published literature. Furthermore, flow charts were constructed to give an overview of the paths through which responses to possible child maltreatment move in each country, as well as showing the interconnections between different institutions or agencies.<sup>114</sup> The notes and the flow charts were then sent to the country experts for validation. All of the experts showed great interest in the project and gave generously of their time, both for meetings and for this follow-up, and all notes and flow charts were returned with helpful explanatory comments.

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<sup>114</sup>Flow charts created by Bianca Grafe with Lovely Charts <http://www.lovelycharts.com>

After receiving the comments and suggestions from the experts, the information was then structured to produce brief reports on the organisational structures of the system, the concepts of notification and reporting, the pathways from suspicion to protection (including the refined flow charts), the threshold for state intervention without consent and the concepts of hearing the child for each country. These were the basis for comparative analysis and discussion.

Necessarily, these interviews and further discussions, while providing a rich qualitative basis for analysis, reflect the subjective assessment of the process of child protection by selected experts, whose perceptions were also influenced by their respective positions in statutory agencies, non-governmental organisations, in governmental responsibility or in the justice system. To complement this material, the actual texts of the relevant laws in all states were obtained (in translation) and reviewed, and for most states publications (such as research studies or official reports) contributed to a fuller and more objective picture. Nonetheless, the present report cannot claim to describe the reality of prevention and intervention generally; there is much regional variation within states, and a wider range of different actors would need to be interviewed to arrive at comparative conclusions.

## FROM SUSPICION TO PROTECTION: STRUCTURES AND PATHWAYS TO CHILD PROTECTION IN SELECTED EUROPEAN COUNTRIES

### BULGARIA

Bulgaria appears to have developed a consistent framework for a protection-focused approach with considerable potential for informed, though still somewhat bureaucratic, child protection practices. However, the resources for child protection work and especially for preventive support services, as well as the supply of professional and qualified personnel have not yet reached adequate levels with the consequence that practical implementation continues to lag significantly behind the theory.

#### ORGANISATION OF CHILD PROTECTION AND POLICY

As of 2011 the Bulgarian child protection system is just over ten years old. It goes back to the Child Protection Act (CPA) of 2000 that was influenced by the Children Act 1989 in the United Kingdom. From the organisational perspective the system can be described as a political compromise. Responsibilities are divided. Planning and implementing of social services are located in social protection within the Ministry of Labour and Social Policy (art. 6 no. 3 CPA), but child protection is also one of the largest departments within the Division for Social Assistance (DSA). The latter is responsible for vulnerable groups such as the elderly, poor, disabled; it works on regional (28 offices) and municipal (200-300 directorates) levels (art. 6 no. 2, art. 20 CPA). The law also established a central State Agency for Child Protection (SACP), the head of which is appointed by the council of ministers (art. 6 no. 1, art. 17 CPA).

This created a dual structure (DSA and SACP) which every government since has tried to reform. The dual structure means a dual line of hierarchical command and potentially differing instructions on specific cases, which can cause tension affecting the local child protection departments and lead to rather inefficient coordination (Bulgarian Gender Research Foundation, 2009; Ivanova & Tsohanoglou, 2008). The SACP is currently being transformed into a commission responsible for policy monitoring, not for specific cases. The budget has recently been cut back by 15% by the Ministry of Labour.

In March 2010 a new mechanism was adopted for coordinating cooperation in work with child victims or children at risk of violence, including sexual abuse, and cooperation in crisis intervention, based on agreement among the various stakeholders responsible for child protection. Its aim is to

ensure quick reaction and protection at the local level in situations of children at risk in the community. This tool contains a detailed description of the role of each of the institutions involved. In 2010 the mechanism was applied to 385 cases, while the number of the multi-agency conferences at the local level was 353 (Bulgarian Ministry of Labour and Social Policy, 2010).

The Bulgarian approach can be characterised as having a strong hierarchical note which leads to more formalism and bureaucratisation rather than supporting children and families, building trust and supervising compliance with protection measures. Exploring the resources within families as well as supporting and developing parental skills still does not get enough attention (Ivanova & Tsobanoglou, 2008). Requirements for documentation and formalities for each step of the procedures are very high which causes substantial delays and takes time away from direct work with children and their families.

In this system, NGOs have the role of service providers. However, services to support families in need while the child still lives with the parents are rare, not only but especially in rural areas. NGO services are partly funded by the state, but the NGOs themselves are not. The funding presupposes that the NGOs fulfil tasks that otherwise would be legal obligations of the state. The government sets a minimum of services and takes responsibility for secure funding up to that predetermined level. Those “state related services” are fully funded. While NGOs services are increasingly financed by the state the lobbying and criticising of the state or its system is decreasing, presumably because of a noticeable loss of independence. However, NGOs participate in the national commission for child protection on policy setting.

Preventive services such as early prevention or early intervention programmes should be implemented as stated in law (art. 23 CPA) but for most of the country they are lacking. Their absence correlates with the reactive investigative approach to child protection (Ivanova & Tsobanoglou, 2008). Concerning the placement of children outside the family of origin there is a policy of deinstitutionalisation in place, leading to a shift towards more foster care and adoption (Ivanova & Tsobanoglou, 2008). The relations in the extended family are assessed more closely. Even so, not many children are placed in foster care, which recently has been strongly criticised (UN Human Rights Committee, 2011). The foster parents take children into their family either on a volunteer or (partly) paid basis. A permit by the State is required before taking a child into foster care (art. 27 para. 5 CPA). The foster care system only provides financial support but no quality control.

Bulgaria does not yet regulate the relevant professions. Training and capacity building for professional stakeholders in child protection have relied on NGOs. Promising programmes have been developed but because of a lack of funding they are hardly ever rolled out (Ivanova & Tsobanoglou, 2008). There is a shortage of qualified staff in public administration and partly in NGOs (Bulgarian Gender Research Foundation, 2009).

There is a National Strategy on Children (2008-2018) in place, adopted by the National Assembly (SG 14/2009). The Strategy envisions the adoption, among others, of special measures for children who are victims of any form of abuse, violence and exploitation. Two years after its adoption, the implementation of the Strategy will be assessed under a special project of the SACP. In 2010, the SACP prepared a draft of a National Plan on Prevention of Violence and Abuse of Children (2010-2013) with the goal of better interaction among institutions in cases of violence, including better coordination when crisis intervention is needed. Recently, the Council of Ministers adopted the 2011 National Program for Child Protection, where one of the challenges will be the fight against sexual abuse of children on the internet.

In 2010 the municipality of Sofia adopted its strategy for development of social services for children and family (2010-2013), including services for children in situations of violence.

Due to an amendment of the regulation for implementing the CPA (chapter 8) of 2009 a national telephone line for children was set up. The help line resides at the SACP and is operated by an NGO (Animus). The calls are free of charge. A call centre provides psychological counselling and information, also about the nearest services at the local level. If a child at risk is identified the case is referred to the respective DSA. The call centre prepares periodical and annual analyses and assessments of usage of the telephone line to the SACP. In 2010 66,366 calls were registered with 13,695 consultations. In addition a web site of the national telephone line is online ([www.116111.bg](http://www.116111.bg)).

The legal framework for child protection is to be found mainly in the CPA which is administrative law and defines the duties of responsible public bodies at national and regional level. The Family Code (FC) was reformed in 2009 (SG 47/2009) and regulates custody, visitation, adoption and other family law issues and together with the CPA establishes a public responsibility for the protection of children.

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## CHILD PROTECTION PROCEDURES

The procedures on child protection are outlined in the current guidelines on the mechanism for the coordination of cooperation. They state that when a professional or citizen reports a suspicion of child maltreatment, the Division for Social Assistance, Child Protection Department (DSA/CPD), State Agency for Child Protection (SACP) or the police are obliged to inform all other relevant authorities within one hour of receipt of notification, including a transmission by phone and fax. The information is sent to the DSA/CPD with the current address of the child. Within the DSA, the head of each child protection department or a representative has to take immediate action and appoint a social worker responsible for the case who has to carry out initial investigations within 24 hours. The aim of investigation is to determine whether abuse or neglect is substantiated or not. The DSA is allowed and, if necessary, obliged to collect information not only from the family but also other institutions, professionals or persons in contact with the children or family regardless of whether the parents consent or not.

When a risk is identified a case will be opened. The social worker responsible for the case writes a report with the results of the investigation and sends a copy to the professionals and institutions involved. S/he has to set up a multi-agency conference and invite the participants by phone in the shortest time possible. According to the guidelines and subject to the case the multi-agency conference includes a representative from the local police department; a regional inspector or an inspector from the child pedagogical chamber; the Regional Healthcare Centre (RHC); the child's personal doctor in general practice; a representative of "Emergency Care"; the head of the healthcare department; the Regional Education Inspectorate under the Ministry of Education, Youth and Science; the school/kindergarten director; a teacher of the child or an educational group; a school psychologist; the local commission on combating anti-social activities by minors; a regional judge; a regional prosecutor; an authority managing a social service or NGOs providing social services.

The multi-agency conference sets up a service plan in which they agree on actions to be taken as well as developmental goals to be achieved with specified deadlines. Each of the participants in the multi-agency conference offers to the rest of the team a specific contribution regarding the case which they have to carry out within the remit of their operative independence and specific regulatory system. The idea is that all participating institutions and professionals in the multi-agency conference work together on a long-term goal with the purpose of guaranteeing the interests of the

child at risk to the highest degree possible. As long as the case remains open a team conference is held every two months.

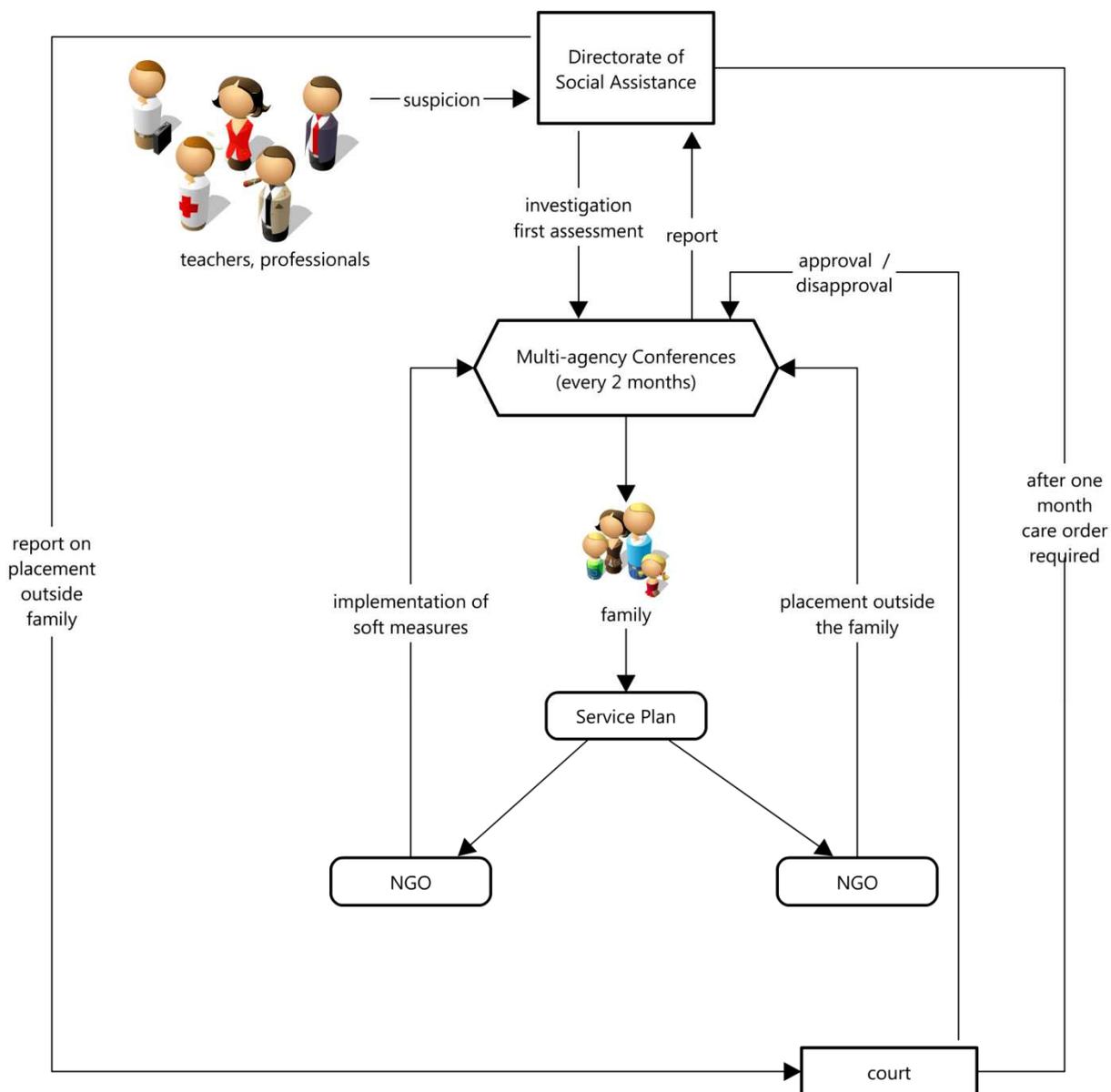
The tasks of the following participants in the multi-agency conferences are:

- *Ministry of Interior*: A representative from the regional directorate of the Ministry of Interior takes part. In cases of police protection it provides security and escort to the victims to the places of accommodation provided by DSA/CPD.
- *Ministry of Healthcare* provides a free medical, 'forensic' examination of the child and issues a forensic medical certificate. Such an examination is obligatory in cases when it is recommended by the interdisciplinary team.
- *SACP* organises and contributes financially to the work of the group for crisis intervention. It supervises the staff of the DSA/CPD and sometimes the other participants as well, and has to periodically up-date the mechanism for coordination to comply with changes in legislation and guidelines. It should provide supervision to the personnel of SWD/CPD and, if needed, to the rest of the participants in the multidisciplinary team.
- *DSA/CPD* brings in the administrative competences and obligations for protection and support; provides methodological advice to the appointed case worker of the DSA/CPD; prepares monthly schedules of the social workers on duty which are communicated to the regional departments of the Ministry of Interior.
- *Mayor of municipalities* appoints an employee of the local administration to take part and supervises the implementation of the goals in the help plan according to art. 7 CPA.

Depending on the findings and assessment in the multi-agency conference, the DSA/CPD has the power to remove the child from the family in serious cases. However, there is a problem of where to place the child, as Bulgaria has only recently begun to develop foster care (policy of deinstitutionalisation).

When a child is placed outside the family the DSA/CPD has to send a report to the court. After one month a care order is required with the court's approval or disapproval of the placement (art. 28 CPA).

## Flow Chart of Child Protection Bulgaria



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## ESTONIA

The Estonian system for proceeding from suspicion to protection is characterised by a dual approach involving parallel actions by child protection and criminal justice systems throughout the process. It can be described as a transitional and emerging system aiming to strengthen its supportive potential.

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### ORGANISATION OF CHILD PROTECTION AND POLICY

Child Protection in Estonia is organised on the level of the local governments (sec. 6 para. 1 Child Protection Act 1991 [CPA]). There are 226 local governments for about 900,000 Estonians and about 300,000 Russians. In larger municipalities or counties the local government has a “Social Services Department”. In smaller local governments sometimes a single person is in charge of social affairs, sometimes combined with other tasks; in these municipalities or counties the expertise on child protection may be not secured within the staff, for example, if only four people work for the whole local government. As the child protection system is part of municipal self-government rather than the centrally controlled administration, the quality of child protection in the municipalities may differ vastly and consistency in effective delivery does not seem to be guaranteed throughout the country.

Estonia was one of the first states in Eastern Europe to include NGOs as important consultants in the process of developing a social welfare system (Sicher et al., 2000). As a result, many are involved in the provision of support services and the scope as well as the quantity of services provided seems to be steadily growing. However, NGOs in Estonia are often rather small. For example, the state wide operating Estonian Union for Child Welfare is the largest NGO and has ten employees and 15 volunteers. The objectives of the organisation are to protect children’s interests and legal rights, to develop activities based on child protection and welfare, to participate in developing and implementing youth and family policies, and to represent the joint interests of the members of the organisation – currently 33 child welfare unions working in all 15 Counties in Estonia (Estonian Union for Child Welfare, 2011). Despite the strong commitment of volunteers, financing of NGOs remains dependent on government which, in turn, limits their independence. Projects are substantially funded by the National Gambling Tax Council and other funds. As a result federal government leads developments. However, the quality of cooperation between NGOs and government differs between the Ministries. While the Ministry of Social Affairs has developed a trusting and productive partnership, there seems to be room for improvement in cooperation with the Ministry of Justice and especially with the Ministry of Education.

Qualification remains an unsolved obstacle on the path to child protection. Child protection workers, even in larger governmental districts, do not always have the relevant education and professional training required by law (sec. 6 para. 2 CPA), although there are now intentions to make this a more binding rule. There is the additional problem of individual social workers having to carry excessive case loads, which can prevent adequate work on less serious cases and impede the shift at a local level towards the more preventive approach intended by national policy.

In the justice system child and family matters are dealt with by the County Courts. These differentiate between departments for criminal justice, for administrative justice and for civil justice. The latter deals with child protection and family law issues but there are no specialised family or child protection courts. In practice, the responsibility for such cases is often concentrated with certain judges and makes up the majority of their case load. Those judges are rarely provided with training or specialisation, however. In the criminal justice system, only specialised prosecutors dealing with violence against and by minors, so called “child prosecutors”, receive secured further training. All persons working with children have to have their criminal record checked before they

can be employed but there are gaps in this control mechanism concerning volunteers (Development, 2010, p. 18 with reference to Tamm, 2009).

Current law in the form of the Child Protection Act 1991 derives from the CRC but tends to be somewhat programmatic, insufficiently binding and lacking in specificity (Rääk, 2006). However, a new Child Protection Act is being drafted, and the draft is expected to become public and to enter the legislative process in 2012. The provisions for families can be mostly found in the Social Welfare Act. Violence against children is addressed in various sections in the criminal law ([www.legaltext.ee](http://www.legaltext.ee)).

So far as policy is concerned, the new National Action Plan 2012-2020 for children and families emphasises prevention, especially the development of parental skills. The “Triple P” program<sup>115</sup> will be broadly established and existing counselling centres are to be strengthened as a means of supporting local governments in their responsibility for assisting families. Currently these centres are run by the Department of Education and deal mainly with school issues but the plan foresees that their scope be complemented through provision of counselling to parents. These initiatives might help to reduce a criminalised approach to child protection and shift understanding of the official term “children at risk” from children who have violated the law to children in danger (see sec. 35 CSA, Rääk, 2006). Present policy approaches suggest the continuing prevalence of traditional gender patterns in both the Ministry of Justice and the Ministry of Education (Paats, 2010), such that current national efforts to change gender stereotypes (Allen & Perttu, 2010; Allen et al., 2010), for example, under the European Social Fund program “developing gender equality”, still have a way to go.

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#### CHILD PROTECTION PROCEDURES

After a suspicion is reported to local government/social services by a citizen or by the police, a social worker talks to the family and to other professionals or persons working with the child or family (child care, school etc.). If the information collected supports the original suspicion a team conference is convened with the family and all professionals who are in contact with the family or whose expert opinion is needed (sec. 35 CPA: use of expert opinions) to devise an appropriate intervention plan. The instrument of a case management plan is increasingly wide-spread but not implemented everywhere.

Quite a wide range of services exists in Estonia for families and children in need and could be implemented (Rääk, 2006), but the development has been uneven and they are lacking especially in rural areas (Estonian Development Plan, 2010, p. 20). Even when available, however, access is not always straightforward in that the recommendations of the team conference require approval by the heads of local government. Especially in smaller districts the head of government sometimes reserves the right to decide if specific services will be financed. Overall delivery of support is hampered by the lack of legal clarity as to definitions and divisions of responsibility (Estonian Development Plan, 2010; see sec. 24 CPA). So far as perpetrators are concerned, few services are available, apart from anger management groups while in custody or during probation. Additionally, there is no reliable and consistent monitoring of implementation and quality of service provision, despite county governments having a legal obligation to do so.

Where it is deemed necessary to remove a child from the family, foster care placements have priority over institutional care, which is considered a last option (Rääk, 2006). If parental consent is not forthcoming, the case is referred to the county court, civil department. The court will consider whether local government has offered sufficient support to the family and additionally has powers

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<sup>115</sup> The “Positive Parenting Program” developed in Queensland, Australia, is a widely recognised program of education and intervention aiming to assist parents.

to remove or restrict parental rights. If the placement outside the family is approved, social services are required to file regular reports with the court, although in practice, this doesn't always happen.

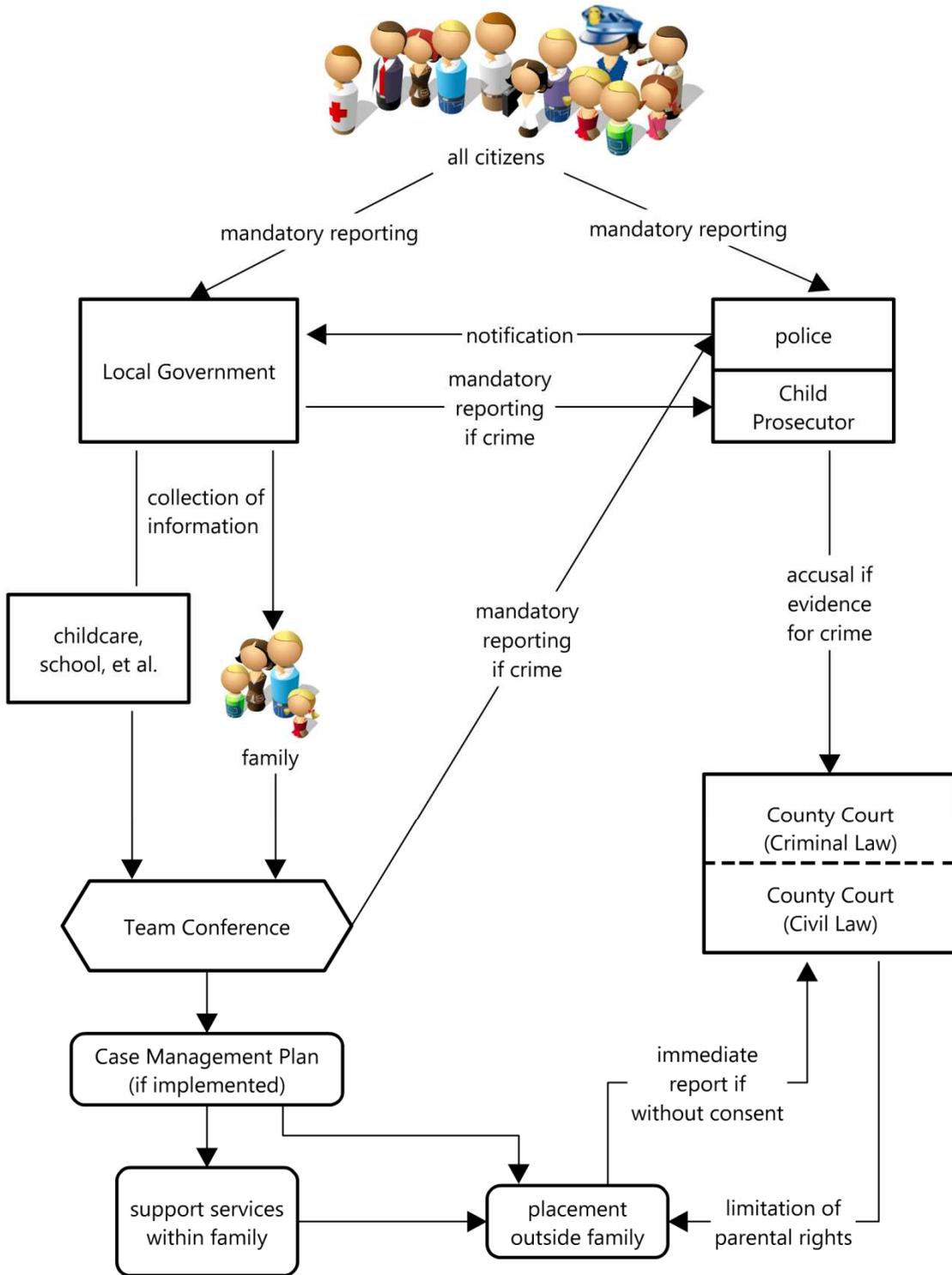
In parallel to support and protection, coordinated and supervised by the social services, the criminal justice system is always activated. Every time a team conference or any professional becomes aware of clear signs of violence the case and the relevant information has to be reported to the police. If police find sufficient evidence, they will refer the file to a "child prosecutor" who, again subject to the evidence, will always initiate criminal proceedings in the county court, criminal department. Hence, support and protection responses will run in parallel with criminal justice system responses, save in very minor cases where child prosecutors, following detailed binding guidelines, may decide not to press charges and to close the file.

Once charges have been filed, the court has three procedural options to progress the case:

- regular criminal proceedings with cross examination, expert opinion etc.;
- simplified procedure of plea bargaining ("deal") which includes a discussion of details in a official "meeting" with the offender and, if the accused pleads guilty, the court enters an agreed judgment;
- subject to the consent of all parties, a simplified procedure of a hearing without witnesses and expert opinion, basing its decision on that hearing.

The law permits a maximum duration of four months from charge to judgment. In all cases involving a child victim, a child advocate is appointed to the child. Following an amendment to the law effective from September 2011, children are no longer required to attend (all) criminal court proceedings. Interviews by the police are all video-taped and under the recent reform cannot be challenged. Despite this change, the evidence suggests that the handling of cases of child abuse is not sufficiently child-friendly or expedited (Estonian Development Plan, 2010).

# Flow Chart of Child Protection Estonia



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## GERMANY

Child protection in Germany is an integrated part of a holistic approach to child and youth welfare, with legal rights to wide-ranging support services, including child care. The striking characteristic of the system, its strength as well as its weakness, is the individuality of youth welfare offices within the self-governed municipalities and districts as well as the principle of subsidiarity with respect to the provision of services, resulting in a diversity of services and policy approaches on the local level.

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### ORGANISATION OF CHILD PROTECTION AND POLICY

Central responsibility for child protection rests with statutory youth welfare offices. The law requires their establishment in all large and medium-sized cities and districts (sec. 69 para. 3 Book VIII of the Social Code, Child and Youth Welfare [SGB VIII]). Currently there are youth welfare offices in 591 cities and districts. Child and youth welfare are constitutionally reserved to self-government at the local level (art. 28 para. 2 Basic Law for the Federal Republic of Germany). Neither the federal level nor the *Länder* may set binding guidelines or issue instructions. As a result, the governments and parliaments increasingly aim to bring their child protection policy into effect via legislation as their only binding instrument.

While child protection is an integral part of the child and youth welfare system, the term “child protection” is not used consistently. In all cases it includes voluntary services if provided to prevent further endangerment, within or outside the family. However, it might also include all preventive support services for children or parents to foster a healthy and conducive environment for the child’s development. There is a lively debate on whether all child and family services should count as child protection, which might have adverse effects such as a misleading focus on the threat of harm in the approach to parents and children (Schone, 2010 and 2008; SFK 1, 2010). The debate is gaining further attention in the course of a draft child protection act (BT-Drucks. 17/6256) that puts even early prevention under the umbrella of child protection.

In Germany, there is a consensus on the inseparability of protection and help and a rejection of the older concept of child and youth welfare as a regulatory task aimed only at averting danger. The performance of the protection duty, its procedural standards for assessing and averting endangerment, incumbent on child and youth services in case of child endangerment, has been regulated on a statutory basis through sec. 8a SGB VIII since October 2005. In this respect, there are nation-wide standards which are supplemented on a federal state or regional level through child protection acts, administrative provisions, policy recommendations, guidelines, scientific concepts and the like. The leading community associations have developed common guidelines for the implementation of sec. 8a SGB VIII, which play an important role (Bundesvereinigung der kommunalen Spitzenverbände, 2009). However, the sub-legislative provisions on the performance of the protection duties are distributed unsystematically through further education programmes and through their integration into the professional training curricula.

It is not only youth welfare offices as public authorities in the municipalities and districts which have legal responsibilities, but also NGOs. With the introduction of sec. 8a SGB VIII in 2005, independent youth welfare agencies in the voluntary sector were legally included in the protection duty for the first time. In particular, they are entrusted with risk assessment in cooperation with a qualified expert and should encourage the child and/or custodial parent(s) to accept the necessary support. The duty to notify the statutory youth welfare office of child endangerment only applies if the NGO does not have sufficient means to assess or respond to the danger and if efforts to encourage the voluntary use of support services have been unsuccessful (Münder et al. sec. 8a margin number 30 ff).

The draft Child Protection Act foresees including health care institutions, doctors or providers of counselling and assistance outside the field of child and youth welfare in a similar way but on a voluntary basis (sec. 4 draft-law on Cooperation and Information in Child Protection [KKG-E]). Cross-case working groups are to be implemented in every city or district with a youth welfare office and participation will be obligatory for the relevant institutions and professionals (sec. 3 KKG-E).

Through planning, organisation and financing, youth welfare offices are legally required to ensure that there are sufficient services. However, it is local government that determines the necessity of services. If legal rights to support are not actively claimed by children or parents the lack of strictly binding duties is increasingly used to reduce the offers.

Under the statutory paradigm of the unity of child and youth welfare, the youth welfare offices provide a multitude of services to benefit children and promote their education and development, most of which are delivered by NGOs. Children and/or family members are free to access a number of services directly without asking for permission and funding at the youth welfare offices. For example, counselling centres provide low-threshold services in all areas across the country based on the principle of meeting demand. In addition, the broad spectrum of services comprises general support measures for young people and their families, day care for children and individual services for children, adolescents and their parents as well as for young adults.

The German welfare system is traditionally based on the principle of subsidiarity, that is, services should primarily be provided by NGOs, while public agencies should only take over such tasks themselves if provision by NGOs is insufficient. The public agencies, secured by law, grant funding for services to NGOs and are responsible for ensuring that the demands of children and families are met (sec. 79 and 80 SGB VIII). This principle of subsidiarity in child and youth welfare, however, has been weakened with increasing provision of services by the youth welfare offices themselves, while NGOs are more and more involved in the fulfilment of statutory tasks.

All youth welfare offices and child and youth welfare NGOs are legally obliged to employ only professionals with a relevant education and/or specialisation (sec. 72 SGB VIII). Nevertheless, there are a number of problems. Most of the youth welfare offices are understaffed. Additionally, while a recent change to the law, which will take effect in July 2012, limits the allocation within youth welfare offices of no more than 50 cases involving guardian or curatorships to each full-time employee (sec. 55 SGB VIII), there are no such limitations of case load levels within social services. Moreover, training for judges in family courts is only voluntary and the provision of training is limited.

Child protection in Germany is mostly regulated through the Social Code, Book VIII on Child and Youth Welfare but also through important provisions in family law and – indirectly - through criminal law. Barriers to child protection in court proceedings were addressed by legislative measures in 2008 (Meysen, 2008).

Responsibility on the federal level rests with the Ministry for Family, Senior Citizens, Women and Youth. In 2006, the federal government founded a National Centre for Early Prevention (NZFH) and, together with the *Länder*, initiated programmes for its development and promotion. The National Centre promotes a wide range of projects nationwide intended to improve cooperation between health care and child and youth welfare services, especially during pregnancy and the first three years of life. Training “family midwives” as a means of low-threshold access to, and support for risk groups is one strategy being tested (NZFH, 2011). It should be noted that for the most part the projects have been funded by the *Länder* and not by the federal government that funded primarily concomitant research.

At present, political debate in Germany is strongly influenced by high profile cases of neglect and abuse leading to the death of a child. With demands that no child be lost, the child protection system is faced with the expectation that it should always be in the right place at the right time. These high expectations not only conflict with the Constitution but also stand in sharp contrast to the deficiencies in resources and personnel in both youth welfare offices and family courts. The federal government, the *Länder* and the cities/districts emphasise and support the establishment of improved cooperation. Initial experience in practice suggests that this is having a positive impact (Maelicke et al., 2009; Ziegenhain et al., 2011; Meysen et al., 2010).

## CHILD PROTECTION PROCEDURES

If a youth welfare office, as the law phrases it, “gains knowledge of weighty grounds to assume that a child’s best interests are in danger”, either while in contact with a family already or by notification of a suspicion, pursuant to sec. 8a SGB VIII it is obliged to assess the risk. This assessment has to be conducted in cooperation with several experts. The children as well as their parents have to be involved in the assessment process. If required, they must be offered the necessary support services (sec. 8a para. 1 SGB VIII).

Before implementation of sustained support services the youth welfare office has to draw up a service plan, following a help conference in which all relevant parties participate. This includes children and their parents, foster parents or other carers as well as NGO professionals and psychiatrists or psychotherapists, if such treatment is to be offered. The youth welfare offices must then review any service plan in further help conferences at regular intervals (sec. 36 para. 2 SGB VIII).

If a danger is identified or if a more thorough assessment of the danger is deemed necessary and the parents are neither willing nor able to cooperate, the youth welfare office must appeal to the family court (sec. 8a para. 2 s. 1 SGB VIII). In emergency cases, the youth welfare office has to take children into care (sec. 8 para. 2 s. 2, sec. 42 SGB VIII). If the parents oppose this, the child must be returned or application made to the family court without delay.

In Germany, only family courts may intervene in parental rights. Exceptions are made for cases of serious emergency, in which police and/or youth welfare office may temporarily ensure protection. If the family court becomes aware of grounds to assume child endangerment it must institute proceedings *ex officio*.

The family court can employ a range of measures to avert the danger. It may order the uptake of services offered by child and youth welfare or by health care institutions (implementation order), to ensure that the child attends school; a prohibition against a family member, either temporary or for an indefinite time, to enter the family home or another dwelling, to go within a certain radius of the home or to visit other places where the child usually spends time. The court may also impose restraining orders and prohibit abusers from contacting the child. Finally, the court may additionally make legal declarations in lieu of the parental custodian, or suspend or withdraw parental custody in part or completely (sec. 1666 para. 3 Civil Code).

Suspending only the parent’s right to decide on the child’s residence is a frequent instrument of enforcing protection measures. If parental custody is withdrawn wholly or in part, the court appoints a guardian or curator<sup>116</sup> who decides on the appropriate support for the child or adolescent. Such

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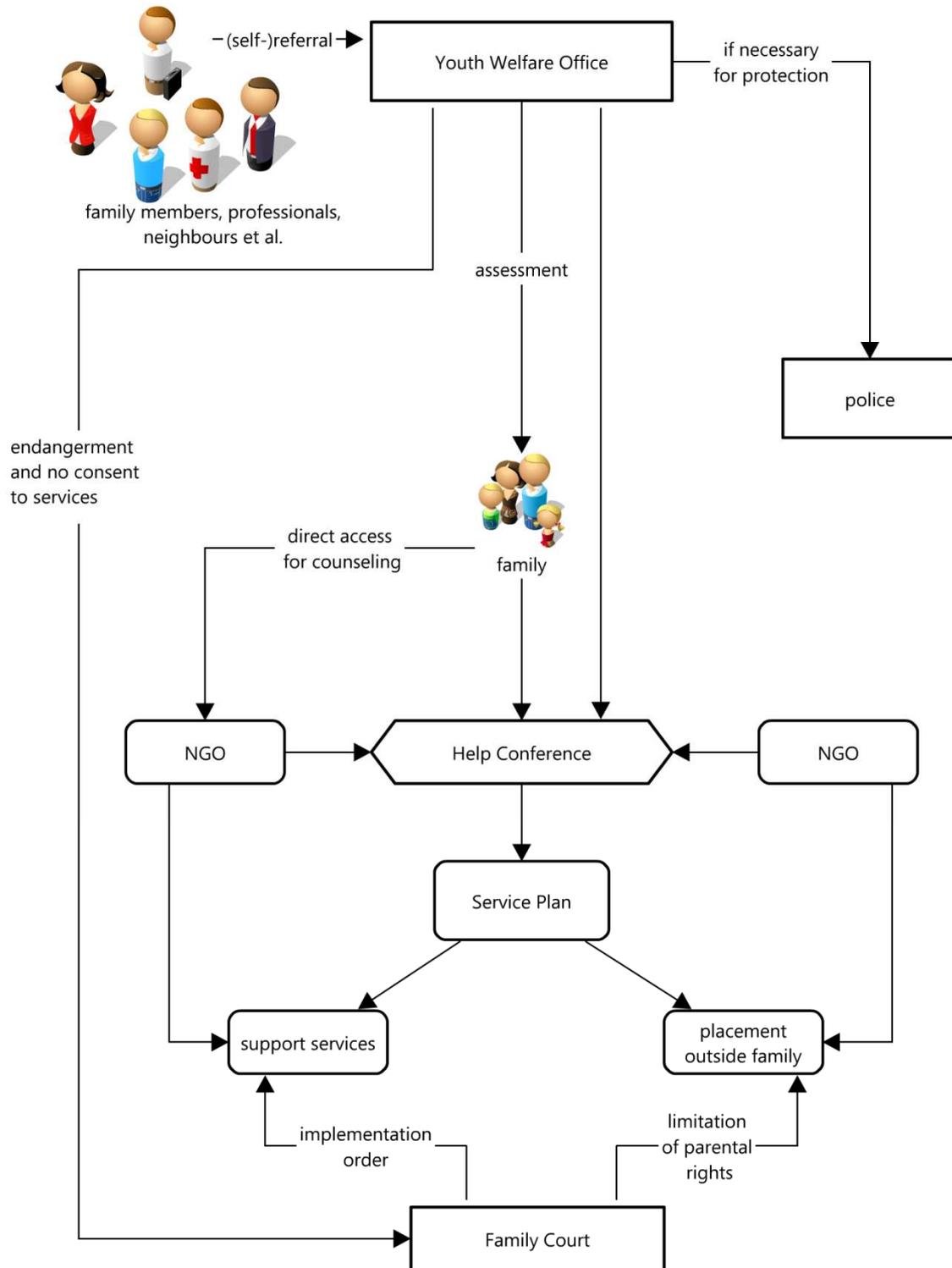
<sup>116</sup> A guardian is appointed when parental rights are withdrawn in all respects; a curator takes on specific limited responsibilities when parental rights have been restricted.

measures may comprise home visiting, supervision or counselling as well as part-time or full-time residential care. Child and youth welfare services are generally aimed at improving the conditions under which a child is brought up in such a way that the child can stay with his family.

A measure to avert a danger to the child's best interests must be terminated by the court if the child's best interest is no longer in danger or the measure is no longer necessary (sec. 1696 Civil Code; sec. 166 Act on the Proceedings regarding Family Matters and Voluntary Jurisdiction). These decisions are not final and may be amended at any time. The family court has to review the decision *ex officio*, for example on the suggestion or formal application of the parents or any other person affected by the court order.

In the criminal justice system the separation between child protection and prosecution is central to the German approach to child maltreatment. On the one hand, the legal system reacts to the infringement of a child's legal rights with a differentiated code of criminal offences, which guarantees that such acts are punishable. This is particularly essential to child protection if the offender is unknown or does not reside with the child and if the child's caregivers support the investigations. On the other hand, child protection is based on the view that for effective protection and support, it is vital to win the trust and cooperation of the families whenever possible; criminal prosecution may impair this relationship, especially if the abuse occurred within the family. Therefore, the law draws a line between child protection and criminal justice and will resort to criminal justice only when in the best interests of the child.

# Flow Chart of Child Protection Germany



## GREECE

Child protection in Greece does not present a picture of a systematic approach, and there are considerable gaps between law and implementation. Inadequate structures and resources mean that prescribed procedures are not initiated or followed, and access to services or child protection is not secured. Searching for hope in the Greek child protection system, it can be found in highly committed NGOs.

### ORGANISATION OF CHILD PROTECTION AND POLICY

The central role in the child protection system in Greece belongs to the District Attorney (DA) at the first instance court. There is supposed to be a DA for minors in all courts but only in very few is this specialisation implemented (Athens, Thessaloniki, Piraeus, Patras). Each DA is responsible for a far too large district.

Greece has no distinct administrative child protection system, nor are there specific agencies responsible for welfare or for families. There is no binding legal duty on the state to provide adequate or, indeed, any support and assistance services to children and families. Social service provision is uneven across the country and, in many municipalities and prefectures, inadequate. Offices are chronically under-staffed (Hetherington and Baistow, 2001), and social workers frequently lack appropriate qualifications.

The Ministry for Health is, in theory, responsible for health care and social services, with care for the welfare of children assigned to the social services in the municipalities and prefectures, or on smaller islands a hospital. However, de-centralisation of responsibilities to the local level (Municipal and Community Code, Law 3463/2006) is only partially implemented. At the same time, the only national level resource for child protection, the National Centre for Social Solidarity, does not handle cases; when suspected abuse is reported, they do not investigate but forward information to the social services or the police.

Social services provide support only if family members ask for certain specified assistance, which almost never happens. There are no services while the child lives within the family to help the parents and their children solve problems or overcome problematic child-rearing. If the child is to be removed, institutional care is often the only option, with almost no foster care available, despite national policy to develop and extend this service (Presidential Decree 86/2009: Organisation and function of the institution of foster family).

The police have the duty to protect minors from any kind of moral, physical or psychological danger (art 97 para. 1 of Presidential Decree 141/1991). To this end, they are tasked with implementing any court removal order and offering help to children, but the latter rarely happens in practice (Greek Helsinki Monitor et al., 2004). Only in Athens does the headquarters of the police employ a psychologist, but, as in all public institutions, the offer of help can only be made if the child is accompanied by an adult relative. It is therefore difficult for a child or adolescent to access services independently, which is particularly problematic where abuse is occurring within the family.

Some 15 years ago the obligatory implementation of specialised family courts was introduced by law, to deal with all cases concerning family law, including child protection issues (art. 48 para. 1 Law 2447/1996). Simultaneously, an additional requirement was imposed to ensure the presence of social services in each court of first instance, staffed by experts on matters of family and juvenile law (art. 49 para. 1 Law 244/1996). However, these regulations have not yet been applied in Greece at all (Committee on the Rights of the Child, 2001).

A number of NGOs attempt to fill the gaps in service provision, although there is no systematic connection with the social services in the municipalities and prefectures, and services to prevent child maltreatment provided by NGOs are usually not financed by the state. State run residential homes for children with psychiatric problems connected to psychiatric institutions are largely lacking. There are no (public) centres or services for children in puberty or adolescents. The key phrase is “who accompanies the teenager?” Services at least theoretically exist, but only if the teenager is accompanied by a relative. This closes access for young people being abused at home.

While some NGOs provide residential care services, others operate only within office hours (9 a.m. to 5 p.m.). Most limit provision to children meeting specified criteria (for example, at least one parent must be Greek, or the child must be under 12 years of age). There is only one NGO, Smile of the Child (SmoC), which does not have limiting criteria. SmoC has also recently started to operate a 24/7 helpline for children, a service which is promoted by federal government, although government does not contribute with funds or, indeed, assist with the provision of other services. This NGO is able to provide ongoing services for families in some regions (Smile of the Child, 2011).

Just as access to other services require the child to accompanied by a relative, so hospitals have an unwritten rule that a parent or other adult must be with the child at all times. Nurses will not accept the responsibility otherwise, and this becomes a problem when a child is to be hospitalised for social reasons or when parents or other relatives are not able to stay with the child all day and night. Here, NGOs offer a vital service and will stay with a child when a parent or other carer is unable to do so, or is in need of a break.

There is a serious gap in all health and welfare provision to adolescents, especially if in need of psychiatric help. Hospitals will not accept admission of a child over 12 or, at most, 14 years of age, and admission of an adolescent to an adult psychiatric hospital is discretionary and determined on a case-by-case basis. Psychiatric care for children is generally scarce, not only affecting children who may need specialised treatment after abuse, but also limiting temporary placement options for children at risk. There is only one child psychiatric hospital located in Athens, with few clinics or child psychiatric services elsewhere in Greece, and no follow-up care after a child is discharged.

Overall, the legal framework can be characterised as highly fragmented, lacking both dedicated child protection laws and support and assistance services for children and families. Perpetrators of persistent abuse or malicious neglect resulting in bodily harm to a child may be prosecuted and sentenced under criminal law (art. 312 and 360 Penal Code). Neglect, however, falls primarily under provisions of civil law when the carer fails to exercise a minimum degree of care, such as supplying the child with adequate food, clothing, shelter, education or medical care (art. 1518 Civil Code). Child sexual abuse is dealt exclusively within the boundaries of criminal law (esp. Law 3727/2008 Protection of Children against Sexual Exploitation and Sexual Abuse), but reporting of cases is quite rare (see also below 3.1.4 and 3.2.4). There have been several announcements for an as yet undefined federal policy on child protection during recent years but not much concrete action can be identified.

#### CHILD PROTECTION PROCEDURES

When any public authority (police, social services, hospital) is alerted to suspicions that a child is in danger, a referral is made to the DA who will, in turn, direct social services to investigate. Enquiries – usually a visit to the family – can only be conducted by a social worker employed by the statutory social services, and the purpose of the investigation is only to substantiate or dismiss the suspicion.

The rationale underlying this system is that without an instruction of the DA there is neither a duty nor right to investigate. There is no possibility for proactive, preventive measures to be taken. No

agency is responsible for identifying high risk families or for providing appropriate support. No agency has the right to monitor the safety or the well-being of a child without a court order or an order to investigate by the DA. If the DA is well-informed or sensitive to child protection issues, s/he might take a side route outside the legal provisions and call on an NGO.

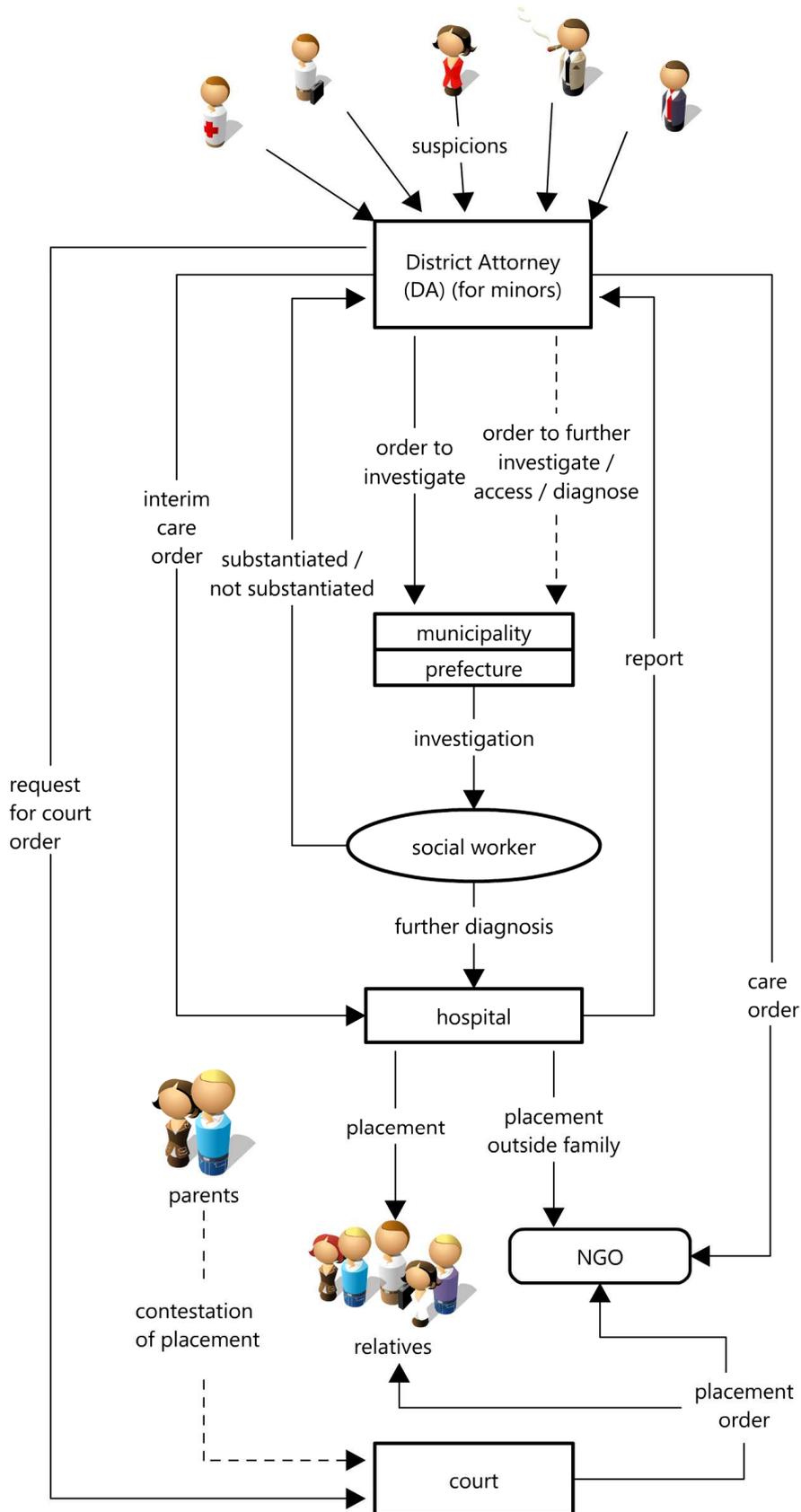
Investigation by understaffed social services may take a long time and the duration often has no connection to the severity of the endangerment of the child. Many reports from the DA are never investigated. However, where an investigation does take place, the findings are reported back to the DA who then decides what further action is to be taken. Further investigation or protection measures can be ordered. In case of placement of the child outside the family the DA calls on the social services to remove the child accompanied by the police. If initial suspicions are substantiated, the DA will usually refer the child to hospital for examination. The purpose of this order is often to gain time to find a placement for the child outside the family. The DA has no right to oblige the hospital to take a child, and the hospital may refuse to do so.

Every long term placement or short term placement that is contested by the parents requires a court order. In practice parents rarely challenge a removal because the evidence before the DA takes action has to be so high that their chances of success are minimal.

In all cases where a child is placed in residential care, after 30 days custody automatically reverts to the community home, unless parents try to contest the placement. The DA is obliged to apply for a court order after these 30 days (art. 1532 Civil Code). All cases of long term placement go to court and there has to be a court decision on custody at some point (art. 1536 Civil Code). In practice the order is adjudicated long after measures and placement have been implemented. In theory, a court can suspend or remove parental rights of custody only when other measures to safeguard a child have proven unsuccessful or insufficient to prevent danger for the child's health. However, the absence of viable alternatives means these powers are seldom used.

Finally, since the DA and the court are responsible also for criminal investigation, the protection measures always reflect the course of criminal proceedings as well.

# Flow Chart of Child Protection Greece



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## NETHERLANDS

The Netherlands have probably one of the most sophisticated and best educated systems of child and family welfare integrating child protection into an overall preventive approach with a strong focus on preserving the family and a more recent shift towards more active intervention. However, on the organisational level the system may complicate protection procedures by splitting the competences among various institutions.

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### ORGANISATION OF CHILD PROTECTION AND POLICY

Aiming to facilitate the access to support for children and parents and to increase the transparency of the system, the Netherlands enacted a new youth welfare law in 2005. It includes an integrated approach specifying duties for all organisations involved on the local level and promotes multi-disciplinary assessments. It created the youth welfare office (Bureau Jeugdzorg) as a central agency on the local level of the provinces (van Montfoort, 2010). These are run by publicly subsidised private organisations but have a public task. They act as contact point for children and families to find access to the differentiated, timely and widely available support services. In addition, they carry out the supervision orders of the court and act as guardian if appointed by the court.

Part of the youth welfare office is the agency for notification of child maltreatment (Advies en Meldpunt Kindermishandeling – AMK). It receives notifications of suspected child maltreatment and has the responsibility to assess. If endangerment cannot be resolved by voluntary support services the AMK reports to a state run agency: the child protection board (Raadvor de Kinderbescherming) which investigates and, if necessary, applies for court decisions on the protection of children.

When long term and/or costly support services are to be implemented the youth welfare office, since it is a private organisation, has to apply for confirmation at the General Department of Social Services in the municipality. The latter decides about the commitment to pay or not.

The differentiation between the youth welfare office/AMK and the child protection board makes the child protection system a two staged system. There are ongoing discussions as to whether there should be one single child protection board responsible for all child protection investigations (von Montfoort, 2010).

The diverse range of early prevention, early intervention and other support services is mainly provided by NGOs according to the principle of subsidiarity, from which the legally founded expectation of secured funding by the state follows (Cooper et al., 2003). Related to the programmes “a chance for every child” (“Allekansenvoorallekinderen”) and “children safe at home”, a child and family centre with counselling and other services is available in every city and community under the supervision of the local public authorities since 2007. The result is an increasing decentralisation of youth welfare and child protection (von Montfoort, 2010).

In addition to foster and institutional care new closed residential homes for children have been established since 2008. Children can be sent there by a juvenile judge for their own safety, regardless if the danger is a family member, a stranger or their own self-destructive behaviour (drug abuse, auto-aggression, or delinquent behaviour). This measure is only taken in very severe cases.

The child’s and parents’ right of complaint is laid down by law. Organisations for child and youth care are legally obliged to have a complaint procedure and complaint review in which a client-confidant (vertrouwensperson) is appointed. The intention of the procedures is to strengthen the position of the clients and improve the quality of care.

The legal basis of child protection and youth welfare system in the Netherlands is founded in the Youth Welfare Act (Wet op de Jeugdzorg). Legal provision for state interventions in parental rights can be found in the family law of the civil code.

Though executed on the local level the child protection system is fairly centralised. Responsibility at the national level is vested in the Ministry on Youth and Family since 2007. The policy on child protection at the national level is highly influenced by a high profile case of the death of a child named Savanna in 2004. Since then the federal government instructs social workers, representatives in child welfare institutions, physicians and judges to put the protection of children first, thus at least partly reversing a policy that lasted for about 30 years of taking the least intrusive interventions as possible and, as far as possible, keeping the child within the family. Binding recommendations for working methods (Delta gezinsvoogdij), check lists (CareNL, Orba, LIRIK, CFRA), guidelines for the youth welfare offices (Veiligheidsbeleid Bureaus Jeugdzorg) and changes in the law (Voorstellen voor nieuwig jeugdbeschermingsrecht) were part of the reaction to this case.

Part of the “Delta plan” was the reduction of case loads to 15 children per full-time social worker. Currently the numbers are at 21. Full-time guardians are allowed to conduct a maximum of 18 guardianships at any one time. The main goals of the more or less binding recommendations for working methods are: safety for the child, if possible within their families; supervision and empathy; the development of the child; using the resources of the family and the surrounding social network (von Montfoort, 2010).

The supervision of foster care was rather neglected in comparison to institutional care in the past and is now being given more attention. The child care inspection board now examines a selection of cases in all youth welfare offices every two years and will examine in particular cases that went wrong. In addition, a system of complaint centres with highly qualified procedures of, for example, visiting every child in (closed) institutional care monthly is in place. Supervision and intervision are mandatory for all professionals in the child care sector. The level of professionalism and specialisation in the system is high (von Montfoort, 2010).

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## CHILD PROTECTION PROCEDURES

Suspicion of child maltreatment, child neglect and/or child abuse is usually reported to the AMK in the youth welfare office. The AMK has the duty and the power to investigate whether the child and his/her family is in need. They talk to parents and other relevant persons (doctor, school, etc.) as well as to children but (usually) not if under the age of six. After the assessment, reports are written that must be retained at the AMK for five years. If the suspicion was reported by a neighbour or other citizen, the reporting person may remain anonymous, but when a professional makes a report, his or her name has to be mentioned.

The investigation by the AMK is obligatory. As part of the youth welfare office, AMK has its own confidential doctors. However, usually the first assessment is a low-level-investigation. There are regulations for their procedure, and they must inform the parents.

If the case is found to be less serious and family support services are called for, the AMK will turn to their colleagues in the general department of the youth welfare office, which has funding for up to five sessions of voluntary counselling. Within this space, the agency must decide whether further support should be given. If more is needed, and if parents agree, they would be referred to the General Department for Social Services that decides on the funding of the suggested support services. They also could refer the children and other family members to the health care system, for example for psychological counselling.

The youth welfare office works out a help plan with the family. Before that a family conference has to be held. The obligatory family conference includes the entire family, and there are no exceptions or reservations for cases of prior intimate partner violence; family members cannot have an advocate or support worker with them.

If the AMK after its investigation concludes that the child is in need of protection or support, it will report this to the child protection board which then has to investigate the case further, and if the suspicion of maltreatment, abuse and/or neglect is substantiated and the parents do not give consent to the necessary support services, the child protection board will request a child protection measure from the court (art. 254 para. 5 Civil Code). In court the case will be dealt with by a juvenile judge.

In the past, the juvenile judge had a very active role, discussing the case with the child protection agency, the parents, the child and lawyers. Since 1<sup>st</sup> November 1995, however, the judge only becomes active on request of the child protection board and usually has no role after issuing the requested court order unless the agency calls on them again. Nevertheless, when a case goes to court the judge will discuss the situation with the child protection agency and the parents, and the parents may also bring a lawyer.

If there is an urgent need for immediate help (as in very severe cases), police, hospitals and doctors or the AMK can report directly to the child protection board. If immediate help is necessary for the safety of the child, the child protection board can obtain an emergency court order at any time of day or night. These court orders are temporary and usually last no longer than three months. The parents (and the child itself, if it is 12 or older) must be heard by the court within two weeks after the court's decision. Investigation of the need for (longer lasting) protection measures must be completed within these three months.

The court has the power to intervene in parental rights. If this seems appropriate, the court can leave the child in the family and put the family under supervision (art. 254 Civil Code). Court supervision orders are implemented by the child welfare office, and they may include various measures required of parents. The child welfare office can issue written requirements that the parents and/or carers have to follow during a supervision period (art. 258 Civil Code). A social worker will then visit the family regularly, talk to the child, parents, relatives and neighbours. This order has a maximum duration of one year, but can be prolonged, if necessary. Parents can also request that the court dismisses a supervision order (art. 259 Civil Code). Possible protection orders of the court are:

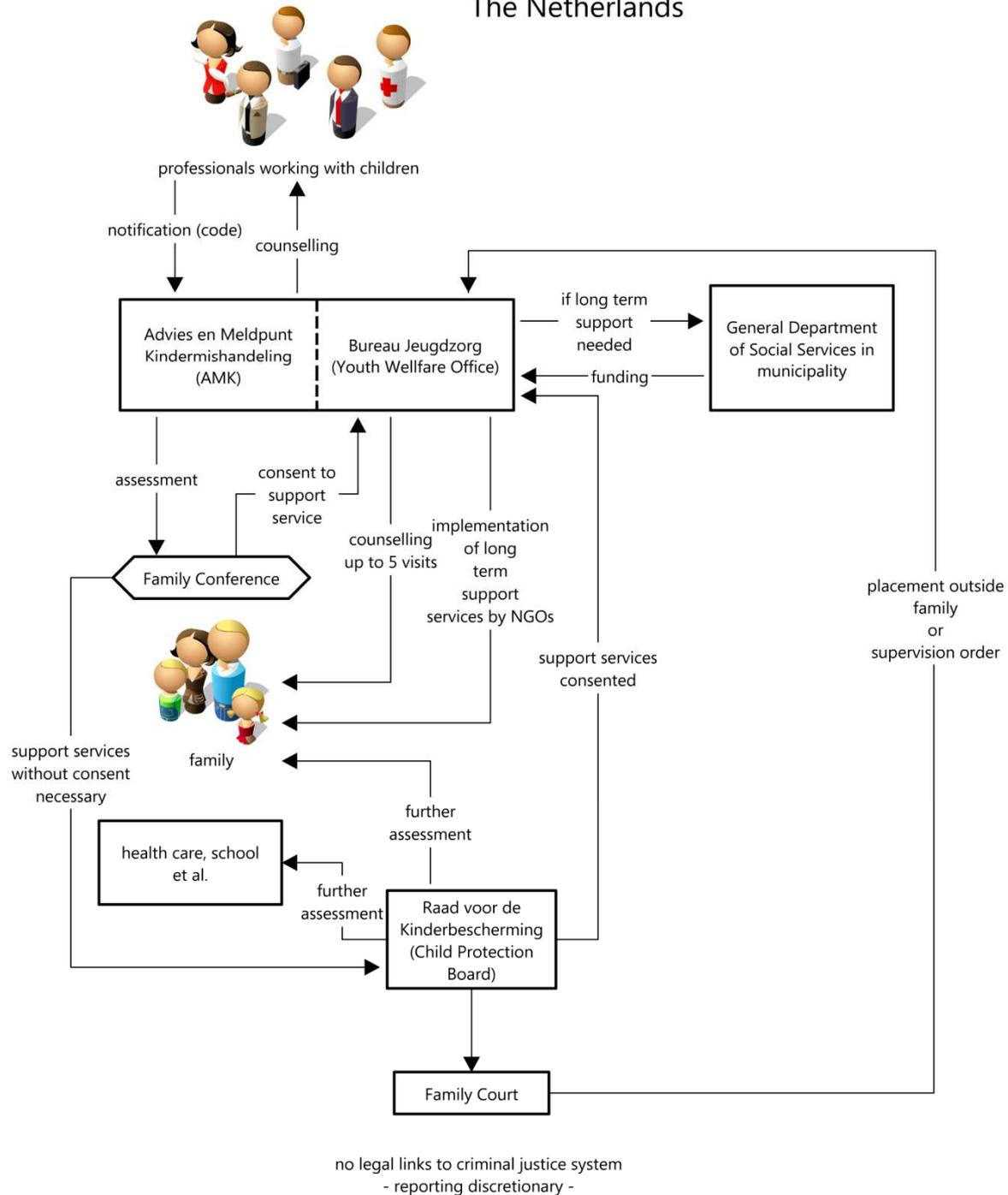
- family supervision order (art. 256 Civil Code), duration maximum 1 year, can be prolonged;
- placement outside the family (art. 261-263b Civil Code), duration maximum 1 year;
- dismissal of parental authority (art. 266-278 Civil Code), guardianship is appointed to youth welfare office.

The latter is the ultimate measure and will only take place in severe cases. The dismissal of parental authority will end when the child reaches majority (age of 18).

If only one parent is abusive, it is possible by way of an administrative sanction to remove the perpetrator and ban return to the residence; this is limited to a fairly short time when issued by the mayor's office, but an administrative judge, rather than a family court or juvenile judge can extend that period. In cases of a dismissal of parental authority of the father, the mother's parental authority will be dismissed as well if she does not separate.

If these measures do not ensure the welfare of the child, a placement out of the home can be ordered by the court, again for maximum one year. If there is no perspective that the situation will improve, and/or one of the parents is convicted of abuse, parental authority can be dismissed until the child reaches the age of 18.

## Flow Chart of Child Protection The Netherlands



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## ROMANIA

Over the last two decades Romania has developed and established a high standard that combines a preventive approach of early prevention and early intervention with an obligatory multi-agency assessment of suspected child maltreatment and ensuing protective measures where needed. However, the assessment of suspected child maltreatment is still located in a legal framework that favours an investigative approach with extraordinarily wide powers for the state.

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### ORGANISATION OF CHILD PROTECTION AND POLICY

When the pictures of the devastating conditions in Romanian orphanages spread around the world in 1989/90 they caused an outcry. Romania knew its child protection system had attracted broad international attention and still does. External pressure, especially in the course of the process of Europeanisation while negotiating EU membership, accompanied by increasing internal commitment has led to substantial improvement (Jacoby et al. 2009). In 2004 Romania passed a legislative package for the protection of children's rights which specified procedures, priorities, institutional structures and responsibilities to take effect when there is any indication of child abuse or neglect (Law No. 217/2003). At the same time a Plan of Action was initiated for implementation (Romanian Priority Action Plan 2003). An extensive manual of implementation was issued spelling out the responsibilities of each agency and profession. Overall, the system seems to be strongly influenced by the US American and Canadian approaches to child protection.

The main responsibility for ensuring child protection is located on the 40 county-level General Directorates for Social Assistance and Child Protection (GDSACP) (art. 102 ff. Law 272/2004 on the protection and promotion of the rights of the child). They are responsible for investigating suspected child maltreatment and implementing support services. They are further tasked with consulting local authorities in the communities. There are detailed protocols for referrals, coordination and cooperation within local partnerships.

The overall philosophy is to prioritise services and support for parents to enable the child, where possible, to remain in the family (Generalkonsulat von Rumänien, 2004). Support services that are provided range from early prevention (day centres; educational programmes for the development of parental skills; counselling on parenthood during pregnancy) to early intervention (psychological and psycho-pedagogical counselling for children; psycho-pedagogical and social counselling centres for parents; ongoing services of family workers, especially for single parents; mother-child homes; assessment of resources in the extended families; assistance in finding a job; leisure time activities for children; pedagogical assistance to ensure school attendance) and alternative care and support arrangements (foster care; institutional care; family reintegration services). This last group of services in particular is financed by the state and can be provided only with state permission. Foster parents who have been licensed for foster care receive both services for foster children and financial support. Foster care is clearly prioritised before institutional care and the numbers are shifting towards foster care considerably (Jacoby et al., 2009, p. 125).

It was quite a challenge for Romania to develop all of the services called for by the legislation. EU, UNICEF and USAID funds have played a key role, as have partnerships with NGOs, partially funded by international donations, and with qualified professionals. Each local authority has a partnership agreement with local organisations, both to ensure that the services are available that the County Directorates could not otherwise provide, but also to act jointly for the purposes of prevention. In Romania, the government can provide funding to an NGO within the framework of a specific project. For example, a municipality will issue a call for provision of services. The state can also contract with private individuals in a partnership. Services and facilities provided by NGOs can be partly or fully funded by the state but overall, state funding is estimated to amount to about a third of the services

undertaken by the NGOs. All private providers of services have to be registered and are monitored and inspected by the National Authority for Child Protection and Adoption (NACPA) that also sets nationwide standards.

In rural areas children and parents still face problems accessing the services. In urban areas many more NGOs are active and a far greater variety of services is available.

Tension is evident between the child protection system on the one side and the police and criminal justice on the other. There is still a lot of mistrust because of continued corruption in the police and judicial system.

National responsibility lies with the General Directorate for the Protection of Children's Rights as a department of the Ministry of Labour and Social Protection. In addition, NACPA is the national authority that coordinates the actions of relevant ministries, sets standards for the institutional system and the service providers, and develops guidelines and facilitates their implementation with representatives on the county level to build links to the local "commissions for child protection". This commission is a specialised body of the county council (Government Decision No. 1437/2004). It is responsible for periodic review of protection measures, informing parents and children of their rights, and responding to complaints by children, etc. (Romanian Priority Action Plan, 2003).

The law on the prevention and combating of family violence (Law No. 217/2003) came into force in 2005. It sets very tight legal guidelines for social work (and adoption). There was a huge mistrust that good practice would not develop in the absence of binding rules. These strict rules and binding procedures, however, inhibit flexibility of professional judgement, a vital element of social work, and do not take account of the specific organisational parameters on the county level. For example, the maximum case load of a full time case worker in social services is set at 30 by binding national guidelines (art. 105 para. 5 Law 272/2004). In practice this is difficult to achieve and results in delegation of tasks to NGOs and/or private social workers.

Another central element of the legal package that came into force in 2005 is the law on the protection and promotion of children's rights (Law No. 272/2004). This states the primary responsibility of parents for the development of their child and their right to support in order to fulfil this legal obligation. Children's needs are observed and promoted in an individualised and personalised manner. Abuse and neglect is defined.

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## CHILD PROTECTION PROCEDURES

The General Directorates for Social Assistance and Child Protection (GDSACP) have to assess any reported suspicion regardless of whether the identity of the notifying person is known or not. In cases of grounded suspicions they have a right to visit the children where they live and to obtain information about how they are taken care of, their health and physical development, their education and training (art. 36-38 Law 272/2004). The GDSACP carries out the assessment, but can also call in private social workers for this task. If the child or parents are in need the GDSA has to provide the appropriate specialised services for the children and their family. After 30 days they have to report back to the professional who notified them of her/his concern about the measures that have been taken.

Where services are provided and implemented the GDSACP sets up a service plan (art. 35 CPA). A multi-agency approach is required (see diagram) to ensure that all participating organisations combine their resources. The proceedings as well as the framework are regulated by Order No. 286/2006 of NACPA. A weak point in this system is that there are too few support services for

women exposed to domestic violence, and, unlike child abuse, admitting to being a victim of intimate partner violence remains stigmatised.

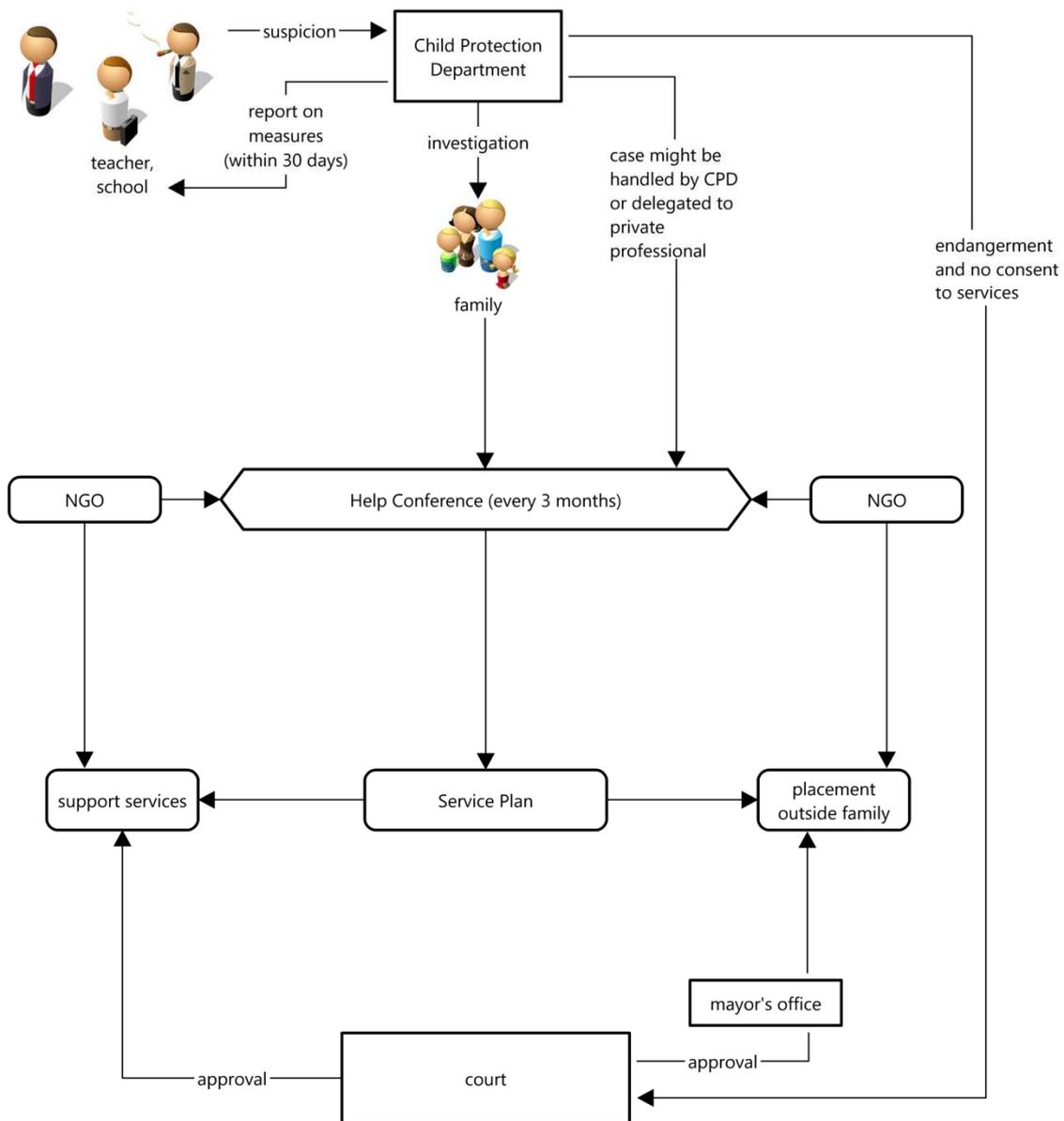
If the efforts fail to secure the safety of a child within the family on a voluntary basis, the GDSACP requests special protection measures from the court. In urgent cases the GDSACP can take a child into care without parental consent but must notify the court within 48 hours (art. 6 Law 272/2004). Except for immediate protection (art. 64 ff. CPA), the court is the only competent institution to intervene in parental rights (art. 38 CPA; Romanian Priority Action Plan, 2003).

The court can approve the implementation of support measures without consent, or order placement of the child in foster care. Romanian law does not yet permit removing the abuser from the home in cases of domestic violence. Unless the woman petitions for separation or for protection from the abusive partner, it is difficult to take action to protect the child from the harm done by witnessing domestic violence. Furthermore, there is no legal instrument that obligates parents to accept a psychological assessment of the child. Sexual abuse is very rarely uncovered and approaches to specific protection apparently have yet to be developed.

When a child is placed in foster care, the rights of the natural parents remain largely valid, visits with the child are encouraged, but if a parent has been abusive this is likely to be permitted only under supervision. When parents agree voluntarily to placement in foster care, a dual system of parental rights exists. When a court decision is needed for placement, this will include regulation of the rights of the natural parents, for example, by limiting contact with an abusive parent.

In cases with a court approval for a placement outside the family the mayor's office of the community where the parents reside is involved.

## Flow Chart of Child Protection Romania



### SWEDEN

Child protection in Sweden takes a focused preventive approach to child and family welfare (Katz & Hetherington, 2006). The system consists primarily of statutory agencies and combines differentiated and timely support services available throughout the country for children and their families with a highly normative prohibition of (especially physical) violence against children. This seems to result in some tension between a strong child developmental approach and investigating as well as judging parental actions.

## ORGANISATION OF CHILD PROTECTION AND POLICY

In Sweden child protection is organised and implemented on the local level of the 290 municipalities. The local social services, police and health services operate differently in all municipalities. The national policy is to seek more nation-wide standardisation by regulating procedures for the work of the social services/department for child protection in recent years. This tendency was and is dominant, despite research showing a need to develop the skills of social work for assessment and intervention in practice, which requires leaving room for professional judgement. Standardisation of locally implemented procedures for child protection therefore is not only difficult but also is considered to be problematic. Overall, staff in the social services/department for child protection have a secured and appropriate qualification, mostly as social workers (Hetherington & Baistow, 2001).

The Social Services Act (SoL) guarantees that all residents of the municipalities shall receive the support and help that they need (sec. 2 para. 1 SoL). Social welfare provision is understood to be a primary purpose of the state (Katz & Hetherington, 2006). The law thus lays down the provision of a variety of secured statutory support services (sec. 11 para. 2 SoL). The nationwide policy is that services are non-stigmatising, should be open to everyone and selective only in the positive sense of ensuring accessibility. Early parental support for all parents is promoted on a national level (Children's Ombudsperson Act, SOU, 2008:131). Social workers have the task of assessing if children and their families are in need of any kind of services (sec. 6 para. 3 SoL). If so, they are provided with a high level of discretion to select the individually suitable service (sec. 11 para. 2 SoL). As a result, the identification of risk groups is not systematically implemented. But, for example, low-threshold family advice centres have been established in high-need neighbourhoods or communities. Family centres follow a multi-agency approach but recently numbers are decreasing because several had to be closed.

NGOs fill the gaps but are independent. In Sweden the state cannot delegate legal obligations to NGOs. The independence of NGOs has a very high value.

The sophisticated provision of services is accompanied by a tendency towards strong legal regulations that prohibit what should not happen in the rearing of children, especially banning corporal punishment. As a result, Sweden is proud of a high level of awareness in the general population that it is never permissible to hit a child (Regeringskansliet & Save the Children, 2009; Global Initiative & Save the Children, 2009). This highly normative approach to prevention can result in persistent denial when social services/department for child protection tries to contact families in which abusive acts have taken place. They face problems with evaluating the child's situation and initiating changes in the family because families are reluctant to reveal what they know to be a criminal offence. The strong preventive and supportive approach to child welfare and child protection can thus take a less supportive than investigative starting point.

When police are involved, in some districts they are committed in assuming a symbolic-normative role. When informed of physical violence in a family they visit and tell the parents that their behaviour was/is wrong. A problem with this procedure is a lack of reflection. The effects of such instructive visits can be adverse, for example when they address a parent with depression or an anxiety disorder.

To strengthen links between child protection/social welfare and the criminal justice system children's advocacy centres were introduced in 2006 (Annerbäck, 2011). Currently there are 22 in Sweden. The children's advocacy centres are not formalised agencies with professional staff; at most they employ a (part-time) coordinator. However, when cases are discussed in these conferences, the criminal justice system is represented and thus automatically informed. In communities with a

children's advocacy centre first research results point to improved criminal investigations and a better understanding and exchange of knowledge between the relevant institutions and professions (Kaldal et al., 2010).

Guidelines from national authorities describe these as the model of how coordination of a multi-agency approach in the children's advocacy centres should be organised. But there are neither central financial resources nor any legal obligations behind this model, and municipalities differ in how they organise these centres. They can be attached to different agencies and show much variety (see below).

The general responsibility of the municipalities is laid down in the Social Services Act. Voluntary placements are governed by the Social Services Act (SoL, 2001:453), whereas compulsory placements are governed by the Care of Young Persons (Special Provisions) Act (LVU, 1990:52). Family law issues such as custody, housing and access for children are primarily regulated in the Children and Parents Code (FB 1949:391).

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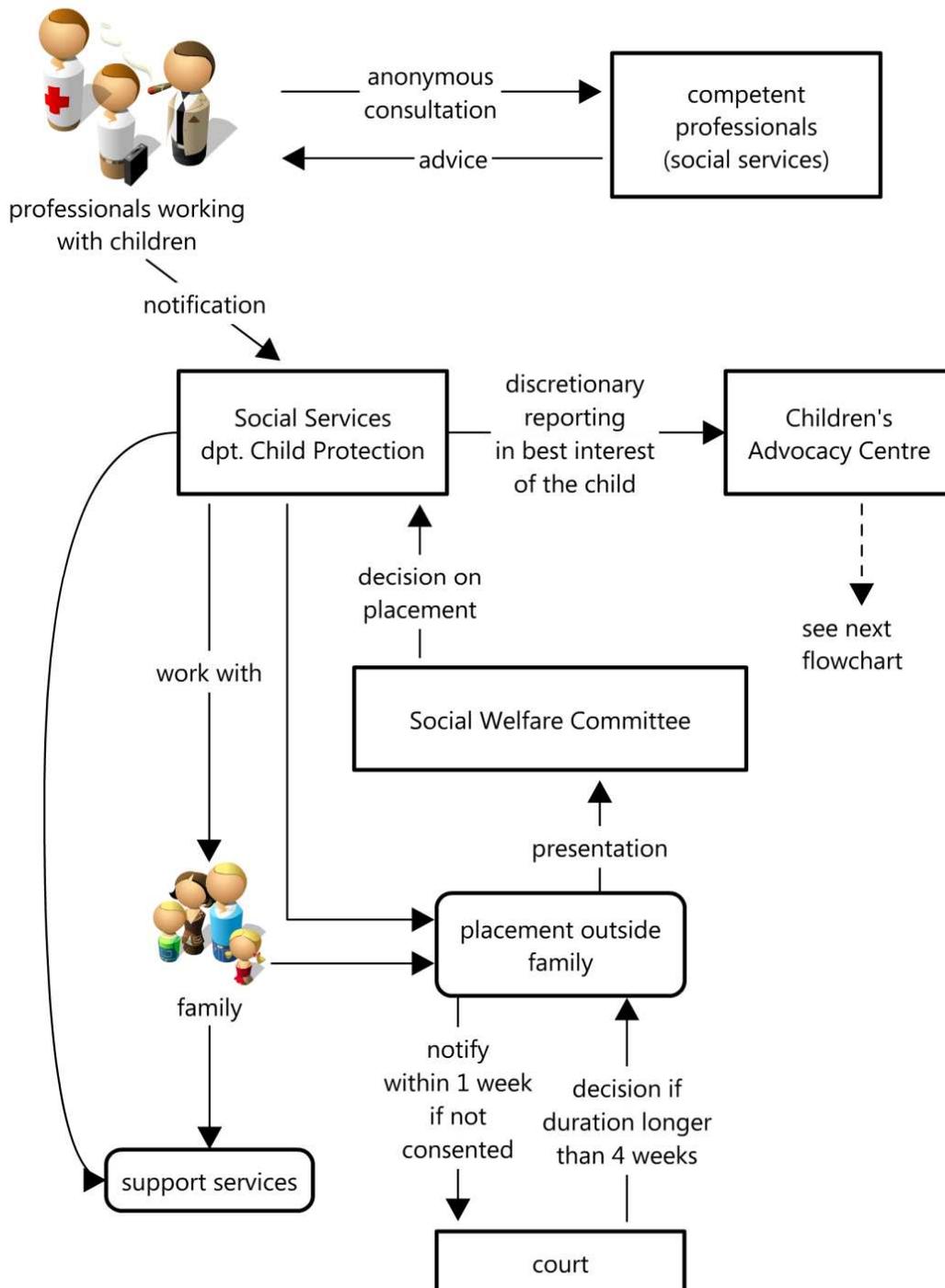
### CHILD PROTECTION PROCEDURES

If the social services/department for child protection in the municipality receives information of a suspicion of child maltreatment, the social workers must decide how to proceed. Usually the first path leads to the family and work with them. Exceptions can be made, for example, in cases of suspected child sexual abuse. Early interventions and voluntary family support interventions are regarded as the best way to protect children. If the children or parents are in individual need of support services these are implemented. Social services might, if necessary, also gather information from other agencies and persons without the consent of the family (sec. 11 para. 2 SoL). The department for child protection is expected to collaborate with other bodies or professionals involved in the case (sec. 9 SoL) in the implementation of support measures, but due to the vague legal provision and confidentiality regulations practice cannot be described as consistent (Glad, 2006).

In cases in which there is a significant concern that the child may be in danger of harm, the child can be placed in care for up to four weeks without a court decision. Social services can take custody of a child for this period without a prior court order, criminal investigation or conviction. Placement in these cases is a foundation for clarifying the suspicion and collaborating with the family to bring about change. This can also be done as a pre-emptive measure without prejudice in order to clarify whether there is a risk of harm. The placement can take place with or without consent of the parents. If the parents contest the removal of the child social services have to notify the court within one week. A court decision is necessary if it lasts longer than four weeks.

Reasons for short-term placement outside of the family can be the identified need for immediate protection or uncertainty about the safety of the child. Criteria are the likelihood of the child being at risk and the level of the suspected risk of harm. The child may also be removed from potential perpetrators in order to prevent a "cover up" by the parents and, on rare occasions, the whole family with their consent is placed in institutional care.

# Flow Chart of Child Protection Sweden



When a child is placed in foster or institutional care the social services/child protection department must immediately involve the permanent political board (Social Welfare Committee [SWC]). If the placement is without consent of the parents it is the SWC or the chairman of the SWC who signs the decision (sec.6 LVU 1990:52). Where parents consent, the social services/child protection department have to send a written report to the SWC and the decision is made by a supervisor.

When the social services want a child returned to the family they must submit this consideration for consultation and decision to the SWC.

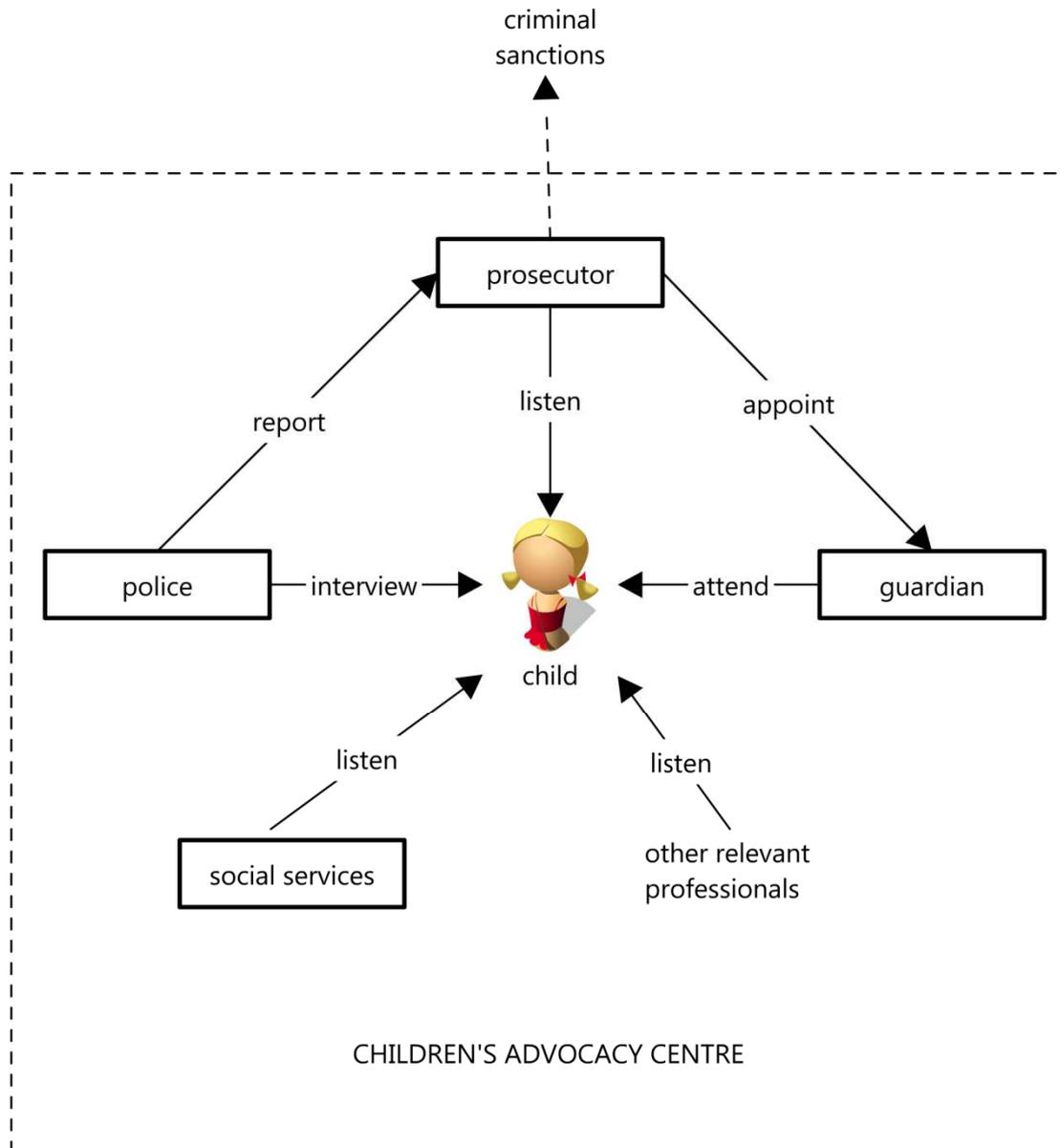
A review process of a placement takes place every six months along with a report to the SWC, a copy of which is sent to the parents. If the child is placed in a foster family the law requires a “final” decision on legal custody after three years.

When the social services/department for child protection make a discretionary decision in the best interests of the child to report a case to the police, thus also involving the criminal justice system, in most cases they send the report to the children’s advocacy centre, if available. As a general policy the first action of the police as part of the children’s advocacy centres is to interview the child to secure evidence. Police are not allowed to interview the child without knowledge and consent of a parent. If a parent is the suspected abuser a guardian has to be appointed by the prosecutor for that purpose. The family must also be informed about this fact, but not necessarily before the child has been interviewed. The approach seems adapted to very severe cases, but might cause problems when a child needs time, support and trust to disclose abuse fully, for example sexual abuse, or when the social workers are about to develop, or already have established, a trusting working relationship with the family and have reasons to believe that the parents or other carers will be able to change their abusive or neglecting behaviour.

Generally speaking, this policy prioritises an investigative approach to interviewing the child. The interview is conducted in the children’s advocacy centres by a specially trained police officer. In general, children’s advocacy centres are meeting points for multi-agency collaboration. Many, but not all, are equipped with rooms appropriate for interviewing children and have the technology for all relevant professionals to listen and to add questions. Behind a screen the other professionals involved from the social services, health care system, schools etc., listen and may bring in questions that the interviewer then asks the child. The interview is videotaped for court use. This is guided by a strong norm that children (who have already suffered harm) should not be subjected to repeated interviews and should not have to appear in court to testify.

In this approach two perspectives seem to collide, that of prosecution and that of social work. There are different views on what is the best for the child. The criminal justice system might think it best (for the child) that the perpetrator is brought to court (or not) and that the evidence is quickly collected and the suspicion investigated. Prosecutors and police may not always be sufficiently reflective about the impact of investigative, legally oriented interviews or other measures on the child. This can have an impact on the social work in child protection, where priority can be building a supportive relationship with the family and with the child. The shared overall approach focuses on clarification of the maltreating actions in the past first and only afterwards looking ahead and searching for solutions and perspectives, even if a social worker decides not to report to police and to work with the family.

## Multi-agency Approach in Children's Advocacy Centres Sweden



### TURKEY

Child protection law in Turkey centres on the expectation that both children and parents should obey the law, leaving some room for doubt as to whether the child is to be protected from harm or the society from problematic behaviour of children. The shortcomings of an insufficiently binding legal framework and the lack of national or regional policy with guidelines, while evidently leading to uneven service provision, does also seem to stimulate the development of qualified practice in hospitals that has potential to serve as a model for legislative reforms and policy progress.

## ORGANISATION OF CHILD PROTECTION AND POLICY

The main responsibility for child protection is located in the child protection departments of the social services in the municipalities and provinces. The organisational structure of the child protection departments is laid down in the Social Services and Child Protection Institution Act of 1983. The General Directorate of Social Services and Child Protection (GDSSCP) is the main governmental body for implementing public policy and delivering social services through the Provincial Social Services Directorates (PSSD) and their affiliated care institutions (children homes; residential care centres; community centres; women shelters; family counselling centres etc.). The GDSSCP has the main responsibility to provide care and protection and follow up for children who are neglected, abused or in need of care.

More generally, however, most, and in the majority of regions all actions for child protection begin with the police and prosecutor, that is, with the criminal justice system. The Juvenile Protection Law (No. 5395) of 2005 (JPL) was conceptualised as a fundamental change from an understanding of child protection as an act of mercy to a rights-based approach. It is notable that this has resulted in a law which pertains to children who have committed a crime (“are pushed into crime”), or have been the victim of a crime or who are in need of protection for any reason (art. 1 JPL). This bracketing together of children as perpetrators and victims underlines the central focus on criminal justice. The law thus emphasises child protection as an issue more to protect society from deviant behaviour. Below that level endangerment of a child is not easily recognised as such.

The JPL partly defines responsibilities and interdependences between justice, social services, health care and education and other related sectors and institutions. However, collaboration between related sectors is not well defined and detailed procedures and terms of reference are missing. Support services are neither sufficiently differentiated nor timely and widely available. Human resources (professionals and all other staff) seem to be deficient in qualification as well as numbers.

Early intervention support services for families to help them solve their problems so that the child can stay in the family have not been sufficiently established, despite being emphasised in the law (art. 5 JPL: “Protective and supportive measures are measures ... within his/her family environment before all else”). In particular ongoing services are unknown throughout most of the country. There are model projects run by NGOs that were very successful but could not gain any broader implementation. Services such as counselling are mostly state-run. When a child is placed outside the family the placement might be with a relative, or if this is not possible, foster care is a preferred option to institutional care.

If NGOs are involved in preventive or support services the funding by public bodies is voluntary and not determined by law. Good practice depends on the awareness, willingness and capability of the local representatives and professionals working in the field of child protection.

Without legal basis, some hospitals have begun to establish child protection centres with psychologists and social workers working together with the doctors in larger cities such as Ankara, Istanbul or Izmir. They actively promote notification of suspected child maltreatment to them and offer counselling for parents and children as well as examination and further assessment. The child protection centre in the hospital will draft a help plan for social, psychological, medical and psychiatric support. In preparation of the help plan a multi-disciplinary team conference is held with doctors, social workers, psychologists, etc. attending. Substantiated abuse or neglect is reported according to the legal duties (see below 3.2.8).

The practice of child and family welfare and child protection seems to follow a culture in which “family is a private box” that public bodies can and should not enter. The state increasingly

withdraws from social welfare measures, for example, by reducing child care facilities. It has increased the numbers of children in institutional care who are sent back to their families while providing families financial support to motivate the reunion even when no control mechanisms or supervision for the safety, well-being and development of the child are in place. Financial incentives have also been introduced for mothers to stay at home with their children.

Though a well evolved university social work education exists and the law mandates obligatory training for social workers (art. 32 para. 1 JPL), overall for professionals working in the field of child protection additional training or specialised qualification is not secured.

Children's Courts are responsible for child protection cases only; there are 77 of them in 30 cities. In the other cities/areas the ordinary courts or the regular criminal courts deal with child protection cases. However, it must be noted that "child protection", as defined by the child protection act from 2005, includes juvenile justice and addresses children from the age of criminal responsibility (12) to majority (18). Family Courts deal with custody, visitation, parentage and maintenance issues. Despite obligatory training (art. 32 para. 1 JPL) judges receive, if at all, minimal training in child protection and they seem to lack some basics of understanding advocacy for children.

Over the past 20 years child protection policy was managed by the General Directorate for Social Services and Child Welfare under the Ministry of Family and Women's Affairs. During the present study the General Directorate was abolished and the name of the ministry changed to Ministry of Family and Social Affairs. The restructuring process is ongoing and seems to be heading towards decentralisation of public services.

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#### CHILD PROTECTION PROCEDURES

When a suspicion is reported to the police and/or prosecutor they investigate themselves or appoint social services to collect evidence (art. 6 para. 2 JPL). If the case is reported to social services in the province or municipality directly they take action themselves and assess the case by interviewing the parents and other persons or professionals in contact with the child or family. Further assessment by a psychiatrist, psychologist or other physician in a hospital can be initiated.

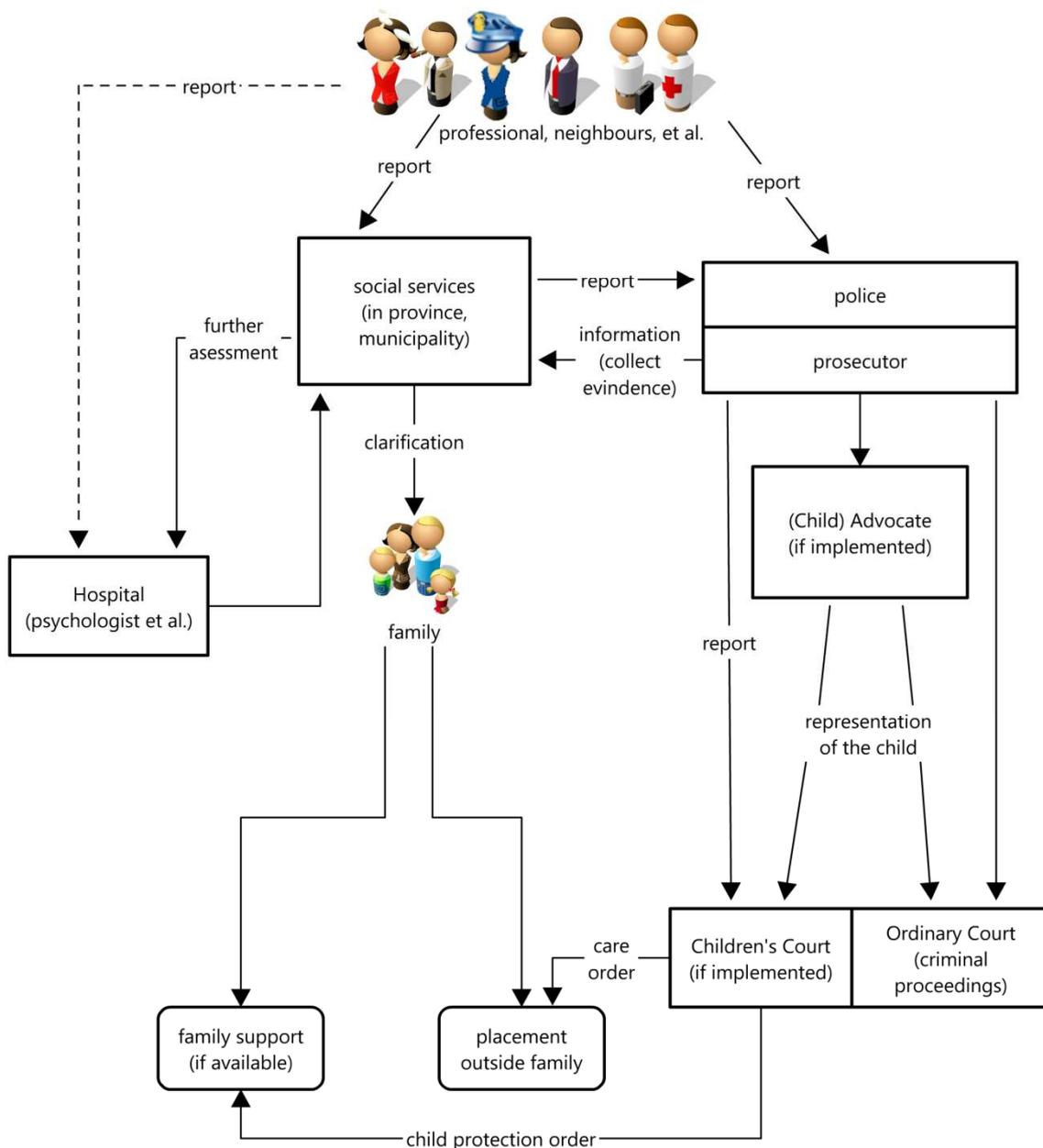
If the conclusion is that child maltreatment is likely, the case worker approaches the family to implement the necessary support services. S/he will report the substantiated case to the prosecutor who takes over the further investigation and interviews the child (accompanied by a parent or by an expert), and if abuse is confirmed, presents the case to the court.

Courts have social workers who work under their supervision, and thus can be instructed to assess the situation overall. The court can either issue direct rulings, or intervene by way of social services. The court can issue a care order to place the child outside the family or a child protection order to implement support not voluntarily accepted by the family (art. 7 para. 3 JPL). There are cases where the abuser is ordered to leave the residence and the other parent or relative stays with the children. Furthermore, courts can order parents/families to go to counselling, or to enter therapeutic treatment because of violent behaviour, or can order that the child receives therapy. In addition, the general social services of the municipality or the health care system are asked to give aid such as food, clothes, or cash to the families. If a court orders support services developments will be reviewed monthly and social services send a report to the court every three months. The court then reviews its decision (art. 8 para. 2 JPL).

In cases of emergency social services can remove a child from the home (art. 9 JPL). Then a court order must be issued within five days, and social services must deliver a report to the court within 30 days.

Depending on the severity of the case the prosecutor might file charges with the criminal court. If implemented according to the Criminal Procedures Law, before interviewing a child and sending a report to the court the prosecutor informs the Law Society who appoints a specialised advocate to the child. The child advocate represents the children’s rights during judicial proceedings. The appointment of the child advocate is compulsory when a child is to be a witness as a victim or is arrested because of delinquency; the police cannot act, for example interview the child, before the lawyer arrives. If the lawyer believes that the child requires protection which the prosecutor and/or court failed to realise or agree on, s/he can, as a citizen with personal authority and if sufficiently committed, report this to other bodies such as the Bar Association Child Centre (SHCEK), child court, NGOs, etc. in order to involve community support. This lawyer is generally financed by the criminal legal aid system which does not provide “good conditions” for lawyers.

### Flow Chart of Child Protection Turkey



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## UNITED KINGDOM (ENGLAND AND WALES)

Child protection in England and to a lesser degree in Wales has been a priority issue in national policy for years and kept the professionals and their organisations on the move. The internationally top-ranked system (Svevo-Cianci et al., 2010) with its tendency towards a selective risk-identifying approach struggles with the devaluation of social work in public. It has faced pressures towards investigative overregulation and bureaucratisation instead of case-centred professional judgement in supportive helping relationships (Munro, 2011b; 2011a; 2010).

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## ORGANISATION OF CHILD PROTECTION AND POLICY

The United Kingdom consists of four separate countries each of which have their own arrangements for children's social care. England and Wales share legal and courts systems but the Welsh Assembly Government has competence in relation to children's social care. Scotland and Northern Ireland each have their own legal systems; Northern Ireland's Children Order 1995 draws very heavily on the Children Act 1989 which applies in England and Wales. There are substantial differences in Scotland (Scottish Children's Reporter, 2011; 2009a; 2009b).

In England and Wales children's social care is separated from adult social services. As in the central government's Department for Education the local departments for children's social care have responsibility for child protection, children and family social services and schools. There are strong links with children's health issues which are matters for the Department of Health and various local National Health Service organisations.

Children's social care in the local authorities have a general duty to provide "a range and level of services appropriate" to children's needs (sec. 17 para. 1 Children's Act 1989 [CA]). A legally binding obligation to undertake a specific service (investigation and protection) only exists in child protection cases (sec. 47 para. 1 CA), not for children in need cases. This has led to a dual system approach, one dealing with child protection cases and the other dealing with cases estimated not to meet this threshold. The latter receive much less attention and fewer resources.

The law, though, introduced the overarching term "children in need". It is defined as a child:

- unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development;
- whose health or development is likely to be significantly impaired, or further impaired; or
- who is disabled (sec. 17 para. 10 CA).

This legal shift from protecting children towards the provision of support was not fully carried over into practice. The emphasis still lies on child protection investigation and family support services, and these, if it is not a child protection case, are often seen as optional rather than integral (Clarke 2010). The different programmes promoted by the responsible department in the governments since then, such as "Sure Start" (1999), "Working together to Safeguard Children" (1999), "Every Child Matters" (2003), all had significant influence but could only partially turn around the divided picture of family support on the one side and child protection on the other.

The system was, and still is, highly influenced by the death of two children Victoria Climbié (Lord Laming, 2003) and baby Peter (Lord Laming, 2009), events that were assessed by serious case reviews. Other tragedies have had their impact on the local levels and contributed to a negative perception of child protection work in the public (Masson, 2010a). The whole children's social care system has to work within a culture of blame. As a consequence of blame and criticism the system of case reviews is currently under revision (SCIE, 2011).

At the organisational level societal and political mistrust of social work led to establishing far too many regulations that the front line case workers had not only to know but also to follow. Examples are the “Common Assessment Framework”, introduced by the government in 2006 (Department for Children, Schools and Families, 2006) or for England “Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children” (HM Government, 2010) or Wales “Safeguarding Children: Working Together under the Children Act 2004” (Welsh Assembly Government, 2006). The binding guidelines and incentives to obey them left little room for professional judgement and for working with children and families to achieve compliance. The de-professionalising effects of the overregulated system have recently been described and changes strongly called for by Eileen Munro in the Review on Child Protection (Munro, 2011b; on the educational requirement for professionals see Wagner, 2010).

The “third sector”, as it is called in the UK (also “voluntary sector”), plays an important role in the provision of support services. If a support service is provided by a state agency it is fully funded. For example, the NGOs were funded with 240 million GBP to support the Every Child Matters policy in 2010. In addition, the larger NGOs obtain considerable funding from donors that they use to develop and provide services. The availability of services is supervised by a Local Safeguarding Board that identifies the needs in its area of responsibility.

In the end, the state remains responsible for the provision of services. These are predominantly accomplished by social workers employed by the local authorities. The NGOs and private professionals fill the gaps and develop new and/or additional services according to identified needs in communities.

The variety of services is broad, including all sorts of early prevention, early intervention and other family support services. In practice, the provision of services relies very much on an approach of identifying families with risk factors indicative of poor future outcomes, along with all the resource-conserving and potentially stigmatising effects of such an approach.

Family proceedings can take place in magistrates’ courts, where lay magistrates (in panels of two or three) without legal training and without pay adjudicate, with the support of a legal advisor. The majority of cases go to county courts, where there is a professional judge with legal expertise, who has had a minimum of three days of training on child protection and three days on family law. In the adversarial system, lawyers move slowly towards a settlement, and only about a third of cases actually have a final hearing with adjudication. There is a general lack of trust in the quality of social work on the part of legal professionals, so courts and lawyers generally insist on expert witnesses who do the investigative work a second time. Overall, there is a dominance of procedural concerns.

The judicial system in England and Wales faces the need for reform as well. Many of the children concerned are under five and examining the case is a long process. There are strong disincentives to taking cases to court. The average duration of child protection proceedings initiated by local children’s social care (art. 31 CA) is 12 months. The costs of child protection litigation are very high. Parents have a right to free legal aid where they wish to contest child protection proceedings brought by social services. A total of 450 million GBP is paid out each year through state-funded legal aid for lawyers and experts. Legal Aid data indicate that the total fees for a lawyer in a single case may range from 5,000 to a quarter of a million GBP. In addition, a change of policy in 2008 brought higher fees for Local authorities. The cost of filing a court case is just under 5,000 GBP per case. All this is founded on the policy that the costs for the judicial system should be refunded by those who use the courts.

## CHILD PROTECTION PROCEDURES IN ENGLAND AND WALES

The local children's social care department has a legal duty to investigate cases when they have "reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm". The enquiries have the purpose to enable the local authorities to decide whether they should take any action to safeguard or promote the child's welfare (sec. 47 para. 1 CA).

For the purpose of clarification, children's social care contacts the referral person, gathers more information and from there on either (1) closes the case, or (2) gathers information from existing records and contacts, and (3) visits the family at home. Discussions with the family may lead to voluntary measures of "support" for a "child in need". If the case is considered more serious, children's social care (4) initiates a child protection case conference and/or (5) takes emergency measures. There may be cases where there is a referral and not much happens, usually because the family is already known. Cases are closed only after a decision of the team but the responsibility for closure of a case is held by a social worker and a social work manager.

If an initial child protection case conference is convened by children's social care the family members and professionals in contact with the child and/or parents will attend. A known perpetrator normally would not attend the conference, or attend only a small part of it, if meeting other family members is not appropriate. In really severe cases, emergency intervention comes into action. The local education and local housing authority, the local health board, special health authority, primary care trust, national health service trust or national health service foundation trust are legally obliged to assist (sec. 47 para. 9 and 11 CA).

The child protection case conference plans intervention where the needs of the child and other family members as well as the adequate and necessary support measures are discussed. There is no legal obligation on professionals to disclose their information, but no confidentiality either. As a professional there is the risk of being found to be negligent, if a suspicion is not reported and the child is injured later on. Legally, attending the conference is voluntary for the parents, but it is known that open refusal can have negative consequences, so in practice voluntary participation is very questionable and the reality may be mere apparent compliance. The issue of non-engagement is the subject of discussion, particularly in social work literature in the UK (Pearce & Masson, 2011 with further references).

The initial child protection case conference drafts a child protection plan. A key worker is appointed to monitor implementation and coordinate the various actors. Usually it is a social worker from children's social care but could be a health or other worker. The plan is binding, but the conference must meet again to review it after a period of between six weeks and three months. Before then, the key worker can only make changes with agreement of the chair of conference. With agreement of the parents, the child may go to foster care, or an alleged perpetrator may agree to leave the home. About 42,000 children are currently under a child protection plan in total. 8,500 families and 13,000 children (1.6 children per family) are subject to child protection court proceedings every year. About 3,000 children have been through this process and are adopted each year.

In case emergency measures are necessary to secure the safety of a child, action without parental agreement requires a court order but the police have emergency powers to intervene temporarily to protect children by removing the child to suitable accommodation and keeping her/him there (sec. 46 para. 1 CA). The maximum duration of protection by the police is 72 hours, the average in practice is four hours (sec. 44 and 45 CA). The maximum duration of an emergency protection order by a court is eight days with a possible renewal for another seven days; after that the court can

make an interim care order with a maximum duration of two months which can be repeated as often as necessary by one month each (sec. 38 CA).

Besides the (interim) care orders, the court can issue supervision orders, putting a child under the supervision of the designated local authority (sec. 31 para. 1 lit. b CA). The supervisor then has the duty to advise, assist and befriend the supervised child and to take all reasonably necessary steps to give effect to the order (sec. 35 para. 1 CA). A child can also be put under the supervision of a designated local education authority (education supervision order, sec. 36 CA). In cases of reasonable cause to suspect that the child is suffering significant harm, but in which the children's social care department is not able to assess the child's health and well-being without the court's powers, the court may make a child assessment order (sec. 43 CA). Care orders lay down who is to have custody and care of a child (sec. 33 CA; Masson, 2010b).

The average duration of court proceedings is 12 months. This is a strong disincentive to take cases to court. However, voluntary measures, such as agreeing to have the child go to foster or institutional care, can be undercut by parents who can take a child back at any time. A voluntary placement outside the family can be secured by a court order if the safety of the child is at stake. Therefore, many cases end up with court decisions for a permanent placement (Pearce & Masson, 2011).

The law requires children's social care to file application for court orders (e.g. sec. 38, 43, 44 CA). The local children's social care departments for that purpose all employ several lawyers for child protection cases.

Negotiation of allegations is very common. There is a very strong feeling that agreed outcomes are better and faster. So in practice, allegations often are dropped in order to get the parent's consent, if the threshold for intervention is still met. If, for example, one of the accusations is sexual abuse and if there is also proven neglect or other maltreatment, the threshold has been met and there is a practice to drop the allegation of sexual abuse, because it is far more complex and more difficult to prove (Pearce & Masson, 2011).

The new pre-proceedings process with child protection case conferences was intended to streamline and partly divert cases from going to court, but in fact it does not. For some parents, having their own lawyer when meeting with social services can lead to more engagement with social work. Contested interim care proceedings are generally likely to be harmful to the child, and pre-proceedings can lead to a less stressful, agreed interim order. Parents who were not "counselled out" of litigation may have contested hearings with considerable expert witness costs (further details Masson, 2010b).

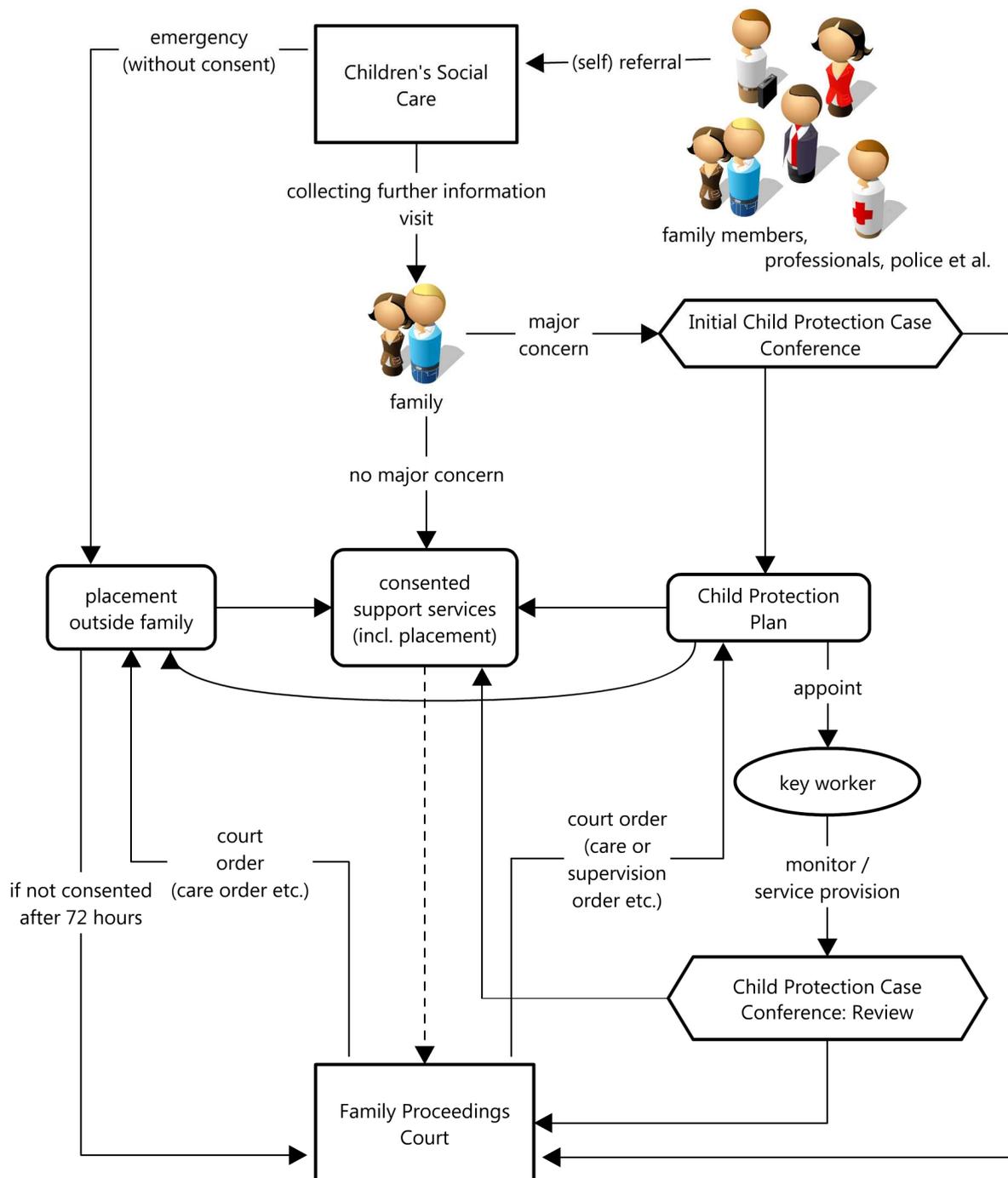
Both pre-proceedings and child protection conferences will usually only take place for children who are still living at home. However, in about a quarter of the cases that go to court the child is already looked after (in state care) voluntarily when proceedings are started. There is little residential care in institutions (on placement policy and practice in England see Knuth, 2010).

While a care order is in place children's social care is designated to have the parental responsibility (sec. 33 para. 3 lit.a CA). Concerning terminology, since the Children Act 1989 the differentiation between guardianship and custody has been abolished and been brought to together in the overarching term "parental responsibility" (Henrich, 2009).

Concerning the links to criminal law, child sexual abuse (and severe physical abuse) cases are often referred to the police very early. In sexual abuse cases forensic investigation is done by special rape crisis units (SARCS), if established in the region. It is a three-cornered investigation, which usually, in

criminal procedure cases, will be going on at the same time. Many (but not the most serious) cases are “either way” offences (jury trial or judge only, the accused gets to choose), and the acquittal chances are higher with a jury trial. Generally there is very little overlap between child protection and criminal prosecution; very often, prosecution is seen as counter productive for the child.

## Flow Chart of Child Protection United Kingdom (England and Wales)



no legal links to criminal justice system - reporting discretionary -

### THRESHOLD FOR STATE INTERVENTIONS WITHOUT CONSENT

When professionals and institutions take action to protect a child and intervene in parental rights the question of too late or too early is always an issue. When a child is identified or suspected to be in need, public social services, courts or other professionals have to make a decision as to whether to respect the will of the parents or the child and leave it up to them if they want to use voluntary support services, or to act without their consent either by reporting, investigation, imposed measures, e.g. supervised implementation of support services, or restrictions of parental custody.

Law and/or jurisdiction have to set a threshold for those non-voluntary measures. If professionals decide to abstain from intervening in parental rights, complaints may arise that rights of the parents are held too high. Stakeholders in probably quite a few states claim that their legal system is too protective concerning parental rights and not enough in regard to the rights of the child (Küfner et al., 2011). Others may criticise that the state is too forceful and uses its powers inappropriately to enforce ideas on what is best for the well-being and upbringing of a child.

The perceptions and judgements have a great deal to do with societal and cultural perspectives on child protection and personal beliefs in concepts of the family as well as beliefs regarding the potential for improvement in parental behaviour. Nevertheless, the law has to define the when and how of interventions without consent of the parents and/or children, since these always imply an interference with fundamental rights.

### BULGARIA

The law in Bulgaria defines a “child at risk” and the threshold for the authorisation of the state to intervene in parental rights.

Protection of “children at risk” is one of the core principles of the Child Protection Act (CPA, SG 48/2000). While the responsible authorities have the obligation to protect children from negative influence on their physical, psychological, moral and educational development they have to identify “children at risk”. They are described (CPA, Additional provision 1, p. 11) as children who

- do not have parents or remain permanently without parental care;
- are victims of abuse, violence, exploitation, within or outside of their families;
- are at risk of harm for their physical, psychological, moral, intellectual and social development (the lack of financial means and unemployment of the parents is increasingly taken into account as a risk factor);
- are disabled, or have a disease difficult to treat.

Terms and threshold for restricting parental rights are regulated in the Family Code (FC) as well as in the Child Protection Act (art. 131 FC, art. 25 CPA). Criteria for state interventions are behaviour of the parents that endangers the personality, health, education or property of the child (art. 131 para. 1 FC) and in more severe cases a permanent failure to take care of and to support the child (art. 131 para. 2 FC). The dismissal or limitation of parental custody may also be ordered because of an inability of parents to perform their parental duties, for example, because of a long physical or mental disability or other objective reasons. The parents may request that the dismissal is withdrawn if the reasons for it no longer persist.

The police have competence for placement in emergency care when the child is

- a target of a crime, or if there is immediate risk to the life or the health of the child,
- at risk of involvement in a crime;
- missing or in a helpless state;
- left without control.

## ESTONIA

Estonian law defines a “child in danger” under the Child Protection Act (sec. 32 CPA), that describes under what circumstances a child may be separated from her/his home and family for the provision of support services in the Social Welfare Act (sec. 25 SWA). The Family Law Act (sec. 134 and 135 FLA) defines the threshold for a restriction of parental custody because of an endangerment of the child.

The need for immediate support is defined as a situation endangering the child’s life or health or a self-endangerment of her/his health or development through her/his own behaviour or actions (sec. 32 para. 1 CPA). A child in danger shall, without request for parents’ or carers’ consent, be placed in safety immediately (sec. 32 para. 2 CPA). The separation of the child from her/his family shall only take place if in the child’s best interests, and/or the child is endangered and such separation is unavoidable (sec. 27 para. 1 CPA). The concept of “child in danger” is not further explained in the text of the CPA but in the FLA (see below).

This unspecific description of the threshold for intervention in one of the most sensitive fundamental rights can hardly be considered supplemented by the outline of circumstances when separation of the child from home and family is allowed in sec. 25 SWA. They are listed as follows:

- parents are deceased, declared to be missing or fugitive;
- alternative measures applied with respect to the family have not been sufficient or their use is not possible;
- the separation is effected in the best interests of the child.

Because of the lack of specification in the CPA and SWA the threshold is to be found in family law. The term “endangerment of the child’s well-being” brings a third concept into the arena. Obviously constructed after the German sec. 1666 Civil Code, it provides that the court shall order necessary measures if the physical, mental or emotional well-being or the property of a child is endangered by abusive exercise of parental custody, neglect, the inability of the parents to perform their parental duties or by a third person and, in addition, if the parents are not willing or able to prevent the danger (sec. 134 para. 1 FLA). The threshold for court decisions thus implies a double prognosis, of the endangerment of the child’s development and the parental behaviour (more see below under Germany).

The separation of the child from her/his family is only permitted if the harm to the best interests of the child cannot be avoided by support services (sec. 135 para. 1 FLA). A restriction of parental rights has to be revoked as soon as the child is no longer in danger (sec. 123 para. 2 FLA).

In practice, the general understanding is that separation from the family involves a considerable and clearly recognisable breach of the child’s rights and the restriction of parental rights is regarded as an extraordinary protection measure. The proof of emotional abuse (or neglect) is difficult, external

factors are better accepted (condition of the apartment, clothing, bruises etc.). The main focus lies on physical abuse. Expert opinions by psychologists can be required but there are not many experts on child maltreatment in Estonia.

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## GERMANY

The concept of “child endangerment” leads the legal path to child protection in Germany. If a youth welfare office or professionals working in the field of child and youth welfare become aware of “weighty grounds to assume child endangerment” they are obliged to take action by assessing the danger (sec. 8a para. 1 and 4 Social Code, Book VIII Child and Youth Welfare [SGB VIII]; for further details see above “from suspicion to protection”). Except in cases of emergency that require immediate protection the youth welfare offices do not have the competence to intervene in parental rights.

Therefore the term “child endangerment” addresses the family courts and is originally located in the Civil Code; there it is defined as the endangerment of the “physical, mental or psychological best interests of the child or its property” (sec. 1666 para. 1 CC). The law does not differentiate what form of child maltreatment causes the danger. According to the general definition of the Federal Supreme Court, a child’s best interests are in danger if it can be foreseen with a high degree of certainty that future developments will result in considerable harm to the child (BGH, 1956; Schmid & Meysen, 2006). Thus, in addition to an assessment of the current situation, the law requires a prognosis. In each individual case it must be verified whether the child maltreatment represents a danger which will lead to considerable harm in the future if public measures do not counteract it.

For the threshold, child endangerment as a prerequisite for state intervention without parental consent is linked to the willingness and/or capability of the parents to avert the danger to their child (sec. 1666 para. 1 CC). Accordingly, particular emphasis has to be laid on the assessment of the progress of parenting ability, a prognosis that easily can become challenging for professionals (Kindler, 2006a, 2006b, 2006c; Kindler & Reich, 2006; Kindler & Zimmermann, 2006; Sobczyk, 2006).

Unlike sec. 135 para. 1 of the Estonian Family Law Act which was modelled after the former sec. 1666 para. 1 CC, the legally defined threshold in Germany no longer takes into account the cause of the danger, in particular if and how the danger is caused by the parents (Act on Facilitating Family Court Measures in the Case of Endangerment of the Well-Being of the Child, 4 July 2008, Federal Law Gazette I, 2008, 1188). The purpose of this reform was to facilitate a focus on the well-being of the child, so that the family court approaches parental behaviour from the point of view of its effects on the child’s situation.

Measures taken without the parents’ consent will only be admissible if the danger cannot be countered through public support measures (sec. 1666a CC). The concept of the child’s best interests as defined by German law consequently is generally oriented towards its outer limit, that is, its endangerment, which either has to be avoided by offering support or terminated through intervention. With regard to protecting children from violence, recent years have seen a clear shift towards pre-emptive measures by statutory agencies. However, placement rates remain high and increasing. A placement outside the family, initiated by a court decision that the parents have not agreed to, is declared to be the last resort in the German constitution (art. 6 para. 3 Basic Law for the Federal Republic of Germany). A measure to avert a danger to the child’s best interests must be terminated by the court if the child’s best interest is no longer in danger or the measure is no longer necessary (sec. 1696 CC, sec. 166 Act on the Proceedings regarding Family Matters and Voluntary Jurisdiction).

The police may intervene to avert danger to the child, a decision which has to balance the endangerment of the child with the rights of the parents. The legal basis for such police interventions can be found in general provisions to avert danger in the police law of the *Länder*.

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## GREECE

Under Greek family law the care for the person of the child comprises in particular its upbringing, supervision, education and schooling (sec. 1518 para. 1 Civil Code [CC]). If a parent violates these duties following from the function to take care of the person of the child the court may order any appropriate measure. The same competence is applicable when parents exercise their custody abusively or are not capable of coping with this task (sec. 1532 para. 1 CC). Although the law mentions “appropriate measures”, this only refers to the full or partial dismissal of parental custody, while the full dismissal is only admissible if other measures had been without success or not sufficient to prevent a danger for the child’s physical, mental or psychological health (sec. 1533 para. 1 CC).

With this last provision, the law implements the developmental concept of the CRC “through the back door”. It also indirectly includes the prognosis of parental willingness to accept and their ability to benefit from the use of support services. Since the current definition in law is inconclusive, it can be subject to many interpretations, for example, that other measures must always precede placing the child in care.

In contrast to this rather future-oriented approach, the Greek concept of the threshold for state intervention in parental rights is completed by a forfeiture of custody in cases resulting in imprisonment of at least one month by reason of an offence that relates to the life, health or morality of the child and that the parent has committed deliberately (sec. 1537 s. 1 CC). The court can additionally order that the convicted parent shall also lose parental custody over her/his other children (sec. 1537 s. 2 CC).

Since there are no other judicial measures in place for the protection of a child than the dismissal of parental custody the threshold is considered to be very high. In practice poor recognition of child maltreatment can be observed when no dramatic physical abuse can be proven. There is almost no protection for emotionally abused children in Greece. Very few cases of sexual abuse are brought to court; it is even more taboo than abuse in general and any person expressing such a suspicion is likely to face the accusation of defamation and may be found guilty of false accusation if the child sexual abuse cannot be proven. Professionals therefore usually ground their assessment of a need for protection on other aspects, if possible.

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## NETHERLANDS

The family law in the Dutch Civil Code (CC) describes two different thresholds for state interventions in parental rights, executed by the court: one for supervision and care orders (art. 254 ff. CC) and the other for suspension or dismissal of parental custody (art. 266 ff. CC).

When a child is being brought up in circumstances that seriously endanger her/his moral or mental development or her/his health s/he can be put under supervision of a youth welfare office. This presupposes either that other, notably voluntary, measures failed to prevent the “serious endangerment” or that their failure is foreseeable (art. 254 CC). Under the same requirement the court may issue a care order if necessary for the care and education of the child or for the assessment of child’s mental or physical condition (art. 261 para. 1 CC).

If the child's best interests are not in opposition to the dismissal of the parents' custody it can be ordered when the parents have proven to be unsuited or incapable of fulfilling their duties in regard to the care and education for a specific child (art. 266 CC). In child protection cases the latter presupposes an application of the child protection board or a prosecutor (art. 267 para. 1 CC) and is only ordered without consent of the parents if the child has already been placed outside the family for six months, if s/he has been placed in institutional care for more than one and a half years and serious danger could be expected in case of a return, or if the parents demand return of their child after a voluntary foster care placement of one year or longer and there are fears that return will cause serious disadvantages for the child (art. 268 para. 2 lit. a and d CC). In summary therefore, the threshold for dismissal of parental authority requires there to be no prospects that the child will return to her/his family. The same applies if a parent is convicted of a crime with a sentence of two or more years in prison (art. 269 CC).

In practice, there is fluidity between the threshold for a supervision order, for a care order or a dismissal of parental authority. In effect, the thresholds in the individual cases, especially in the passage from one to the other order, rely sometimes more on the intuition of the judge than on hard facts and legal requirements. Court measures are often negotiated with the parents (and the child). If the judge estimates that the threshold is met and if the parents agree, measures are taken. If the parents do not agree, allegations are litigated. The judge may decide that the threshold is met based on what the parents admit and order supervision. The supervisor then afterwards can apply for out-placement. If there is an out-placement for years and there is no prospect that the child will return to its original family, parental authority can be dismissed. In cases where the parents cooperate the judge will leave the custody with the parents.

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## ROMANIA

In the Romanian law on the protection and promotion of the rights of the child (Law 272/2004) definitions can be found of the terms child abuse and neglect. Child abuse is an endangerment of the life, the normal physical, mental, spiritual, moral and social development, the bodily integrity, and the physical and mental health of a child by any deliberate action of a person in a position of responsibility, trust or authority towards the child (art. 89 para. 1 Law 272/2004). Child neglect is the endangerment of the physical, mental, spiritual, moral or social development, the bodily integrity and the physical and mental health of a child because of deliberate or non-deliberate failure of a person responsible for the upbringing, care and education of a child to undertake any measures to fulfil these responsibilities (art. 89 para. 2 Law 27/2004). Child sexual abuse is not defined under law 272/2004 but in the Romanian criminal law.

The brief definitions of child abuse and neglect lead into the obligation of the General Directorates for Social Assistance and Child Protection (GDSACP) to verify the suspicion of such and to provide special protection through support services (art. 92 Law 272/2004). They describe a threshold only for the right to verify notifications of child abuse or neglect. The GDSACP, assisted by the police, is allowed to access the home of the child and her/his family no matter if with or without consent of the parents or other carers (art. 93 Law 272/2004).

The above two definitions are not taken into account in the threshold for further state investigations and intervention in parental rights. Romanian law pursues the concept of endangerment of the child (art. 36 para. 1 Law 272/2004; art. 2009 para. 1 Family Law Act [FLA]). When there are sound reasons to suspect the endangerment of the child's life and safety the GDSACP is provided with the right to gather information on the situation of the child (art. 36 para. 1 Law 272/2004). The court suspends or dismisses parental custody if the health or physical development of the child is

endangered by the way parental responsibility is exercised or through severe negligence in the fulfilment of the parental duties (art. 38 Law 272/2004 in conjunction with art. 109 para. 1 FLA).

The prospective view on the development of the child is combined with an evaluation of current parental performance. But when the future development of the child is to be predicted the same has to apply to the question of fulfilment of parental duties. As a result, when the threshold is met, this does not automatically mean that the state may intervene in parental rights. In fact, any placement outside the family or restriction of parental rights must be preceded by systematic offers of support services and assistance, with special emphasis on adequately informing the parents, counselling, therapy and mediation, provided on the basis of a service plan (art. 34 para. 2, art. 36 para. 1 Law 272/2004). Even if parental custody is fully or partly dismissed the GDSACP has to undertake all necessary measures to increase the parents' skills to care for their child with the purpose of regaining the exercise of their parental rights.

It can therefore be concluded that Romanian law firmly stresses a preventive approach to child protection and in doing so, follows the concept of the least intrusive intervention. However, when substantiation of suspected child endangerment permits public institutions access to families, fundamental rights of the parents and children seem to be abrogated in favour of the public interest in investigation. The legal ideals no longer focus on promoting compliance and cooperation but take an investigative approach corresponding to that in criminal prosecution.

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## SWEDEN

The Swedish approach to child protection with its strong past-oriented normative framing is mirrored in the threshold for state intervention without consent of the parents. Courts shall make changes in custody if a parent is found guilty of abuse or neglect in criminal proceedings (sec. 7 para. 1 alt. 1 Act of the Children and Parents [SFS 1949:381]). In addition, it has a future-oriented element: The parent also loses custody if her/his care of the child entails a persisting risk to the child's health or development (sec. 7 para. 1 alt. 2 SFS 1949:381).

When a court considers taking a child into care, the threshold is related to specific prohibited acts: the care order is, in first place, issued due to physical or mental abuse, exploitation or neglect which includes, though the law uses a different wording, emotional and sexual abuse; assessment of further endangerment or future harm to the child is not required (sec. 2 alt. 1 The Care of Young Persons Act [LVU 1990:52]). In addition, the care order can be grounded on any other significant risk of harm to the health or development of the young person (sec. 2 alt. 2 LVU). Self-destructive behaviour also permits taking a young person into care, defined as a significant risk of harm through the abuse of addictive substances, delinquency or socially degrading behaviour (sec. 3 para. 1 LVU).

The Social Welfare Committee (SWC) may order that a young person (under the age of 20) is taken into immediate care when the s/he probably needs to be provided with foster or institutional care *and* a court decision cannot be awaited due to the risk to the young person's health or development, or to avoid serious impediment for an ongoing assessment, or to prevent further inquiry measures (sec. 6 para. 1 LVU). The second and third provisions, in particular, substantially lower the threshold. The term "risk of harm" also only asks for indications of probable effects on the health or development of a child, and thus does not seem to need as strong evidence as an endangerment.

Therefore, the rationale of the legal framework for taking children into care against the parents' will in Sweden seems to differ from all other countries in the study. While in most states the placement outside the family is the last resort, in Sweden it can be a first intervention or an early step on the ladder with the purpose of avoiding long-term placement (sec. 6 para 1 alt. 3 LVU). The

administrative authorities have the competence to intervene in the parental rights even by taking the child into care for the purpose of further clarification of a suspected risk of harm and, as a side effect, to potentially “defuse” the situation so that the parents may respond to a crisis. Taking a child into care, with or without the consent of the parents, in some respects seems to be more a legally permitted social pedagogical intervention than a weighing of the interests of the child and the parents against each other. To evaluate the concrete occasions and thresholds for placements outside the family and the outcomes, further research would be needed.

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## TURKEY

Under the heading “child protection” the family law in the Turkish Civil Code (CC) foresees a successive three-step concept of court intervention in parental rights. (1) Unspecific necessary “protective measures” are admissible if the child’s best interests are endangered and the parents do not remedy the situation themselves or are not able to do so (sec. 346 CC). A child shall (2) be placed outside the family by a care order if there is a danger for the physical or mental development of the child or if the child is in a condition of serious neglect (sec. 347 para. 1 CC). On demand of the parents or the child the same provision is applicable if staying with the family hampers the peace in the family in an unacceptable way and a remedial action is not possible (sec. 347 para. 2 CC). If other protection measures by the court were without success or seem to be without the chance of such (3) the court can dismiss parental custody if the parents

- are incapable of exercising their parental custody in a dutiful way, either because of inexperience, illness, defect, absence or similar reasons; or
- do not care sufficiently for their child or grossly breach their duties towards the child (sec. 348 para. 1 CC).

Though the language of the law might sound rather old fashioned, the approach unfolds the developmental approach to child protection of the CRC in a fairly sophisticated way. It follows the principle of the least intrusive intervention without consent and leaves room for creative reactions by the court. However, in practice the required prognosis of endangerment of the child or the assessment of parental ability would need well educated and specially trained judges and social workers. Since this is not guaranteed throughout Turkey, in many regions protection measures are taken only in cases of visible severe physical abuse, cases with consequences of significant harm arising out of neglect, or cases in which children cause grave problems to social environments.

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## UNITED KINGDOM

The court may place a child under supervision or in the care of the local authority’s children’s social care department, “if it is satisfied (1) that the child concerned is suffering, or is likely to suffer, significant harm; *and* (2) that the harm, or likelihood of harm, is attributable (a) to the care given to the child, or likely to be given to her/him if the order were not made, not being what it would be reasonable to expect a parent to give her/him, *or* (b) the child’s being beyond parental control” (sec. 31 para. 2 Child Protection Act 1989 [CA]). By the letter of the law the threshold takes a dual perspective concentrating on the present situation of the child on the one hand and the causality of the (likely) significant harm of the parental behaviour on the other. This wording, not orientated to the future, would seem to facilitate an assessment by concentrating on the present. Proceedings can be based on risk of harm (likelihood) rather than actual harm which, however, lowers the threshold further. Evaluating the significance of harm the child is suffering requires comparison of her/his “health or development with that which could reasonably be expected of a similar child” (sec. 31 para. 10 CA). The standard of proof in these cases is the civil standard: facts must support the

assessment on the balance of probability. Likelihood of harm in the future has to be based on the proven facts about the past, so that it can be substantiated that the child in question suffers significant harm; it cannot be based on harm to a previous child.

In the end, the court decides by applying the proportionality principle whether or not to issue an order, once the threshold criteria have been proven (Bracewell et al. 2004) and by doing so respects the developmental approach of the CRC.

Concerning what care can be reasonably expected, the courts have some discretionary power since the required standard is not further specified by law. In practice, therefore the threshold is often negotiated. Social workers and parents' lawyers try to convince parents that the threshold is met. There is a strong ethos that agreed outcomes are better than ordered outcomes. Only in about 10% of the cases is the threshold contested and in consequence placed in the discretion of the judiciary.

While a care order is in force the law takes an additive approach to parental responsibility. Local children's social care authorities are appointed with parental responsibility for the child but at the same time the parents (or guardians) still remain holders of custodial rights. Children's social care has to determine the extent to which parents or guardians may meet their parental responsibility but restrictions may only be made if necessary to safeguard or promote the child's welfare (sec. 33 para. 3 and 4 CA).

The Children Act 1989 defines two other thresholds for court intervention in parental responsibility. When an order for emergency protection of children is to be made, the law requires reasonable cause to believe that the child is likely to suffer significant harm if not removed from her/his carers or other surroundings (sec. 44 para. 1 lit. a CA). In case the local children's social care applies for the order, enquiries by the local authority are a prerequisite as well as access to the child being unreasonably refused despite the authority's belief that access is required as a matter of emergency (sec. 44 para. 1 lit. b CA). In conclusion, emergency protection demands fairly reasonable grounds for the suspicion of significant harm and the inability of children's social care to assess its substantiation in time.

Further competences for state interventions that can lead up to proof of significant harm are the child assessment orders. They also presume reasonable cause of a suspicion that the child is (likely) to suffer significant harm. The assessment of the child's health or development or of the way in which s/he has been treated has to be necessary to determine the suspicion and cannot be achieved without such court order (sec. 43 para. 1 CA). Again, the term "reasonable cause" gives the courts room for individual judgement as to whether the grounds are satisfactory or not.

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#### MANDATORY REPORTING, SELF-REFERRAL AND SELF-SIGNALLING

Child protection systems can only act to protect when they know about children who are in danger of harm. As a result, in national and international debates about child protection the question of mandatory reporting is often considered to be a key issue (Svevo-Cianci et al., 2010; WHO & IPSCAN, 2006). However, the causal influence of such a duty on the effectiveness and quality of child protection is disputed and research indicates that there are good grounds to closely scrutinise the issue (Ainsworth & Hansen, 2006; Melton, 2005; Ainsworth, 2002). The policy goal of mandatory reporting is always to increase the flow of information about children in need or in serious danger to responsible authorities, no matter what the legal provisions for such notifications of suspicion presuppose. In any case, the chosen legal framework will necessarily influence confidentiality in helping and treating relationships and has to define its relation to data protection and professional secrecy.

Referral based on observations from outside the family is only one possible source of information, however. Child protection and social welfare agencies can encourage self-referral by parents (and other carers or teachers for example) in need of help or guidance who have used or fear that they may use violence, who are finding it difficult to cope with stress or to fulfil their parental responsibilities, or who have problems with the child's behaviour. Self-referral can be facilitated by confidential low-threshold services.

The likelihood of self-referral to public social services rises when agencies can promise support. It can be promoted effectively by the provision of low-threshold services that offer confidential counselling. Situations of hidden maltreatment can be uncovered that otherwise would not be reported. The range of situations coming to the attention of social and child protection services is wider and the potential for reaching families at an earlier stage, before abuse becomes severe, is greater than with reporting by outside observers.

The frequency of self-referrals seems to vary enormously. Data are scarce, and it should be noted that in some systems, parents can also be pressured to refer themselves to a program or agency; an unknown proportion of self-referrals reflect compliance to avoid further consequences rather than spontaneous help-seeking. Nonetheless, when self-referral is a widely known and accepted possibility, the willingness to disclose problems and accept help is likely to be greater.

A third vitally important route by which information can reach protective agencies or support services is self-signalling by children and young people exposed to abuse or threats. The term "self-signalling" highlights the wide range of different ways in which children may call attention to their need of help, often well before they are ready to disclose abuse. Helplines and services offering confidential advice and counsel can empower the victims of abuse and neglect or those in fear of violence and open the door to intervention and support.

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## BULGARIA

For all professionals working with children and families reporting is mandatory if they recognise a violation of a child's rights. In addition all citizens (and professionals) have a duty to report immediately when they become aware that a child needs protection (art. 7, 40 CPA). The report has to go either to the Division of Social Assistance (DSA), State Agency for Child Protection (SACP) or the Ministry of Interior. Mandatory reporting overrides the obligations of confidentiality guaranteed by professional secrecy but physicians still are usually unwilling to report abuse.

If citizens or professionals fail to report, the child protection authorities may file for penal administrative sanctions. Despite the possible penalties faith in the system is low and complaints of sexual abuse, in particular, are very infrequent.

Corresponding to the general lack of trust, self-referral by parents or self-signalling by children is very rare in Bulgaria.

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## ESTONIA

All citizens have a duty to notify the social service department, police or some other body providing assistance of any suspicion that a child is in need of protection or assistance (sec. 59 para. 1 Child Protection Act, 1991 [CPA]; sec. 134 para. 2 Family Law Act, 2010 [FLA]). In practice, the public and the professionals perform their duty of mandatory reporting by notifying the social services mostly in cases of neglect and less severe violence and the police in cases with clear signs of violence. They might also call the national 24/7 children's helpline (116111) that usually connects the caller with

the local social services. If the notification reaches the social services or the helpline first the specialists decide whether it is a “police case” or not. If there are clear signs of violence it is mandatory to report any suspicion to the police as well. Non-reporting is a crime itself. In effect, no professional working with children or parents can maintain confidentiality, including medical personnel and psychotherapists.

The strict obligation to report every violent act against a child to the criminal justice system includes every hit, slap, or pulling of hair. These actions are not only prohibited but a crime. Neglect is criminalised if it causes significant harm or puts child in serious danger. Emotional abuse is dealt with as neglect. Child sexual abuse is, of course, to be reported as well.

The mandatory reporting of any violence against children to the criminal justice system does not seem to have the intended effect. According to recent research approximately two thirds of the public as well as professionals working with children failed to report cases even though they recognised them as relevant (Estonian Development Plan for Reducing Violence, 2010-2014, 2010, p. 19 with reference to Soo et al., 2009).

Self-referral is fairly unknown in Estonia. Dedicated efforts have been made to overcome the former perspective on child abuse and neglect as a non-existing problem in the Soviet bloc (Sicher et al., 2000), but still, asking for help is viewed culturally as a sign of weakness although there is a growing willingness to seek the support of psychologists, therapists or other professionals. An attitude of distrust towards State institutions deriving from the previous authoritarian system is still predominant and there is a great deal of shame in Estonian society with regard to possible failures in the upbringing of children. The socialist expectation that citizens have to function in the society is still deeply rooted.

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## GERMANY

Confidentiality in professional helping relationships is highly valued in Germany. It is legally guaranteed through provisions regarding data protection in child and youth welfare as well as in other professional domains by professional secrecy. The underlying rationale is to facilitate access to help for maltreated children as well as for persons in their family and social environment, making it easier for them to confide in professionals, disclose their distress and problems, and to accept help and protection, as highlighted repeatedly in the political debate on child sexual abuse (Runder Tisch Sexueller Kindesmissbrauch, 2010).

In order to ensure a multi-professional approach, anonymous consultation with an expert team is legally declared admissible (sec. 65 para. 1 SGB VIII). Professionals working for an NGO in the field of child and youth welfare are legally obliged to consult an expert on child protection in cases of suspicion (sec. 8a para. 4 SGB VIII). In addition, the current proposal for a national child protection act (BT-Drucks. 17/6256) would give professionals outside the youth welfare system (physicians, teachers and all other professionals working with children or parents/carers under professional confidentiality) a legal right to consultation with an expert in the child and youth welfare system (sec. 8b SGB VIII-E).

Mandatory reporting for medical personnel is in place only in very few *Länder* (Bavaria) and under certain circumstances (Hessen). School law in about half of the *Länder* requires teachers to notify suspected maltreatment to the youth welfare offices (for further details see Meysen et al., 2010). When the new child protection act comes into force the fragmented law on data protection will be unified for this area. Confidentiality will be secured up to a legally described threshold (“weighty grounds to assume that the best interests of a child or adolescent are in danger”) and notification

will be allowed if the threshold is met. The provision will be made for anonymous counselling by a child protection expert and obligations established to talk to the child and/or parents first, with exceptions if necessary for effective protection. Professionals with a general duty to preserve secrecy have a right but no obligation to inform the youth welfare office.

According to binding guidelines for police (police service regulation 382) the youth welfare office is to be notified without delay of a child considered to be in need if it already becomes evident during police investigations that the services of child and youth welfare institutions might be required. One effect of this rule is the general practice of police when attending calls in cases of domestic violence to inform the youth welfare office if children are present.

Reporting of suspected child abuse to the criminal justice system is not required in Germany. In order to ensure that the best interest of the child is the primary consideration, the introduction of a legal duty of notification in cases of child sexual abuse, which has been repeatedly discussed in Germany, has been rejected. It is a common understanding in Germany that the best interests of the child cannot be defined through abstract general formula, but the situation and the needs of the specific child must be assessed. Further arguments brought forward against mandatory reporting are that criminal proceedings, once initiated, may impede protection in the individual case and that it would no longer be admissible – even in the child’s best interest – to dismiss the criminal proceedings or to postpone further prosecution to a later time when the child can cope with it. A duty to report to the prosecuting authorities therefore only applies if required in order to ensure protection (sec. 8a para. 4 SGB VIII). Thus, child protection is given priority over criminal prosecution.

There is no general consensus on how far criminal prosecution is necessary or advisable to protect an endangered child or adolescent. In practice, it is therefore generally required that a thorough assessment of danger is conducted by an expert team. Even in case of bodily injury or neglect, the duty to report only applies if criminal prosecution is necessary to ensure protection. The experts at the youth welfare offices and the NGOs consequently have to evaluate the entire circumstances of an individual case by taking into consideration, before all other things, whether a report to the police helps and serves to protect the child.

Self-referral by parents and/or other carers and self-signalling by children are highly promoted and in comparison to other states seem very common in Germany. This could be an effect of the data protection law and the security of confidentiality in helping relationships. The referring or signalling might first reach either the youth welfare office or an NGO, especially counselling centres. Children have a legal claim to counselling without knowledge of their parents if necessary because of a conflict or plight (sec. 8 para. 3 SGB VIII).

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## GREECE

Public officials have a general obligation to report suspected child maltreatment to the prosecutor or police. For educators in schools and child care a more appellative than binding obligation of mandatory reporting of violence against children is laid down (Law 3500/2006). All other professionals working with children and families have no duty to notify. There also seems to be a broad reluctance to report. Professionals will only report when the abuse is evident and physical, and thus relatively easy to prove.

Despite the law stating that reports should be made to the district attorney (art. 1532 Civil Code), in practice they are made to the municipality/prefectures, the police and, probably most of the time, to NGOs that are open to receiving notifications. If reported to the police it is dealt with by the security

department, run by its own chief, in which among other tasks they settle every issue related to minors.

The self-signalling of a child to the police is an option in theory. But if they did so the typical reaction of the police officers would be to demand that the child should be escorted by an adult relative. The requirement to be accompanied by an adult relative also is in place in social services, hospitals and every other public agency. In effect self-signalling is practically impossible for children in Greece.

Self-referral by parents is unknown. There is no confidentiality for persons who notify a suspicion. The reported persons have the right to be informed about who made the allegation against them. In cases of potential child sexual abuse the reporting person is exposed to potential prosecution for false accusation if the abuse cannot be proven. As a result protection against child sexual abuse is compromised. In 2009 only 25 cases were registered (compared to 1,137 cases of child abuse and neglect).

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## NETHERLANDS

In the Netherlands there is no legal obligation to notify authorities of suspected child abuse or neglect. After a recent debate on mandatory reporting (e.g. van Yperen, 2009; Cooper et al., 2003, p. 41), an (ethical) code was drafted for all professionals working with children that encourages them to report to the AMK (more Nederlands Jeugdinstituut, 2011a; 2011b). The code is expected to come into effect by the end of 2011.

There is a presumption that most professionals will follow the code, which is more specific and concrete than is usual for legally defined duties to report. If the code is not followed, the professionals will not be punished by law, but there is a high expectation that it will be integrated into the professional culture. However, the consequences in case of disregard are unclear. There are indications of an increasing willingness to consult with supervisors on possible abuse, as well as awareness of typical injuries in hospitals, and professionals seem more inclined to report to protect themselves from prosecution for negligence.

Self-referral of parents and self-signalling of children has a long tradition in the Netherlands and is quite common. This may be due to the traditionally very high value attached to confidentiality.

Additionally, a bill has recently been introduced in Parliament for a law reform that will oblige every professional working with children to disclose any information that can help to find out if a child is in danger when requested by the child protection board (Raadvoor de Kinderbescherming). If the youth welfare office (Bureau Jeugdzorg) or child protection board reckons that s/he needs information from a teacher, doctor or any other professional during her/his investigation, information must be given. The term "professionals" includes NGOs such as staff of women's shelters. The bill still has some ways to go in the legislative procedure but it seems to be likely to come into force. Until now, teachers, social workers or other professionals could refuse to disclose information, but in the past ten years the overall attitude in society seems to have shifted, though this is not undisputed by professionals (Nederlands Jeugdinstituut, 2011b).

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## ROMANIA

All professionals with a relationship to children that allow them to observe the child for a sufficient period of time (e.g. teacher; child care worker; medical staff; social worker) have a duty to report suspected child abuse, neglect or sexual abuse either to the police or the General Directorates for Social Assistance and Child Protection (GDSACP; art. 91 Law 272/2004 on the protection and

promotion of the rights of the child). The obligation can be fulfilled also by notification to the Public Social Assistance Service (PSAS) in city halls. The suspicion of potential abuse is sufficient; concrete evidence is not necessary. The notification may be based on observations of the relationship between the child and the alleged abuser.

For all persons working in public institutions reporting of child abuse or neglect is mandatory (art. 85 para. 3 Law 272/2004). The same article codifies a right to notify for all citizens. The criminal law does not provide a clear obligation for citizens to report child abuse (Criminal Code, Law 278/2006 on the amendment and completion of the Criminal Code, and on the amendment and completion of other laws). Each GDSACP has to establish a children's telephone line open to receive reports on child abuse, neglect or exploitation.

The failure of persons working in public institutions to notify authorities of a potential case of abuse and neglect is sanctioned, as it is considered a serious disciplinary lapse, according to the legal provisions in force. Also, the lack of notification by a person working with the family of acts of violence against children is a summary offence (art. 29 para. 1 letter b Law No. 217/2003 on the prevention and fight against family violence).

It is still rare for a parent to ask for help but self-referral is starting to develop. There are some centres that provide psychological counselling or parenting courses. Accepting help from authorities to keep children safe is not felt to be shameful to the extent that deficiencies must be hidden from the state or "officials".

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## SWEDEN

Professionals working with children and families in public institutions or the private sector have an obligation to report to social services/department for child protection if they suspect that a child is in need of support (sec. 14 para. 1 Social Services Act [SoL]). This includes, but is not limited to suspicion of abuse or neglect. Mandatory reporting in Sweden seems to follow an understanding of encouragement to children and parents to seek access to voluntary supportive and preventive services at an early stage (Cooper et al., 2003). There is a legal expectation that a professional working with children or families should first consult and seek advice about her/his perceptions and presumptions. For this reason, s/he should contact the specialised professionals in the social services/department for child protection and describe the case without naming the child or family (Children's Ombudsperson Act [SOU 2009:68]). Research in 341 child care institutions showed that only 37% of the cases of suspected child maltreatment were reported (Sundell, 2007) while of 137 children with a suspicion in a Children's University Hospital 55% were reported (Tingberg, 2010).

Parents' and/or children's first point of contact if help is sought is likely to be the medical system. As yet, however, preventive referral and notification by the medical system appears to be fairly infrequent, although structurally there is a strong connection between health care and social services (Katz & Hetherington, 2006). Notwithstanding the challenges for the relationships of parents' with, or children's trust, in children's social care, self-referral or self-signalling does take place in a fairly significant number of cases (Cooper et al., 2003).

Despite the general rule of strict confidentiality between agencies the law allows the social services/department for child protection to report child maltreatment to the police for investigation (Act of the Children and Parents [SFS 2009:400]). This means that social workers have discretion to decide whether to report to the police or not. However, there are some districts in which the higher levels in the administration require their social workers to report all cases. The usual practice is not to follow this rule, as being too rigid, because bringing in the criminal justice system routinely would be an overreaction from a subject-oriented point of view. Legal provisions or national guidelines do

not bind social workers completely so they have the right to use their judgement as to what is in the best interests of the child – generally recognised as the decisive guiding principle (Annerbäck, 2011). In districts where social workers are instructed to report every case to the police, this *can* mean that social services/department for child protection cannot go forward with an assessment of the situation and help for the family until the police have completed their investigation.

The threshold for notification to the police might be: sexual abuse; repeated hitting; hitting with an object; verbal or psychological abuse (Annerbäck, 2011). These parental behaviours could all be prosecuted. In general, the cases that are referred directly to the police are cases in which the child has already told someone about the abuse.

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## TURKEY

The Juvenile Protection Law (JPL) obligates all judicial and administrative authorities, law enforcement officers, health and education institutions and NGOs to notify the social services and child protection agency of any children in need (art. 6 para. 1 JPL); the Penal Code contains a similar reporting duty to police or prosecutor. In rural areas and in cities where local social services are not (well) established the police or prosecutors usually are the primary institutions. Professional confidentiality must be broken when the person working with a child or parents becomes aware of potential child maltreatment. Social services may assess the case first but when it is substantiated they have to report it to the prosecutor as well. In practice some professionals in the social services or health care system immediately inform the police or prosecutor, others start with further diagnosis and go into contact with the child and/or family first. The way the duty to report is respected varies according to the experience of the persons with the suspicion, or the severity of the suspected abuse and neglect and the relationships between the institutions and professionals.

The promising practice of child protection centres in hospitals (see above 2.8) not only uses their expertise on behalf of children who come for medical treatment to the hospital but also promotes the notification of suspected child maltreatment to them. Social services can also refer cases to such hospital units. The centres are active in making their work known and encouraging the different professionals to report cases to them.

If abuse of a child is suspected or recognised during any hospital treatment or examination, or if the child protection centre in the hospital is notified of a suspicion by a professional, a doctor and/or psychologist will examine the child for physical or mental signs of abuse and a social worker or psychologist will talk to the child. If abuse or neglect seems likely, they will talk separately to the parents. The staff within the centres have discretion to rely on their professional judgement as to when it is the right time to further report the case to the child protection department in social services. The centres in the hospitals support the child and counsel the family, often in cooperation with social services. If the centres are informed directly by social services the hospital staff will carry out medical and psychiatric examinations to further assess the case and to clarify the issues. If evidence is found to indicate abuse, the hospital has to decide whether the case is to be reported to the prosecutor and to social services. The hospital centre can also collect evidence on request of the prosecutor.

Apart from the very few hospitals with child protection centres, self-referral and self-signalling are not promoted and therefore almost non-existent in Turkey. Several services such as counselling centres, available at least in some regions have the potential to be inviting to children and parents but no indications could be found that it has been exploited in any way systematically.

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## UNITED KINGDOM (ENGLAND AND WALES)

Professionals working with children should report all cases of suspected child maltreatment to children's social care department according to national guidelines (HM Government, 2010; Tchengang, 2006). In general, professionals should seek the agreement of the child or other family members before making referrals to local authority children's social care. Transparency is one of the "golden rules" for information sharing (HM Government, 2008). However, this does not apply if seeking agreement would place a child at increased risk of suffering significant harm (HM Government, 2010). If professionals are in any doubt they should seek advice without disclosing the identity of the person if possible (HM Government, 2008).

In practice, half of the referrals are from professionals and half come from others, including a significant number of self-referrals by family members. Responses differ depending on who makes the referral. Those coming from police or medical professions are taken very seriously, though this seems to be less the case when the referral is based only on the child having witnessed intimate partner violence.

Each school is supposed to have a nominated teacher who is especially trained in child protection. Other teachers usually call on her/him first to evaluate their perceptions and suspicion before notifying the children's social care department. Only in cases of missing children in which a court has reason to believe that a person has information about the whereabouts of the child may the court order her/him to disclose that information (sec. 95 para. 6 Children Act [CA]).

Concerning reporting to the criminal justice system, professionals working in children's social care are requested to consider their legal obligations, including whether they have a duty of confidentiality to the child, before deciding whether to report a suspicion. Where such a duty is in place, information may lawfully be shared with the police even without consent of the child if there is a public interest of sufficient force. Clear likelihood of a child suffering significant harm is found to almost certainly satisfy the public interest but the child's best interests must be the overriding consideration in making such decisions. These judgements have to be made by the professionals based on the facts of each case (HM Government, 2010).

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## HEARING OF THE CHILD

Children who are capable of forming their own views have the right to express those views freely. The State Parties to the CRC are obliged to provide them with the opportunity to be heard in any judicial and administrative proceedings affecting the child. In decisions, their views shall be given due weight in accordance with the age and maturity of the child (art. 12 CRC). The hearing shall take place in a manner consistent with the procedural rules of national law.

The CRC leaves open whether the child is heard directly or through a representative or an appropriate body. That leaves room for the states to take their own approach towards hearing the child's views in administrative and court proceedings, perhaps even involving the child in the process as a form of participation. The openness of the CRC to individual legal responses makes it worth taking a closer look.

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## BULGARIA

In every administrative or court procedure the outcome of which could affect the rights or interests of a child, Bulgarian law imposes an obligation to hear her/him if older than ten. Exceptions may

only be made if the hearing would harm the child (art. 15 para. 1 Child Protection Act [CPA]). Children younger than 10 may be heard at the discretion of the judges or representatives of the administration, based on their estimation of the child's level of development; the court's decision on hearing the child or not shall be motivated (art. 15 para. 2 CPA).

Prior to the hearing children must be provided with the necessary information by the court or responsible administrative body to help them express their views and to instruct them about the possible consequences of such wishes or views, as well as about the possible decisions to be made by the court or administrative body (art. 15 para. 3 CPA). The wording of the law frames this hearing in terms of testimony to facilitate decisions of the authorities rather than as participation of the child with the status of a subject, and not only the object of proceedings.

However, the child-friendly setting of the hearing is secured by law, which requires that it takes place in a suitable environment appropriate to the age of the child (art. 15 para. 4 s. 1 CPA). And in all cases a social worker from the Directorate for Social Assistance (DSA) needs to be present and, if necessary, other specialists as well (art. 15 para. 4 s. 2 CPA). This accompaniment is free of charge for the child. In practice, it sometimes seems unclear whether the social worker is attending the hearing to support the child or to bring in the child's views as part of her/his own task.

In addition, the child has a right to legal assistance in all procedures affecting her/his rights or interests (art. 15 para. 8 CPA). The latter as well as the right to appeal against a decision is not fully secured, since legal aid is not specifically regulated for children. In principle, the legal aid under the Legal Aid Act is means tested, taking the income of the parents into account, which contradicts the nature and scope of the proceedings when representation of children is called for. Therefore, access to representation by a lawyer does not work in practice; this can be considered a serious gap.

The presence of the parents or other carers of the child during the hearing shall be ordered by the administration or court with the exception of cases in which this conflicts with the best interests of the child (art. 15 para. 5 CPA). In effect, this also applies when a service plan is set up or revised.

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## ESTONIA

Estonian law establishes the general duty of any court, when hearing a dispute concerning a child, to proceed from the best interests of the child (sec. 123 para. 1 Family Law Act [FLA]). In doing so it is bound to consider the wishes of a child of at least ten years of age. The views of children younger than 10 will also be taken into account according to their capability in relation to their developmental level. These obligations apply to all proceedings concerning the rights of a parent with regard to a child and communication between parent and child (sec. 384 para. 4 s. 1 Code of Civil Procedure [CCP]). If the urgency of the matter does not allow a hearing before the decision the child is to be heard at the first opportunity thereafter (sec. 384 para. 4 s. 2 CCP). In cases of endangerment of the child's well-being the court may issue rulings provisionally based only on an application of the responsible local government (sec. 384 para. 5 CCP).

The judges hear the children personally. When a child is heard as a witness the hearing must take place in the presence of a child protection official, social worker, psychologist, parent or guardian who, with the permission of the court, may also question the child. The involvement of such professionals is in the discretion of the court if the child is older than 14 years of age (sec. 261 para. 1 CCP).

A representative can be appointed to the child and will be financed by legal aid. The appointment is obligatory in civil procedures when measures to ensure the well-being of the child involve potential

separation from the family or dismissal of parental rights, or on the removal of the child from a foster family, a spouse or other person entitled to access (sec. 219 para. 2 sub sec. 3 and 4 CCP). If a guardian is appointed to represent the child in the civil court procedure the parents have no right of representation (sec. 217 para. 7 CCP).

In the past, in administrative proceedings the social services department in the local government had a legal duty to hear and document the views of a child only when the child is separated from her/his parents (sec. 27 para. 2 Child Protection Act [CPA]), that is, after placement outside the family. This chronology has been corrected by the Social Welfare Act (SWA). The wishes of a child that is ten years of age or older shall be taken into account, if the child is taken into foster care and a case (management) plan is prepared for her/him. The wishes of a younger child shall be considered if reconcilable with the developmental level of the child. The child has the right to get acquainted with the person who wishes to become a caregiver, her/his family members and home and to receive information on them. S/he has the right to bring her/his personal belongings (sec. 25 para. 2 SWA). In practice, the child protection worker is expected to talk to the child in all cases when a suspicion of child maltreatment is assessed and not only when foster care is considered.

In addition to the hearing of the child, s/he is interviewed by the police to collect evidence for the regular parallel prosecution of child maltreatment as a crime. Interviewing police officers are specialised throughout the country and questioning is video-taped.

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## GERMANY

German law states that children shall be heard personally by the decision-makers in any proceedings that concern them, no matter whether these are administrative, in court or by an NGO. The Federal Constitutional Court derives the duty to hear the child personally from a fundamental right of the child as well as the general right to be heard (art. 103 para. 1 German Constitution [GC]). It declares that the child has to be the subject and not the object of the proceedings, and at the same time stresses the hearing as part of the investigation of facts to ground the decision (Federal Constitutional Court, 1987; 1998). In effect, several authorities and professionals have a parallel duty to hear the child. In addition, the appointment of a guardian ad litem in family court proceedings in which the child's best interests might conflict with the interests of the custodial parents also is defined as a fundamental right of the child (Federal Constitutional Court, 1998).

The law reflects this constitutional foundation. Family court judges have to hear the child personally if s/he is 14 years of age or older or, if younger, and if the "attachments or the will of the child" can be of influence on a decision (sec. 159 para. 1 and 2 Code on Family Procedures and Other Issues of non-contentious Jurisdiction [CFP]). Due to the jurisdiction of the Federal Constitutional Court all children are heard by the court if three years of age or older (Meysen, 2009, sec. 159 margin numbers 7 f.). Exceptions may only be made for serious reasons. If a child could not be heard because of imminent danger the hearing must take place afterwards without delay (sec. 159 para. 3 CFP). During the hearing the child shall be informed about the subject of the proceedings, the proceeding itself and the potential outcome in a child-appropriate way, unless this could be harmful to the upbringing, the development, or the health of the child. The child has to be given the opportunity to express her/himself. Beyond that the conduct of the hearing is at the discretion of the court (sec. 159 para. 4 CFP). Recent research has found that the psychological stress that the hearing may cause for the child is in most cases balanced out after four weeks and children's relief at having had the opportunity to express their views is significant. 47.1% of judges have been trained for the specific task of hearing children. The researchers propose a strict legal duty to hear the child from the age of four onwards (Karle et al., 2010; Karle, 2011).

In family court proceedings that may affect the person of the child the court has to appoint a guardian ad litem (sec. 158 para. 1 CFP). The range in which this duty applies is broad and explicitly outlined in the law. The appointment is mandatory if the interests of the child are in significant conflict with the interests of her/his legal representative, e.g. in all child protection cases (sec. 158 para. 2 CFP). The guardian ad litem has to be appointed as soon as possible and has full procedural rights, for example, the right to complaint. If the court decides not to appoint a guardian ad litem it has to motivate its decision (sec. 158 para. 3 s. 1-3 CFP). The guardian ad litem has to assess the interests of the child and to bring them to bear. S/he has to inform the child about the subject matter of the proceeding, the proceeding itself and the potential outcome in an appropriate way. In cases where the child has a guardian ad litem her/his presence during the hearing of the child is mandatory (sec. 159 para. 4 s. 4 CFP).

In administrative proceedings within the child welfare office the law stipulates several duties to hear or to secure the participation of the child. If the child welfare office becomes aware of weighty grounds to assume that the best interests of a child or adolescent are in danger, the responsible social worker has to involve the child in the assessment of the suspicion and to assess the child and her/his situation personally. Exceptions may only be made if participation could jeopardise protection (sec. 8a para. 1 Social Code, Book VIII Child and Youth Welfare [SGB VIII]). Children are to be counselled and informed about the possible consequences prior to any decision about granting or modifying support services (sec. 36 para. 1 s. 1 SGB VIII). As the foundation of the concrete arrangements for support a service plan must be drawn up with the participation of the child (sec. 36 para. 2 s. 2 SGB VIII). Not restricted by age limits, children are provided with a legal claim to be counselled without knowledge of the parents or other carers if necessary in an emergency situation or a situation of conflict (sec. 8 para. 3 SGB VIII). Legal obligations to hear and to involve the child also apply to NGOs (e.g. sec. 17 para. 2 SGB VIII).

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## GREECE

In cases that go to court, the child's opinion has to be sought by the judge having regard to the maturity of the child and taken into consideration before any decision pertaining to parental care is issued if such decision concerns the child's best interests (art. 1511 para. 3 Civil Code [CC]). In practice, it seems that the provision is not followed. The judges may hear the child personally if necessary for the purposes of decision-making, meaning as a witness (art. 681C para. 3 and 4 Code of Civil Procedure [CCP]). In practice the child is rarely heard, even though the provision to hear the child is deemed unanimously to be compulsory by law experts (Committee on the Rights of the Child, 2001).

If the child's best interests conflict with the interests of the parental carers, their spouses or other relatives either by blood or marriage a special curator shall be appointed (art. 1517 CC). In addition, the representation of the child during court proceedings is expected to be conducted by the DA. If the bearer of custody is not the perpetrator s/he represents the child (art. 1510 Civil Code [CC]). A lawyer might be appointed at the discretion of the court. If so, the parents have to pay for the lawyer unless means are tested and financial need shown.

According to a decision by the Supreme Court (952/2007) a child older than 12 years of age should be heard by the District Attorney (DA). Between the ages of 8 and 12 the hearing is at the discretion of the DA. In practice, the DA interviews the child to hear her/his views in a small minority of the cases. At least in proceedings on their adoption, children 12 years of age or older are legally considered capable of attending a court hearing (art. 800 para. 5 CCP). Children who have reached the age of 16 are in any case capable of appearing before the court in affairs concerning their personal status (art. 742 CCP).

The child is not heard in administrative procedures. As an unwritten approach, the only measure that can be taken to involve the child in the investigation of a suspicion is to hospitalise her/him until the assessment is concluded. Such placement must be ordered by the DA. The law does not ensure that someone hears the views of the child so that they can be considered in the process.

A child who wishes to express her/his views in front of an authority can only do so if accompanied by an adult relative. This expectation applies throughout all settings, including not only social services or the police but also hospitals and all other public authorities.

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## NETHERLANDS

Cases concerning children are dealt with by a juvenile court judge (sec. 808 Code of Civil Procedure [CCP]). In such civil procedures a child above the age of 12 has the right to be heard (art. 800 in conjunction with art. 809 CCP). The judge can only refrain from obligatory hearing if the case is not relevant to the child's concerns (art. 809 para. 1 CCP). The child must be invited by formal letter. A blank page and envelope with stamp is included, so the child can send her/his wishes to court without fees or forms. While the court is obliged to invite the child, the child is not obliged to attend.

Children under the age of 12 will not receive an invitation, unless siblings or parents ask the judge to hear the child and invite her/him. The judge then has discretion to decide if the child is to be heard or not. If the child decides to come to court, it usually will be heard alone, but may bring a person whom s/he trusts. In practice, however, most children come alone. In cases of deprivation of liberty for pedagogical reasons, the young person has to be heard by the court (in the regular proceeding and in front of the parents and supported by a lawyer).

Children who come to court will be heard in chambers. Ideally, the judge will not wear a robe and will try to make it comfortable for the child. The judge will first spend some fifteen minutes talking informally with the child, followed by an explanation that everything the child says is to be reported in court, but that the child has the freedom not to testify if there is something s/he does not want the parents to hear. Afterwards the hearing is summarised by the judge in her/his own words, so the child can agree or make any corrections. The judge is obliged to tell the parents everything the child said so s/he has to make transparent to the child before the hearing that there is no confidentiality.

A special curator can be appointed if the interests of the parents or other carers are in conflict with the child's best interests (art. 250 Civil Code [CC]). Also, the child will receive all documents and in practice the documents usually are sent to the solicitor or special curator.

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## ROMANIA

Hearing of the opinion of the child and giving it due weight in accordance to her/his age and maturity is one of the core principles outlined in the law on the protection and promotion of the rights of the child (art. 6 lit. h Law 272/2004). The law accords children the right to freely express their own views on any matter which concerns them, conditional on their capacity to discern (art. 24 para. 1 Law 272/2004).

Children have the right to be heard in any judicial or administrative procedure which involves them (art. 24 para. 2 s. 1 Law 272/2004). They can request to be heard and if the court or administrative authority denies this wish it has to issue a motivated decision in this regard (art. 24 para. 5 Law 272/2004). After the age of 10 the hearing is mandatory; this duty also applies to expedited proceedings concerning placement measures (art. 125 para. 2 Law 272/2004). A child younger than 10 years of age may be heard at the discretion of the courts and authorities if they deem it necessary

in order to resolve the case (art. 24 para. 2 s. 2 and 3 Law 272/2004). The wording of this provision seems to suggest that the purpose is to expedite proceedings, but the law explains explicitly that the main aim of the hearing is to enable the child to request and receive any pertinent information, to be consulted, to express her/his view, to be informed about the consequences which her/his opinion may generate as well as about the consequences of any potentially upcoming decision (art. 24 para. 3 Law 272/2004). The court's decision must reflect consideration of the child's opinion, as the CRC stipulates, consistent with the age and developmental level of the child (art. 24. para. 4 Law 272/2004). Despite this binding legal framework, however, the views of the child are sometimes not solicited or taken into account in judiciary hearings in practice (Committee on the Rights of the Child, 2009).

In cases of potential abuse or neglect children act as witnesses to ground the decision on necessary interventions in parental rights. In order to conduct a hearing, the child may be subpoenaed by the court (art. 95 para. 3 s. 1 Law 272/2004). Before the hearing the child has to be provided with an initial preparation, the hearing then takes place in the counsel's chamber and in the presence of a psychologist (art. 95 para. 3 s. 2 Law 272/2004). A written statement of the child on abuse or neglect may be taken by the court ex-officio as evidence (art. 95 para. 1 s. Law 272/2004). The statement may also be recorded. If so, the presence and assistance of a psychologist is mandatory. The recording may only take place with the child's consent (art. 95 para. 1 s. 2, para. 2 Law 272/2004).

In administrative proceedings on child protection cases, the child must be heard first. Thereafter, the parents/legal representatives are heard, followed by any representatives of institutions where the child might be placed, or other persons who might give relevant information. The order is set by Government Decision 1437/2004 on the organisation and methodology of the operating of the commission for child protection. The initial hearings shall take place separately and after that further joint hearings can be fixed. If the child is ten years of age or older s/he is informed of the measure proposed for her/his protection and its consequences by the president of the commission. The child has the right to freely express an opinion regarding the protection measure proposed.

A child aged 14 or older must consent to any special child protection measures based on an individual protection plan. Where the child refuses, implementation requires a court decision which under strongly motivated circumstances may overrule the child's refusal to consent to the proposed measure (art. 53 para. 3 Law 272/2004). This provision requires professionals to pro-actively provide information to and counsel the child, both when consent is in question in the administrative proceedings and when court proceedings take place because consent is not given.

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## SWEDEN

In Swedish court proceedings the children's views are almost always heard indirectly through a third person if the child is under 12 years of age, but also in many cases when the child is older. In cases concerning custody, residence and contact, the court first gives the Social Welfare Committee (SWC) the opportunity to submit their information about the child and the family; if the information could be of significance in the assessment, the SWC has a duty to supply such information to the court (sec. 19 para. 2 Children and Parents Code [CPC, FB 1949:391]). If further inquiries are necessary the court may instruct the SWC or another body to appoint a person for this purpose and may lay down guidelines (sec. 19 para. 3 CPC).

The appointed person has the task to ascertain the views of the child and report them to the court; exceptions are made if the inquiries are inappropriate (sec. 19 para. 4 CPC). The court also may hear the child itself but only if there are exceptional reasons for doing so and if it is certain that the hearing will not harm the child (sec. 19 para. 5 CPC). The threshold for the latter is rather high

because of a common opinion in Sweden that the hearing of a child places an undue burden on the child.

When a child is taken into care the law stresses that the best interests of the young person shall be of vital concern for the decision of the responsible administrative bodies or the court. The young person's view shall be clarified as far as possible and be taken into account with due consideration for her/his age and maturity (sec. 1 para. 5 and 6 Care of Young Persons Act [CYPA, SFS,1990:52]). If the young person is aged 15 or older s/he is entitled to speak on her/his own behalf in administrative and judicial proceedings about the placement (sec. 36 para. 1 CYPA); this includes the right to legally challenge a placement. A child under 15 should be heard if this might benefit the investigation and if it may be presumed that s/he will not suffer harm from being questioned (sec. 36 para. 3 CYPA).

In best practice the child should be asked about her/his views early in the process. S/he should be interviewed and listened to both when considering short-term and long-term placement. The most important purpose at an early stage is to give adequate information about what measures may be taken, the reasons for any proposed measure, and how long it might remain in place. Long-term placements have to be regularly reviewed (sec. 13 para. 3 CYPA) and, as part of the "close observation of the care", the child's view must be asked for, documented and listened to, even if it is a young child (sec.13 para. 1 in conjunction with sec. 1 para. 6 CYPA). When it comes to custody or visiting, the child's say has great importance and must be documented, although this is burdensome for social workers because both the parents also have the right to receive all the documentation.

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## TURKEY

Children's courts that deal with child protection cases have a duty to hear the child before rendering a decision (art. 13 para. 2 Juvenile Protection Law [JPL]). For family courts the law does not lay down a duty or certain age from which on a child has to be heard (custody, visitation, etc.) but in case of issues related to protection it is more likely that the child is heard. However, the Grand Chamber of the Court of Appeal (2003) decided that child's opinion regarding custody must be taken into account with reference to art. 12 CRC and therefore, the children have a right to be heard in accordance with their capacity of adequate perception (art. 13 para. 2 JPL).

Where the outcome of legal proceedings might affect the child's best interests, a representative has to be appointed and approved by the judge (art. 345 Civil Code [CC]). The psychologist, social worker, etc. informs the child and prepares her/him for the hearing and during the hearing the presence of this expert is mandatory. The hearing does not take place in the court room. The judge can order, or the advocate appointed to the child, can demand that the hearing takes place without the presence of the perpetrator. The representative should be a specially trained person designated to assist a child through all stages of any legal or quasi-legal proceedings. If available in the region, the Law Society selects an appropriate lawyer; the provision of legal assistance to child victims of crime has been mandatory since 2005.

In practice, the children's court often does not hear the child itself but relies on the report of the General Directorate of Social Services and Child Protection (GDSSCP) that should have heard the child. In cases of separation and divorce, a court social worker will be asked to assess the situation. S/he is also supposed to talk to the child. This report will satisfy the court. As a result, it seems that the role of the child, if heard in the court proceedings, is more that of a witness to facilitate decision-making.

## UNITED KINGDOM (ENGLAND AND WALES)

Courts are obliged to ascertain the “wishes and feelings” of the child considered in the light of her/his age and understanding (sec. 1 para. 3 lit. a Children’s Act [CA]). However, hearing the child personally is at the discretion of the family court in any proceedings concerning the person of the child. The court may order the child to attend certain stages of the proceedings to be specified in the order (sec. 95 para. 1 CA). If the child does not comply with the attendance order, or is likely not to do so, the court may make an order authorising a constable or any other nominated person to take charge of the child and to bring her/him to the court (sec. 95 para. 3-5 CA). The child can be interviewed by the court as a witness giving evidence if s/he understands that it is the duty to speak the truth and has sufficient understanding to justify her/his evidence being heard (sec. 96 para. 1-2 CA).

There is a practice of keeping children out of the court. When children ask to go to court, they are usually shown the court when it is not in session, e.g. on a Saturday morning, to satisfy their curiosity and help the children understand the system. Most children know the court from TV shows and are content to sit in the judge’s chair and to be shown around the court room and chambers. There is a deep concern about the damaging impact of the judicial process on children. Children almost never give evidence in child protection cases and, except in a special magistrate court in London with a professional judge, such cases go to the county court. If the child wants to attend the hearing and meet the judge special arrangements would have to be made. Some judges will speak to children, but they are more likely to do so before the court session, or afterward when they have made the decision. Although children can be witnesses and would then be subject to cross-examination, for example, by the parents’ lawyers, it is permissible and more common for the child’s evidence to be heard indirectly.

In any case the court will appoint a child’s special guardian (formerly known as a guardian ad litem) from CAFCASS who is a special social worker and specially trained, representing the interests of the child (sec. 14 CA). They are appointed when the case starts at court, not earlier. The special guardian, who is supposed to be more skilled in direct work with children and has had special training, speaks to the child and appoints a specialist lawyer. The child’s special guardian has the task fully to assess the best interests of the child. The specialist lawyer also has to have had special training and takes her/his instructions from the guardian, not the child, unless the child is legally competent and wants to give instructions. If the child is competent, which is decided by a judge, the lawyer is bound to take the child’s instructions. It would be uncommon for a child under the age of 12 years to be considered competent to give instructions. Children attend court very rarely anyway and are instead represented by their guardian and lawyer.

In administrative proceedings the lead social worker in children’s social care appointed to the case should see the child alone, without the presence of her/his parents or other carers. Seeing the child has the purpose of observing as well as communicating with the child in a manner appropriate to her/his age and understanding with the aim to ascertain the child’s “wishes and feelings” (sec. 53 CA; HM Government, 2010). Care plans should be reviewed in a child-centred meeting; subject to age and understanding, the child should be involved in decisions about the date, time and venue of the meeting, agenda and invitation list (Department of Children, Schools and Families, 2010). Regard should be given to the child’s views when making decisions about what, if any, services to provide, or what action to take (art. 10 Human Rights Act, 1998; sec. 17 para. 4A CA). Parents should be interviewed both with the child present and in the child’s absence (HM Government, 2010). Research has shown that practitioner decisions on children’s participation are strongly influenced by their own personal views as to what is an appropriate age for a child to be consulted (Shemmings, 2000). Recent (non representative) studies about how children estimate the quality of their participation showed that about 15% were not heard at all, but just above 51% thought that the social worker did take notice of their wishes and feelings (Munro, 2011b, p. 24 ff.).

## ORGANISATION AND PROCESS OF CHILD PROTECTION FROM SUSPICION TO PROTECTION

## POLICY AND OVERALL APPROACH

When a research study asked children and young adults between 15 and 18 in what areas governments should take the particular interests of children into account, the second most often cited concern, after education, was security, for instance, being protected against violence (security 44%, education 77% and health and social affairs 42%; European Commission, 2009). In the course of this case study, it was striking to note the cultural differences within Europe with respect to understandings of the state as guarantor for the safety and welfare of children, relative to the emphasis placed on the responsibility and privacy of families. Whilst the balance between these two responsibilities is also debated within national cultures, the relative importance of child protection as a matter of national policy seems to reflect the extent to which the state is expected to ensure favourable conditions for the development of children and to step in, when necessary, to protect them from harm. This variation can result from slow-moving institutional change, but can also be anchored in the national culture.

In the Netherlands and Sweden a solid knowledge base has been generated through research, and the state draws on this to develop continuity in policy to improve measures to tackle all forms of violence against children. In Germany, England, to a lesser extent also in Wales, and more recently also in the Netherlands, policy approaches tend to be rather agitated and, to a certain degree, driven by high profile cases; there may be conflicting traditions at work oscillating between non-interference in families and state supervision. Romania stands out as a country with worldwide attention on its child protection system and has shown a quite impressive reaction by elaborating the responsibilities of all levels of government and administration. In Estonia the idea that the role of the state should be more active seems to be gaining ground, with the upcoming draft of a new Child Protection Act promising to emphasise prevention and state responsibility for provision of support services. Policy in Bulgaria is very much focussed on education, and legal frameworks for child protection lack practical follow-up, so that there is little intervention and little support available. An explicit profile of national policy locating the responsibility for children in the family is to be found in both Turkey and Greece, but while Turkey frames the justice system as a lever for intervention and has a growing sector of protective and preventive social services, child protection in Greece depends almost entirely on committed NGOs, and it can be said that the legal framework fails to lead to effective protection of children from abuse within the family.

*Table 10: Child Protection as Private Matter and/or Concern of the State*

	responsibility of families	transitional	responsibility of Family and State
<b>Bulgaria</b>	X		
<b>Estonia</b>		X	
<b>Germany</b>			X
<b>Greece</b>	X		
<b>Netherlands</b>			X
<b>Romania</b>			X
<b>Sweden</b>			X
<b>Turkey</b>	X		
<b>UK (England and Wales)</b>			X

The approaches to preventing abuse and neglect of children vary as well. One dimension of difference is to be found in the relative importance attached to legal penalties for abusive treatment as opposed to support and education with the aim of preventing further harm. Whilst both penalisation and supportive interventions are essential elements of child protection in general, a primary focus on one or the other is sometimes expressed through procedures for responses to suspicion of abuse. When, on the one hand, there is a belief that penalisation is essential to deter or stop abuse, investigation tends to be at the centre of proceedings and intervention follows from determining whether an offence has been committed. Where, on the other hand, the danger of harm to children is seen in a more holistic framework, services and support are foregrounded and backed up by early prevention and intervention measures.

Sweden is an example of a state which combines the two approaches (revealing a certain amount of tension between them) but, like other Nordic states, it has long been known for its early prevention programmes and well established support services and emphasis on prevention. In Germany, the Netherlands and England and Wales, a shift from more repressive approaches to expanding preventive services has been underway for several decades and the first response to suspected abuse is generally an offer of support to the family. However, high profile cases sometimes trigger a backlash and, especially in England and Wales, have tended to strengthen highly formalised investigative procedures and documentation requirements in reaction to publicly debated deaths of children, with the effect of weakening the supportive potential of social work (Munro, 2010; 2011a; 2011b).

Romania has much in common with that group, but there still seems to be an unsolved tension between investigating suspicions modelled on criminalistic methods rather than those of social work and an overall approach of assisting children, parents and families to live together without violence and high conflict. In Estonia, prevention and support services while the child still lives within the family are beginning to gain ground, but prosecution has a strong presence in all protective as well as supportive intervention processes. The Turkish policy of keeping families together is oriented to financial support, whilst the reliable and structured development of differentiated and sufficient support services lags behind, and the police still play a central role in the protection system. In Bulgaria and Greece neither sanctions to deter abuse nor preventive services are guaranteed, although in Bulgaria this seems to be due to a lack of funding to implement services that, in principle, are foreseen by law and could be established within existing structures, while in Greece no legal framework ensures the safety of children through services.

*Table 11: Investigative or Supportive Approach to Child Protection*

	primarily investigative	transitional	primarily supportive
Bulgaria	X		
Estonia		X	
Germany			X
Greece	X		
Netherlands			X
Romania		X	
Sweden			X
Turkey	X		
UK (England and Wales)			X

## STRUCTURES AND ORGANISATION

National policy needs structures in which actions in daily case work can be tailored to meet objectives. While some states specify a central player among the actors in the field of child protection, others share responsibilities between different institutions and organisational levels. Either way the structures may be characterised by clearly appointed responsibilities, or these may overlap or be somewhat unclear. In Germany, Romania, Sweden, England and Wales the key responsibility for front line case work clearly lies in the, differently named, social service department of the local government. In Bulgaria it seems that several governmental units at different governmental levels are involved and their interaction, although defined in the law, is not very transparent and possibly not effective. In Estonia both social services in the local governments and the criminal justice system carry responsibility in parallel. Somewhat similar structures can be found in Greece and Turkey. The Greek district attorney (of minors) is the key actor who must order actions to be taken by the local social services. In Turkey the police supervise the investigation of suspicions and, on behalf of the prosecutors, initiate court proceedings for decisions on protection if required. The Netherlands even has four key players; although their roles are clearly defined there is debate over whether this side by side approach is synergetic and makes the best use of resources.

In all countries in this study, NGOs play a significant part in the provision of support services. However, the degree of involvement varies. Usually the involvement of NGOs is high, as for example in Estonia or England and Wales. In Greece, NGOs are almost the only source of energetic child protection. In Bulgaria, and to some extent, in Turkey and Romania, NGOs might be considered the drivers for development. The approaches in Sweden, on the one hand, and in Germany and the Netherlands on the other mark two poles in a spectrum. While the Swedish system takes provision of necessary services to all citizens as the task of the state, with NGOs only filling in gaps and claiming a high degree of independence, in the German and Dutch tradition of the principle of subsidiarity, the state may only provide support services if there is no NGO that could and would do so; the obligation of the state is to fund these services where a need for, or a right to them is recognised; some degree of regulation is usually attached to funding. In some cases, the NGO may even be established by law or legally subject to inspection (Netherlands), or a representative of the government may be a member of its governing board (Germany). When provision of services is a permanent task, the division between NGO and Quasi-non-governmental organisations (or QUANGO) can be rather fuzzy.

*Table 12: Involvement of NGOs in the Provision of Support Services*

	low	high	subsidiarity
<b>Bulgaria</b>		X	
<b>Estonia</b>		X	
<b>Germany</b>			X
<b>Greece</b>		X	
<b>Netherlands</b>			X
<b>Romania</b>		X	
<b>Sweden</b>	X		
<b>Turkey</b>		X	
<b>UK (England and Wales)</b>		X	

## MULTI-AGENCY APPROACHES

Multi-agency approaches are apparently becoming an acknowledged basic component of child protection systems (Glad, 2006). Six states in our study, all but Greece, Sweden and Turkey, foresee

a multi-agency conference of some kind in their procedural pathway towards support and protection. Multi-professional assessment of suspected child maltreatment is certainly one purpose but jointly developing a plan for help and protection seems to be foregrounded in most of the concepts. Which professionals and institutions are included in multi-professional approaches differs greatly; while some involve NGOs most refer primarily to medical or judicial experts (Glad, 2006).

The laws and guidelines in all six states require involving both parents and children in the conference, but the approaches differ as to whether they are seen as partners in the assessment and support process, or mainly as targets of institutional measures. In Bulgaria, in particular, the large number of professionals foreseen raises doubts as to whether participation could be appropriate for a child, and whether parents can have a real voice. Sweden has no binding structures for multi-agency collaboration but implements a practice of multi-agency cooperation in child advocacy centres, where investigating suspected offences against the integrity of a child involves an interview with the child by the police, while other professionals listen behind a screen. In Turkey the fairly new practice of child protection centres in a few hospitals in larger cities points to the emergence of qualified multi-agency approaches, but these have not been systematically adopted. The practice of initial child protection case conferences, and review child protection case conferences, in England and Wales with their onerous procedural requirements, appear to deter this approach in favour of handling the case in other ways. In Germany and Romania the legally expressed aim is to implement help conferences with children, parents or other carers as participants in the planning and evaluating of the help and protection process. The Dutch approach of family conferences that include all members of the extended family contrasts with the practice of all other states to involve only the children and parents or other direct carers.

*Table 13: Implementation of Multi-agency Approach*

	binding implementation	variable practice	none
Bulgaria	X		
Estonia	X		
Germany	X		
Greece			X
Netherlands	X		
Romania	X		
Sweden		X	
Turkey		X	
UK (England and Wales)	X		

#### COMPETENCE FOR STATE INTERVENTION WITHOUT CONSENT

The power to intervene in parental rights is associated with a court in all states included in the study. However, differences emerge with a closer look at the type of intervention, which may involve non-voluntary measures while the child is in the family, short-term removal, or long-term placement. In emergency cases the child protection authorities (or in Greece the district attorney) may act without the consent, or against the will, of the parents (or a child) in all states. But only in Sweden does the social services/department for child protection have the regular competence to place a child outside her/his home for a maximum duration of one month before applying to the court if the parents do not consent. In all other countries the child protection agencies must file application with the court without delay.

The availability of support services while the child stays in the family varies from extensive to entirely lacking, and so do views on whether such services should be voluntary or whether it is

considered useful to prescribe their use to unwilling parents. The law in several states explicitly foresees supervision orders, or the like, that can be implemented without consent of the parents. The United Kingdom makes extensive use of placing children under a child protection plan, while in Germany the consent of the parents is a strong priority (with placement in foster or institutional care as the last resort). The Netherlands requires the entire family to participate in a family conference. All states but Greece require a periodic review of the court orders on such matter as care or supervision.

In view of the crucial role of the courts for interventions that have long-term impact on the fundamental rights of children as well as those of parents, ensuring the necessary qualifications can be considered essential. Specialised courts or specially trained judges dealing with child protection are not secured anywhere. Germany, the Netherlands, Romania, England and Wales and Turkey have established specialisation by legal provision, but in Bulgaria, Estonia and Sweden the regular civil courts deal with child protection. In Greece the law has prescribed the establishment of family courts since 1996, but none have been set up. In all states training and capacity building for judges is lacking or even completely missing. This correlates with the findings of the Feasibility Study (FSL) that the authorities with the most power and competence, the judges, are the least prepared for the challenging tasks of decision making in child protection cases, with only Spain and Latvia providing mandatory specific training (European Commission, 2010).

*Table 14: Specialised Courts*

	not established	established
<b>Bulgaria</b>	X	
<b>Estonia</b>	X	
<b>Germany</b>		X
<b>Greece</b>	X	
<b>Netherlands</b>		X
<b>Romania</b>		X
<b>Sweden</b>	X	
<b>Turkey</b>	X	
<b>UK (England and Wales)</b>		X

#### SUPPORT SERVICES FOR PARENTS AND CHILDREN WITHIN THEIR FAMILY

From the point of view both of developmental psychology and of children's rights, the separation of the child from her/his family, while always a burden, might be necessary to protect her/him from greater harm (Goldstein et al., 1974; Bowlby, 2005). To ensure that this will be avoided as far as possible unless the child's best interests call for it, the CRC requires the State Parties to render appropriate assistance to parents in performance of their child-rearing responsibilities (art. 18 para. 2 CRC). At international level, discussions of how this can best be achieved have highlighted the importance of going beyond good advice and bringing support into the home, and of offering parents resources and practical opportunities to learn skills (WHO & IPSCAN, 2006).

Children and families in need face a wide variety of problems and obstacles to the child's healthy development. In view of this, the feasibility study on harmonising legislation proposed as a minimum standard on child protection, that states should devise and implement effective procedures for the establishment of social programmes to provide widely available, timely and sufficiently differentiated, necessary support for the child and for those who have the care of the child, as well as for other forms of prevention, treatment and follow-up of instances of child maltreatment

(European Commission, 2010). Such services should be easily accessible, affordable, and able to respond to diverse needs, thus making early intervention possible, but they should also include multi-professional services for families in difficult circumstances to help them find a way out of chronic conflict and abuse or neglect. Although the various services are often not empirically evaluated, these criteria are met to a large extent in Germany, the Netherlands, Romania, Sweden and United Kingdom, although Romania still faces shortcomings in rural areas. Estonia and Turkey have problems with availability in all parts of the country and the range of services offered needs to be broader. The situation in Bulgaria still faces serious gaps, however there are promising practices of NGOs to build on. In Greece, the standard is not met in any category.

In many of the countries in our study, services specifically designed to offer help while the child still lives within her/his family are missing or not accessible without long waits, or not sufficiently available throughout the country. Services to advise parents, to strengthen their parenting skills and to enable them to take better care of their children’s needs appear to be insufficiently established in all states, and sometimes almost entirely lacking. In Greece only very few NGOs provide ongoing services, and then only in single regions and with exclusively private funding. In Turkey such services exist but due to a lack of legal or other binding provision they are present only in some regions, and are, again, too few in number. Bulgaria may be considered to be at the very early stages of developing such support services, and Estonia has begun to implement programmes for parent education nationwide. Romania, with its straightforward wording of the law (art. 34 para. 2 Law 272/2004), is successfully pushing forward services for supporting parents, while in Germany, the Netherlands, Sweden, and England and Wales they have been well established for about twenty years.

The services provided might be highly differentiated and available in a very broad scope as it is the case in Germany, for example, but there are often no data to assess who uses them and what they achieve. In Sweden, the United Kingdom and the Netherlands quality assurance is a key standard, and it is a policy goal that services should be continuously evaluated and/or empirically validated based on outcomes, either through research or inspection procedures, some of them secured by law (Netherlands).

*Table 15: Provision of Widely Available, Timely, Differentiated and Evaluated Support Services*

	standard not met	developing	standard met	evaluation as quality control
<b>Bulgaria</b>	X			
<b>Estonia</b>		X		
<b>Germany</b>			X	
<b>Greece</b>	X			
<b>Netherlands</b>			X	X
<b>Romania</b>			X	
<b>Sweden</b>			X	X
<b>Turkey</b>		X		
<b>UK (England and Wales)</b>			X	X

## THRESHOLD

### INTERVENTION WITHOUT CONSENT

States take differing approaches to the conditions under which statutory agencies may act to protect a child without parental consent, as has already been confirmed in the findings of the Feasibility Study (European Commission, 2010). Although different forms of child maltreatment are mentioned somewhere in the law, legal definitions are not common. Some can usually be found in criminal law, especially for child sexual abuse, in Romania “child abuse” and “child neglect” are legally defined (art. 89 Law 272/2004). The different terms also show up in family law, children’s or child protection acts, or social welfare law. Some states deliberately avoid naming concrete forms of child maltreatment and place all phenotypes under overarching definitions (Estonia, Germany, Greece, Netherlands, Turkey). These findings do not allow any conclusions to be drawn about the legal relationships and whether the practice differs among forms of child maltreatment named in the law, or whether forms not explicitly named are even addressed, since there is no further information about the underlying rationale for, or the consequences of, explicit references as opposed to more generalised legal frameworks.

Under closer examination, most national laws only define one threshold (Bulgaria, Estonia, Germany, Greece, Romania, Turkey, United Kingdom). Others raise it in relation to the intrusiveness of the intervention without consent (Netherlands, Sweden). However, Bulgaria describes different grounds for the one threshold. The law in Estonia is not (yet) consistent due to law revisions without amendments in older laws. In England and Wales the differentiation between substantiated suffering of harm and the likelihood of harm effectively lowers the threshold. In the Netherlands and Sweden the threshold for separation of the child from her/his family (Netherlands) or for restriction of parental rights (Sweden) is higher than for a supervision order (Netherlands) or other interventions, which might even include temporary placement for the purpose of further assessment (Sweden).

All states allow emergency protection measures under a lower threshold.

Several states take an additional normative approach to interventions without parental consent. They allow or demand restriction or dismissal of custody if a parent with custody is convicted of a crime against the child (Greece, Netherlands, Sweden). In Turkey the normative and societal perspective is added by a provision for intervention if peace in the family is hampered.

*Table 16: Concepts of the Thresholds*

	one threshold	stepped threshold	special threshold in case of emergency	additional normative approach
<b>Bulgaria</b>	X		X	
<b>Estonia</b>	X		X	
<b>Germany</b>	X		X	
<b>Greece</b>	X		X	X
<b>Netherlands</b>		X	X	X
<b>Romania</b>	X		X	
<b>Sweden</b>		X	X	X
<b>Turkey</b>	X		X	
<b>UK (England and Wales)</b>	X		X	

All states in the study take the child’s needs as well as the parental (or other carer’s) behaviour into account. By doing so, they differ in concentrating on past actions, the current situation or future development. Since the CRC takes a developmental approach to child protection complex predictions and prognoses should be required. Some states demand a highly exacting double prognosis: one on the endangerment of the development of the child and the other on the development of the parenting ability (Estonia, Germany, Greece, Netherlands, Turkey). Swedish law solely concentrates on expected development of the (risk of harm for the) child which of course indirectly has to reflect the expected parental behaviour. Bulgarian judges have to assess the actions of the parents in the past and to predict future risk for the child. While Romania, in addition to child endangerment, considers the current behaviour of the parents, judges in England and Wales are required to assess the present situation of the child and the parents (or other carers) but have to weigh the interests of both by incorporating predicted future developments before making an order.

Finally, the United Kingdom approach of focussing on whether the child is at present suffering harm or likely to suffer may be easier to handle in an adversarial legal system, where proof of actual damage may make a court decision in favour of intervention easier. In the face of such proof, negotiated outcomes are relatively frequent, as is the phenomenon of apparent compliance.

*Table 17: Prognosis, Past Actions or Current Situation*

	development child	current situation child	development parenting ability	current parental behaviour	past parental actions
<b>Bulgaria</b>	X				X
<b>Estonia</b>	X		X		
<b>Germany</b>	X		X		
<b>Greece</b>	X		X		
<b>Netherlands</b>	X		X		
<b>Romania</b>	X			X	
<b>Sweden</b>	X				
<b>Turkey</b>	X		X		
<b>UK (England and Wales)</b>		X		X	

Two main concepts describing the threshold for intervention could be found among the nine states in our study. “Child endangerment” is dominant and applies to six states (Estonia, Germany, Greece, Netherlands, Romania, Turkey). The concept of the child “suffering harm” or “likely to suffer harm” (United Kingdom) is similar, despite the focus on the current situation of the child, and can be considered a variation of the endangerment concept. Two states set a presumably lower threshold with the term “child at risk” (Bulgaria, Sweden). The evidence is not conclusive as to whether child protection law in Europe might converge towards the general concept of child endangerment but there are indications that this is the case. It seems that the German concept of child endangerment in sec. 1666 Civil Code from 1900 (on the historical background Schmid & Meysen, 2006) served as a model not only for the definitions in Greece and Turkey but also for the law changes related to the negotiations on the accession to the EU of the younger EU Member States in Estonia and to a lesser extent in Romania.

Though “child endangerment” could be identified as the dominant concept of the states in this study, the underlying practice of acknowledging the threshold for intervention seems to differ quite significantly. But the convergence towards more or less similar legal concepts should improve the chances to evaluate and compare practice and outcomes in future research.

*Table 18: Main Focus of the Threshold Concerning Situation of the Child*

	endangerment	risk
<b>Bulgaria</b>		X
<b>Estonia</b>	X	
<b>Germany</b>	X	
<b>Greece</b>	X	
<b>Netherlands</b>	X	
<b>Romania</b>	X	
<b>Sweden</b>		X
<b>Turkey</b>	X	
<b>UK (England and Wales)</b>	X	
	suffering harm or likely to suffer harm	

For both approaches, cultural attitudes towards children’s rights and towards state intervention in the family sphere are likely to influence how the threshold for intervention is actually interpreted in practice. It seems clear that, in states where a child protection system compatible with ratification of the CRC has emerged only recently or where implementation is uneven or incomplete, clear evidence of serious physical abuse is often the only trigger to intervention, even if other forms and levels of maltreatment or endangerment call for state intervention in law. In Bulgaria, Greece, Romania and Turkey, cases of sexual abuse within the family only rarely come to the attention of the child protection system and NGOs also find it difficult to take protective action.

State interference with parental rights often presupposes unsuccessful attempts to assist parents to fulfil their responsibilities in regard to the child, or the likelihood of such service provision being unsuccessful. The strictest requirement can be found in Romanian law, stating that measures without the consent of parents are only admissible if “preceded by the systematic granting of services and assistance (...) with a special emphasis on adequately informing the parents, providing counselling, therapy and mediation for them, based on a service plan” (art. 34 para. 2 Law 272/2004). Others follow the concept of the least intrusive measure which means that interventions without consent are subsidiary to offering and using voluntary support to overcome child endangerment; the support services must be expected not to be sufficiently effective to avert the endangerment (Estonia, Germany, Greece, Netherlands, Turkey), while in Greece the legal demand for prior assistance to parents has a cynical note because the state fails to provide such services.

The above mentioned criteria were, though in a less differentiated format, examined in the feasibility study (European Commission, 2010) and therefore the results from EU Member States not included in the present study can also be found in the table below.

Table 19: Legally Required Assessment of Child's and/or Parents Situation

	only child's needs	only parental behaviour	child's needs and parental behaviour	subsidiary/ least intrusive measure
Bulgaria			X	
Estonia			X	X
Germany			X	X
Greece			X	X
Netherlands			X	X
Romania			X	X
Sweden	X			
Turkey			X	X
UK (England and Wales)			X	
FSL Study (European Commission 2010)	Belgium, Czech Republic, Finland, Poland, Slovak Republic	Slovenia	Austria, Cyprus, Denmark, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, Portugal, Spain	Cyprus, Denmark, Finland, France, Malta, Portugal

## PENALISATION

Although all states in the study foresee criminal penalties for child maltreatment, both the definitions and the threshold for criminal prosecution differ considerably. Within the scope of this study, the actual implementation of criminal justice could not be studied in depth.

Sexual abuse of a child is an offence in criminal law in all EU Member States and in Turkey. This includes all forms of sexual penetration, and frequently such offences as sexual touching as well (European Commission, 2010). At the same time, sexual abuse is often very difficult to verify. In some states, despite provisions in the law, actual cases that go to court seem to be extremely rare, while in other states this is more frequent. On the whole, perpetrators outside the family are more likely to be prosecuted. Based on the reports of experts the possibility of prosecution depends very much on a social and institutional context that encourages children and/or a concerned parent to disclose the abuse, and also on skilled and sensitive investigation. Specialised and well-trained police units and prosecutors and well-informed judges seem to be important factors in successful prosecution. In addition, cooperation between social work and police plays a key role (see the Swedish children's advocacy centres, above 2.7), as does psycho-social support for the child victim. Disclosure and prosecution can be hampered if professionals or other persons reporting suspicions of child sexual abuse can face prosecution for false accusation if the abuse cannot be proven (for example in Greece). It follows that child sexual abuse is more likely to be prosecuted when the support services are well developed. However, comparative data are missing.

With physical and emotional abuse or neglect, the legal approaches towards criminalisation differ a great deal among states (European Commission, 2010). In Bulgaria, Estonia, Greece, the Netherlands, Sweden and the United Kingdom, child physical abuse is dealt with under the general offences on assault, bodily harm, causing physical pain or injury, battery or torture. In Bulgaria and Sweden criminal law explicitly states that offenders who maltreat a child will receive higher penalties (aggravated offence). In Germany and Turkey abuse by parents or other carers is a specific offence and in Romania criminal law takes both approaches (European Commission, 2010).

Concerning the threshold for penalising neglect three variations could be found, sometimes two of them in the same state. Persistent failure in the fulfilment of parental responsibilities is a specific offence in Turkey and the United Kingdom. Causing danger by the breach of a legal duty to care for the child is criminalised in Bulgaria, Germany, Estonia and Romania. The result of significant harm and/or injury is the threshold for prosecution in Greece, the Netherlands, Sweden, and also in Bulgaria, Germany, Romania and the United Kingdom (European Commission, 2010).

In Sweden every act of corporal punishment or hitting a child, however light, as well as acts of psychological violence by a parent or carer, is criminalised by law. Prosecution is mandatory if the evidence permits. However, Sweden allows social workers discretion on whether it is in the best interest of the child to report the case to the police. In Estonia, all violent acts against children have to be prosecuted without exception and all citizens have a duty to report clear signs of violence to the criminal justice system. Turkey and Greece also penalise child maltreatment and task the police (Turkey) or public prosecutor (Greece) with instructing social workers to investigate, but actual prosecution seems to be relatively rare. In Germany, the Netherlands, Romania and the United Kingdom the dominant understanding seems to be that prosecution of a parent or carer is generally not in the best interest of a child and should be avoided unless there has been serious harm. In Bulgaria any violence against children receives higher penalties but prosecution and criminalisation seems not to be a priority in addressing violence within the family generally.

Summing up, it can be said that both the legal frameworks and their actual implementation in dealing with cases of child abuse or neglect vary greatly across the states included in this study; this would be a fruitful area for further research.

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## MANDATORY REPORTING, SELF-REFERRAL AND SELF-SIGNALLING

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### MANDATORY REPORTING

Discussions on how to increase the flow of information about suspected child maltreatment to the responsible authorities can be found in all states. Especially when high profile cases are discussed in the media and the states do not have a full mandatory reporting system, the issues and possible legislative changes are debated at length. Nonetheless, not all states have such obligations. German law now closely describes the circumstances and criteria permitting disclosure of information that is under professional secrecy in their special data protection law. In the Netherlands there is a strong opinion that a reporting obligation would not be the way to tackle child maltreatment at home; nevertheless the government has created a code for notifying authorities with the expectation that it will be followed as if it was a legal obligation (Nederlands Jeugdinstituut, 2011b).

By contrast, Bulgaria and Estonia obligate not only all professionals working with children and families but also all citizens to report suspicions. In both states the failure to report is a crime in itself. The latter also applies to Sweden and Turkey where only professionals have a duty to report suspected risk of harm to a child. Similar provisions can be found in Romania, England and Wales. In Romania the failure to report can lead to administrative disciplinary sanctions. Greece demands that all public officials report and the failure theoretically can be, under general provisions, recognised as a crime. Only in England and Wales are professionals expected to report, but face no penalty for the failure to do so.

To give an overview of the larger picture, the table below draws on the feasibility study (European Commission 2010) to include comparable findings for all other EU Member States.

Table 20: Duty to Notify Suspicions of Child Maltreatment

	all citizens	professionals	no	penalisation of failure
Bulgaria	X	X		X
Estonia	X	X		X
Germany			X	
Greece		X		X
Netherlands			X but notification code	
Romania		X		X disciplinary sanctions
Sweden		X		X
Turkey		X		X
UK (England and Wales)		X		
FSL Study (European Commission 2010)	Cyprus, Denmark, Luxembourg, Latvia, Poland, Slovak Republic	Austria, Czech Republic, Finland, Hungary, Italy, Latvia, Malta, Portugal, Slovenia	Belgium, France, Ireland, Spain	Cyprus, Czech Republic, Finland, France, Hungary, Italy, Luxembourg, Latvia, Portugal, Slovenia, Slovak Republic, Spain

Any discussion of mandatory reporting has to differentiate between informing the authorities responsible for child protection and reporting to the authorities responsible for criminal prosecution. The latter duty applies to all citizens who become aware of a suspicion of child maltreatment in Estonia. In Greece public officials also have to report to the district attorney but in practice notification to the local social services or NGOs seems to be a common alternative.

In Romania and Turkey the duty to report may be fulfilled by notifying either the public social services or the police. The administrative departments responsible for child protection must be notified of suspicions in Bulgaria, Sweden, England and Wales. Although there is no obligation to report, the law in Germany and the Netherlands describes in detail the data protection provisions to permit (and encourage) notification to youth welfare offices (Germany) or loosens the restrictions of data protection for notification to the relevant agency in the youth welfare office (Netherlands).

Table 21: Authority to Report to (as a duty or when in the child's best interests)

	child protection system	criminal justice system	either child protection or criminal justice system
Bulgaria	X		
Estonia	X	X	
Germany	X		
Greece		X but practice varies	
Netherlands	X		
Romania			X
Sweden	X		
Turkey			X
UK (England and Wales)	X		

Although requiring citizens or professionals to report any indications of child maltreatment to the relevant authorities is clearly intended to increase the likelihood of appropriate intervention, in our case study we found no indication that such laws have the desired effect. The extent and degree of mandatory reporting seems to bear little or no relationship to the actual likelihood that authorities are notified of suspicions of child maltreatment, either by ordinary citizens or by professionals who come in contact with children. This is doubtless partly due to the difficulty of proving failure to notify or report except in extreme cases, since it would have to be proven that the non-reporting person knew or should have known of the maltreatment.

There are also some indications that citizens and child-care workers or teachers may be more likely to inform child protection agencies when they perceive these agencies as offering help and support. However, this perception seems to be linked to a high value of confidentiality in Germany and the Netherlands, on the one hand, or to respect for the “caring” tradition of a welfare state in Sweden on the other. In these three countries and in England and Wales, where failure to notify authorities of a suspicion is not penalised, the child protection agencies receive information of suspected maltreatment or neglect relatively often, while in Estonia and Turkey such information seems to be infrequent despite their strict legal duty to notify authorities. In Greece reporting is also rather rare. Legal obligations to report have little effect when the provision of child protection intervention is overall weak and is not trusted to take effective and appropriate action, but they may also be ineffective when cultural attitudes oppose state intervention into the family.

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#### SELF-REFERRAL AND SELF-SIGNALLING

With regard to the existence and relevance of self-referral by parents or self-signalling by children three patterns could be identified. In some countries there seems to be no or almost no self-referral to the responsible authorities (Bulgaria, Estonia, Greece, Turkey). Reported suspicion of child maltreatment is investigated and (only) if substantiated are children or parents in need referred to the services provided by an NGO or a state agency. Support services by NGOs in these countries are rarely accessible without prior decision by the public social services along with explicit consent to funding the concrete measure. Experts in other states noted that significant numbers of child protection cases come to the attention of the social services when children or parents access the support services or social authorities directly (Germany, Netherlands, Sweden, United Kingdom). The social services in these countries go to quite some effort to encourage both children and parents to disclose their needs, conflicts and problems by asking for help. Such self-signalling or self-referral is either made to the responsible public authorities or to counselling centres that offer a high degree of confidentiality. Those states are characterised by highly differentiated provision of support services that are widespread throughout the country and available on short notice, including hotlines open 24/7 and sometimes internet-based counselling.

In a third category are states that, until recently, belonged to the first group but that are now shifting in the direction of according high priority to establishing preventive measures. Romania is heading towards a sophisticated system of support services for children and families in need. Estonia is currently taking ambitious steps in the same direction, but according to our experts, in neither country does self-signalling play a significant role in the initiation of child protection measures yet. The extent and frequency of self-referral and self-signalling could be a useful indicator for the success of preventive services in gaining trust in the populace, but data have not been collected on this for any country so far. This remains a question for future research.

## HEARING OF THE CHILD

Comparing the states in this study regarding the legal frameworks on the right of the child to be heard in administrative and judicial proceedings (art. 12 CRC) an enormous disparity of approaches becomes visible. Moreover, the actual practice does not always reflect the letter of the law and this further broadens the range of differences between the legislative and procedural approaches.

## DUTY TO HEAR THE CHILD

The right of the child to be heard is acknowledged by the letter of the law in all states. Only in Greece do neither courts nor responsible local social services have a binding duty to hear the child personally or through a representative. In court proceedings, Sweden and England and Wales have a policy to keep children out of the court. Direct hearing in court is obligatory in Bulgaria, Estonia, Germany, the Netherlands, Romania and Turkey, though there are indications that at least in the Netherlands and Romania the fulfilment of the duty is sometimes lacking. In Greece the judge hears the child personally as well, if at all.

Table 22: Duty to Hear the Child – directly or indirectly

	duty to hear the child		court proceedings	
	in court proceedings	in administrative proceedings	direct hearing by judge	hearing through representative
Bulgaria	X	X	X	
Estonia	X	X	X	
Germany	X	X	X	
Greece			X	
Netherlands	X	X	X	
Romania	X	X	X	
Sweden	X	X		X
Turkey	X	X	X	
UK (England and Wales)	X	X		X

While the local social services responsible for child protection on the administrative level have a duty to see the children in need no matter what age and to listen to their views in direct contact in all states but Greece, the law usually sets a minimum age from which the court must hear the child. In Bulgaria, Estonia and Romania the court has to hear a child 10 years of age or older, in the Netherlands the age limit is 12. Due to a Supreme Court decision the child also should be heard from the age of 12 on in Greece. In Sweden a child of 12 or older has a right to be heard if s/he so wishes, and that can only be denied because of grounds to prevent harm for the child. In Turkey the age limit is at the discretion of the court with regard to the child's age and understanding. The same applies for children under the age limit in the other states with such limit. In Germany the law sets the age limit at 14, but the Supreme Court in constant adjudication has made clear that the child must be heard from the age of 3 to 4 at the latest; otherwise the decision can be appealed.

*Table 23: Minimum Age for the Duty to Hear the Child*

	3-4	10	12	depending on the child's capacity
Bulgaria		X		
Estonia		X		
Germany	X			
Greece			X	
Netherlands			X	
Romania		X		
Sweden			X	
Turkey				X
UK (England and Wales)				X no duty

In some states, the child must be informed about the proceedings, her/his role and rights and the possible outcome. In Bulgaria, Germany and Romania this information must be given in a child-appropriate manner in advance of a court hearing. In Estonia and the Netherlands the judge shall perform this duty her/himself, and the law demands both ex ante information and information during the court hearing. Greece, Sweden, England and Wales have no such legal requirement.

#### REPRESENTATION IN COURT PROCEEDINGS

The representation of the child in the proceedings is secured either by the appointment of lawyers, guardians ad litem and special curators or through the presence of specialised professionals. Whilst in Germany as well as England and Wales the obligation to appoint a guardian ad litem is very strict and courts thus order the appointment in all child protection cases, the duty is weaker in the Netherlands. The English or Welsh child's special guardians often also appoint a lawyer as an additional representative for the child. In Greece the provision exists but rarely comes into practice. In Estonia and Turkey either a lawyer or a special guardian can be placed at the child's side.

During the court hearing the presence of a specialised professional is obligatory in Bulgaria, Germany and Romania. In Germany this is the guardian ad litem, sometimes together with a social worker of the child welfare office, in Bulgaria and Romania it is usually a social worker or psychologist from a public child protection authority.

*Table 24: Representation and Professional Backing in Proceedings*

	representation			presence of a specialised professional
	Lawyer	guardian ad litem	either	
Bulgaria	X			X
Estonia			X	
Germany		X		X
Greece		X		
Netherlands		X		
Romania				X
Sweden		X		
Turkey			X	
UK (England and Wales)	X	X		

## FIRST ACCESS TO THE CHILD

On the question of who has the first access to the child when maltreatment is suspected, tensions between the criminal justice and the child protection systems could be found in most states. To clarify if there has been a crime and if so, to secure best possible evidence the criminal justice system usually has an interest in interviewing the child before any professional of the child protection system talks to her/him. A professional working with children may seek the first interview to facilitate a process of gradual disclosure and offer emotional and practical support, in order to ensure protection; effective measures require hearing the child's views and explaining to her/him what is happening and why. Problems arise, on the one hand, when the criminal investigations cause delays for protective measures or necessary support or treatment for the child, or when being required to give evidence for prosecution causes fear and distress and leads to denial of the abuse. On the other hand, difficulties arise when professionals in the child protection and welfare system talk with the child about the abuse in a way that leads to the statements of the child being no longer valid evidence in criminal proceedings. Putting evidence for prosecution first results in a shift of perspective from the developmental approach to child protection towards a clarification of actions in the past, but can also provide a stronger basis for protection by imposing clear sanctions. For example, in Greece and Turkey assessment of child maltreatment by social services seems to follow this chronology of investigating the truth first and working with the family on securing safety, well-being and healthy development of the child second. In Sweden, with its strong normative approach, some ambivalence seems to affect social work in this respect. If the first interview can be videotaped and used in court, further delay of supportive and protective measures can potentially be avoided, but in legal systems that require the child to testify in court personally, conflict between the two systems may be prolonged for as long as it takes for the case to come to trial.

## DIVERGING APPROACHES

With regard to hearing the child in court proceedings, our study found extremes. The framework and practice in Sweden and England and Wales on the one hand and Germany on the other differ fundamentally.

- Family court judges in Germany must hear children personally from the age of three on and are obliged by doing so to include the guardian ad litem, and in the higher courts all members of the senate in the hearing. In addition, the guardian ad litem has to speak with the child as well as the youth welfare officer who is participating in the court proceedings and, if appointed, a psychological expert.
- In contrast, courts in Sweden, England and Wales avoid making the child come in front of the judge(s). The approach is to appoint a reliable contact person who accompanies the child during court proceedings by informing and counselling her/him. In England and Wales the child's special guardian is responsible for the psychosocial aspects and in most cases the court will additionally appoint a lawyer for legal representation.

Finally, it must be emphasised that the laws and regulations applied to hearing the child in court often do not distinguish clearly between taking evidence from a witness and giving a child a voice in decisions affecting her/his own life. Not a great deal of information is available about what "hearing the child" implies for decisions. Having an opportunity to speak does not necessarily mean that the child's views and wishes are taken into account. Some research has indicated that some children involved in child protection cases may feel that they are not being listened to or taken seriously, for example, by social workers (Munro, 2011b). While there is little research on children's perceptions of being heard, it is notable that only two states in this study provide young people with the right to object to measures such as placement outside the family, objection that can only be overruled if

there are weighty grounds to do so. Romania requires the consent of a child over 14 to the measures in a child protection plan, and Sweden a child over 15 can legally challenge a placement.

Future research should take a closer look at the effects of conducting the hearing by a judge in all stages of the proceedings as required in Germany in contrast to the Swedish approach of hearing by a social worker outside of court, especially with respect to the aim of taking the child seriously and understanding her/him as a subject of the proceedings rather than as an object of adults' decisions.

From a developmental point of view, rigid rules applied to all children and over the range of forms and circumstances of endangerment of the child's well-being – for example, the child should always be heard in court in person, the child should never be asked to appear in court – do not seem well-suited to fulfilling the obligation to hear the child nor to safeguarding children's fundamental rights as laid down in the CRC.

Overall, this comparison of legal provisions focuses on child protection cases, but the duty to hear the child in all decisions that affect her/his life should apply far more generally in the sphere of family law, including many matters such as custody and visiting rights that may not be adjudicated in court at all. Many questions also remain about hearing the child during the assessment of endangerment, risk or harm and before a decision on whether to take the case to court at all. It was not possible to cover this field in the present study, but the information gathered makes it clear that, while it is widely agreed that the duty to hear the child should be implemented, there is practically no convergence in Europe about what this should mean and how it should be fulfilled.

## CONCLUSIONS

### GENERAL

1. There is significant diversity in the frameworks and regulations regarding the process of protecting children from violence, despite the commitment of all states in the "Realising Rights?" study to the UN Convention on the Rights of the Child. In part, these differences need to be understood against the background of differing historical, legal and cultural traditions, such as those relating to the proper role of the state vs. that of non-state organisations, or those relating to the values attached to the privacy of the family and the rights of parents (Ferrerri Riba, 2010).

In part, however, the differences found in this study may be the result of uneven development of the political will to ensure the well-being and safety of children and to implement and safeguard children's fundamental rights in full measure. This requires not only laws compliant with the CRC and well-ordered institutions, but also a continuous policy of establishing agencies and implementing multi-agency cooperation, anchoring programmes of both prevention and intervention, supplied with the necessary resources, and qualifying professionals (Sicher et al., 2000).

Children are vulnerable in a way that adult citizens are not. They can hardly choose to leave a family, a school, or a church when they are abused, and if they try to seek help or disclose maltreatment, they may be unable to describe their experience or they may not be believed, and they may then find that the abuser continues to have undiminished power over them. When society abandons children to the care or education of adults who are not capable or not willing to meet their essential needs, are indifferent to their welfare or unable to control their own emotions, and offers the carers

no resources, knowledge or skills to give adequate care, the specific fundamental rights of children are violated. Therefore it is not a matter of political preference, general policy or values whether or not child protection should be a political priority.

2. It is worth noting, however, that despite the many differences in institutional and legal regulations shaping child protection practice, the overall patterns of the flow charts show a good deal of similarity as well; in each country, there is a framework for moving from suspicion of possible abuse or neglect to protection, involving a number of agencies whose interaction has to be regulated within the framework of the national structures. Six states in our study have implemented a binding multi-agency approach. There is no need to impose a standard model across Europe, but in each country, to examine and review how well the structures in place work to realise children's rights.

Research and comparison of the outcomes of the varying systems should be a goal. Therefore, the knowledge base about the organisation and structures in child protection across Europe needs to be further elaborated. This study can only be one of the first steps. Subsequently, adequate indicators for the outcomes of child protection systems need to be developed, on the one hand, according to the hierarchy of values in different societies and, on the other hand, in a coherent way enabling comparison of the effectiveness of national or regional systems (Kindler, 2010).

3. The main institutional and legal structures of child protection in most European countries have been built with a view to intervention when maltreatment has already taken place. While it is generally agreed that prevention is far more effective for children's healthy development as well as in protecting them from all forms of violence, programmes of early outreach to parents, to ensure that they have the necessary "knowledge, skills and resources" to care for their children, are not widespread across Europe, and even where they exist they are often not established with the stability and continuity required. The Nordic countries have been most successful in this regard, perhaps because they could build on universally accepted early prevention programmes based in the health care and child welfare systems.

4. The feasibility study (European Commission, 2010) stressed the importance of developing an integrated strategy to address both gender-based and generational violence in an overarching framework. This does not seem well-developed in any state in the case study, and the intersections appear rather marginal to child protection, although some states and stakeholders are giving more attention to this issue. At the same time, some common problems in the two fields can be seen to emerge.

One key issue is the threshold at which state agencies have the right and the duty to investigate suspicions or concerns about possible endangerment or violence, and to that end are entitled to overrule privacy rights or the right to informational self-determination. In public debates and within professional discourses, cases where no effective intervention was implemented and serious or even lethal violence came about generate a sense of urgency and high expectations that agencies must identify potential victims and ensure their protection. Especially when the context is the family or other relationships of trust, the emphasis on protection seems to suggest better effectiveness by more and earlier information sharing among agencies, gathering data widely for standardised risk assessment, and suspending rules of confidentiality in helping relationships. Procedures can become routine that lack transparency or allow little real participation of the person to be protected (or, in the case of children, of the parents or carers). The challenge is to develop methods and standards that respect rights as well as empower (potential) victims and (potentially perpetrating) parents or carers without falling back into traditional patterns of non-interference in the private sphere.

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## THRESHOLD FOR INTERVENTION

5. Across Europe there is no agreed nor consistent practical understanding of the forms of maltreatment, the criteria for endangerment of a child's healthy development, or the levels of severity that call for intervention (Meysen et al., 2011). But all seem to have in common that the application of the law stating the threshold faces continuous uncertainties and professional debates (Kindler, 2010). Legal definitions of maltreatment are rare and frequently very vague. To some extent this is unavoidable, since the potential of certain acts to cause harm depends on the developmental stage of the child, the relationship of trust or dependency, and a number of other factors.

6. There seem to be differences with regard to this threshold. Concerning the situation of the child two main concepts were found; predominant is the concept of child endangerment, which requires a prognosis of the future development of the child if no intervention takes place. A wider concept centres on the term "child at risk" which implies a potentially lower threshold requiring professionals to take action. However, knowledge is lacking on what indications of current endangerment and future harm are in fact taken to justify such intervention. In some states an additional normative threshold is met when parents are convicted of a crime of violence against their child.

The convergence towards a dominant concept of child endangerment should facilitate comparative research on the actual thresholds in practice, the decision-making processes and the outcomes of interventions.

Using the ideas of a child at risk or child in need is not restricted to abuse and neglect; it seems to be helpful in early intervention and linked to patterns of working with parents to change the situation, while not as strongly linked to intervening in the rights of parents and/or children without consent.

7. Each approach appears to have its thorny areas. Endangerment requires a prognosis for which a high level of qualification and tolerance for uncertainty is required. Although endangerment focuses on the future development of the child, it implicitly calls for a prognosis of the future capacity of the parent(s) to fulfil their responsibilities of care and education as it is often also established in the legal thresholds for state interventions by raising the question whether the parents will be able, with appropriate support, to develop a level of care that could prevent future harm. The double prognosis is challenging, but meets the standards set in the CRC. Because intervention may encroach on fundamental rights both of parents and of children, this requires qualified professional assessment. But the complexity of this approach poses the question whether competent experts are regularly available for consultation and assessment, and whether the courts are willing to accept their assessments. Legal definitions of different levels of endangerment, as provided for in the Netherlands, give judges great leeway for their own assessment on a case by case basis, and here again, without training they are more than likely to draw on their personal ideas about how families should raise children. In correlation with judges as the group of professionals with the lowest degree of specialisation, education and training on child protection this is likely to become problematic.

Using a lower threshold of a child in need or a child at risk opens up more possibilities for early intervention, but at the same time requires ensuring that active support of families and methods or programmes for supporting and assisting parents as well as teaching parenting skills are well developed, and that early intervention has the chance to enable the child to remain in or to return to the family. Otherwise, a low threshold may harm children by placing them too readily in institutions or foster care, while setting a high threshold of endangerment may lead to a failure to protect, especially when staffing is insufficient and the case load of social workers too high, as was

reported to be the case in several countries. No state in our study limits the response of the state to cases in which abuse has already taken place; all define a threshold based on prognosis for the child's development.

8. When a suspicion of maltreatment arises or a child seems to be in need, the law in all countries of this study states that efforts to work with the parents and to offer them support should be the first priority. However, some understand this prioritising as a first option to be assessed and others as the necessity that attempts to voluntarily implement services must have failed prior to interventions without consent. This legal postulate is only meaningful if such services are in place, accessible and qualified; in several countries, this is not (yet) the case. While not the preferred option, a critical point is defined by the threshold at which statutory agencies can intervene against the will or without the consent of the parents. Often, knowing that such actions are possible may help persuade parents to agree to measures "voluntarily", if available and offered.

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#### MANDATORY REPORTING, SELF-REFERRAL AND SELF-SIGNALLING

9. In the comparative evaluation of child protection systems and in political debates about strengthening protection, systems of so called "mandatory reporting" were identified as mainstream (Kindler, 2010; IPSCAN, 2006). Often, it is assumed that establishing a duty to report any suspicion of child maltreatment would increase the proportion of children recognised as being at risk, and would improve chances of timely intervention. This has not been confirmed in our study, not even when failure to report is penalised. The high expectations often attached to the idea of mandatory reporting seem to rest to some extent on a presumption that child maltreatment will be recognised and identified more readily by persons who see the child if they are under a legal obligation to report suspicions, but this is often not the case. On the contrary, awareness and cognition may be significantly reduced if recognising is associated with possible negative consequences. If the person who is concerned about a child or uncertain whether or not to suspect maltreatment can reflect her/his perceptions in a trustful setting with an expert, the referral may be facilitated. Referrals on this basis will also be more qualified. It cannot be assumed that social services can identify maltreatment just by visiting the family and seeing the child. In cases where a professional had a trustful relationship to the child or another family member the reporting may hamper their disclosure.

Provisions for mandatory reporting should not be considered a key component for the quality of national responses to child maltreatment. They may be suitable for a national approach to child protection, but not necessarily so. It seems far more important that citizens in general and professionals whose work brings them into contact with children and families in particular perceive child protection agencies as trustworthy, committed and competent, and that they have an opportunity to consult with such agencies about their impressions and concerns before taking steps that necessarily infringe on the privacy rights of parents and children. Well-functioning structures of cooperation are the base to be built for such referral of children, families or information with all the conflicts that may occur when working together on single cases. Whatever the system, responsibilities and protocols to follow must be known clearly to service providers in all the relevant sectors (WHO & IPSCAN, 2006).

10. Following the EU Directive on combating the sexual abuse, sexual exploitation of children and child pornography (repealing Framework Decision 2004/68/JHA), there are two essential components to an effective reporting system: (1) to ensure that confidentiality rules imposed on certain professionals that work in contact with children do not constitute an obstacle to the possibility of their reporting to the services responsible for child protection when they have

reasonable grounds to suspect abuse or neglect; (2) to encourage any person who knows about or suspects abuse or neglect, in good faith, to inform the competent services of their concern.

In the vast majority of cases, not only but especially in the field of sexual violence against children, identifying child maltreatment is only possible if either the child or a parent is able and willing to disclose the situation. This is most likely to be possible in relationships of trust and confidentiality. Assisting parents to change their childrearing and develop the emotional and cognitive abilities and skills for non-violent parenting also requires establishing a relationship with professionals they can trust. This leads to the conclusion that states with a system of mandatory reporting should provide services that allow children and families access to confidential low-threshold services where the fear of reporting and its consequences does not hinder them in applying for support (WHO & IPSCAN, 2006).

Studies of failures in child protection suggest that the problem was often not the lack of information about a difficult family situation, but the fact that a helping relationship could not be maintained (Fegert et al., 2010; BMFSFJ, 2008). It has to be acknowledged, however, that with or without mandatory reporting there will be cases in which professionals simply fail to take proper action despite knowledge about (potential) ongoing abuse or neglect which may have serious consequences for children. As both approaches cannot rule out their risks of failure to notify, a culture of assigning blame in cases of failed protection should be avoided. Instead of seeking for the single mistakes a systems approach should be taken towards identifying the underlying reasons why good practice happens or not. Therefore, high quality research is needed on how to empower and encourage professionals to take the suspicion on board and react appropriately (Fish et al., 2009; Axford & Bullock, 2005).

11. In all discussion of reporting, it is essential to differentiate between reporting to the criminal justice system for investigation of a possible crime, and reporting to social service or child protection agencies, who could make a professionally founded assessment of the danger to the development of the child and offer necessary support to prevent (further) endangerment. Despite the differences among legal and institutional frameworks, it seems that the most effective systems encourage reporting suspicions to agencies for child welfare and child protection, and give the trained social workers the task of deciding whether the available information calls for informing the criminal justice system. The feasibility study found this to be the predominant pattern in the EU as well (European Commission, 2010). The local social services as key actor in the field of child protection seem to be the competent authority for professional judgement whether prosecution and possible conviction of child maltreatment as a crime is reconcilable with the child's best interests. However, their staff resources and training must be at a level that makes careful assessment and timely intervention possible.

12. For future research and evaluation of the quality of a child protection system the percentage cases that enter the child protection system via self-referral and self-signalling could be a strong indicator. This implies accessibility of support services with low-threshold, ongoing services and outreach as well as effective efforts to make services known. It might also give hints as to the professionalism of social work with its core elements of creating trust and establishing cooperation in helping relationships. This correlates with the growing consensus about the necessity of voluntary confidential services accessible for children and parents directly where a disclosure of child maltreatment is not directly notified to the public authorities and/or criminal justice system (WHO & IPSCAN, 2006, p. 61 f.).

No estimate can be offered here on possible percentages that might be satisfactory. But the numbers would probably correlate with the notifications of a suspicion because of trustful and functional cooperation between the actors in the field of child protection (see above 4.3.2).

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## HEARING OF THE CHILD

13. Legal frameworks concerning the right of the child to be heard vary greatly, as do the rules and procedures of providing the child with a legal representative of her/his interests in court proceedings. There is no overall convergence, and not even a debate about the different ways in which this right is or should be assured. A discussion seems to be necessary about whether the direct hearing of children in court proceedings (Germany, Netherlands) serves the right to be heard (art. 12 CRC) better or hearing through a specially appointed representative (Sweden, United Kingdom). The effects on children and the quality of participation should be compared in these extremely diverging approaches.

14. The right of the child to be heard comprises two aspects:

- “in all matters affecting the child” the views of a child capable of forming her/his own views are to be given due weight in accordance with age and maturity, and
- the child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting her/him.

In connection with proceedings about maltreatment, the provisions on hearing the views of the child sometimes seem to be confused with taking the testimony of a witness, which is a quite different matter. In connection with protection measures and family law, the requirement to hear the child might easily be complied with as a formal requirement with little real effect on decisions. Simply hearing the child does not secure her/him the status of a participating person in all proceedings, especially if the child is younger. While court hearings in Germany and Sweden seem to be of ambivalent intentions, court hearings in Greece, the Netherlands, England and Wales in child protection cases sometimes seem to have more of an investigative aim of interviewing a witness; giving a child opportunity to freely express her/his views seems to serve primarily to facilitate adults’ professional decisions. This is also likely to be the case in Bulgaria and Romania. When hearing of a child is predominantly understood as evidence collection little is achieved with regard to securing children’s rights.

15. From the principles of the CRC it follows that the inclusion of children in proceedings is more than a formal hearing and should be a substantial and concrete participation in all actions related to their rights and needs (Terres des Hommes, 2010). Hearing the child should be part of the child’s participation in child protection and child welfare proceedings. With this in mind there is no state in the study whose practice fully reaches this goal, in court proceedings to a far lesser degree than in administrative child protection proceedings where participation sometimes seems to be assured. However, older children can be given rights independent of their parents in court proceedings. Some states take even further steps. Romania interestingly provides children over 14 with the right to object to a placement decision that can only be overruled by a court and in Sweden a 15 year old may challenge the placement.

16. The right of the child to be heard has consequences for the education and training of those who implement this right. Basic knowledge of developmental psychology, of pedagogy and of research knowledge on the dynamics and effects of different forms of violence are needed to hear and understand what children of different ages who have been exposed to different forms of

maltreatment can say about their experience and their needs, wishes and aims. In all proceedings, whether they involve working with children and families or bringing about court-ordered measures, the key actors – including those in the justice and family law systems – need education and training to safeguard children’s fundamental rights.

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## CONCLUSIONS

This report presents four distinct pieces of research, grounded in data collected across 38 European countries. Chapter 1 extends the FSL project (European Commission, 2010) to analyse legislation on VAW and child abuse across the non-EU states. The three comparative case studies (Chapters 2-4) – on NPAs on VAW, EPOs and child protection systems – focus on how policy regimes influence the implementation of legal measures. Each is underpinned by human rights standards and takes its points of departure from two conventions – CEDAW and the CRC, alongside the accompanying due diligence obligation of states. Our common research question was the extent to which the rights of women and children to live lives free of violence and abuse are being realised.

A principle in the *Realising Rights* project has been recognising that international standards can be implemented in different ways, fitted to the diverse legal frameworks across the European region. That said, an important finding across the case studies was that how policies are framed can compromise the extent to which they comply with fundamental rights issues. Examples across the case studies of this include:

- domestic/family framing in NPAs compromise women’s right to be protected from **all** forms of violence;
- crime/ law and order framings may compromise the fundamental principle of the best interests of child in child maltreatment cases and with respect to VAW mean insufficient attention and resources are invested in support services and empowerment;
- gender neutral framings may compromise understandings of VAW through a human rights lens: as discrimination, which in disproportionately affecting women is a cause and consequence of gender inequality;
- the ways in which legal processes are operationalised can minimise the right of children to participate and be heard in decisions concerning them;
- the fragmentation of child abuse across multiple areas where there are likely to be explicit policy documents – commercial sexual exploitation, child maltreatment and family violence – runs the risk of creating inconsistent understandings of children’s rights and child protection.

The recommendations in each of the case studies offer practical routes to enhancing the protection of women and children. In an age of austerity measures it is in the interest of states to ensure that interventions are the most effective in preventing further violence; in the case of both child abuse in the family and a number of forms of VAW (IPV, stalking, forced marriage, honour based violence and FGM) early intervention measures are especially promising, since they have the potential for decreasing the number of cases which move into requiring more expensive and extensive measures – for example, court cases and multiple agencies having to invest resources into the same case. Where thresholds for intervention are defined solely through parameters of high risk and seriousness – as can be the case for child abuse and VAW – this detracts from early intervention.

Whilst examining the intersections between gender and generation was not an aim in this project it did emerge as an issue in several ways:

- that a number of forms of VAW (FGM; early/forced marriage; sexual assault) are most commonly experienced by girls and young women – who if under 18 qualify as children under the CRC;
- the centrality of a gender perspective to the issue of VAW and its relative marginal status with respect to child maltreatment, despite the fact that girls and boys are differently exposed to abuse with gender-related consequences, especially sexual abuse;

- the limited attention paid to girls in NPAs on VAW;
- a tendency in some states to fail to gender parents, and/or distinguish between abusive and non-abusive parents where children are living with IPV.

We do not propose solutions here, but rather point to the importance of being aware of intersections across both forms of violence, which are simultaneously VAW and child maltreatment and that the 'gender lens' is always a revealing one. The importance of synchronising across action plans (child maltreatment, trafficking and sexual exploitation and VAW) is also evident here.

Several policy-related impediments to the effective protection of women and children emerged across the research undertaken for this project:

- over-regulation/bureaucratisation which serve to rationalise access to measures like the EBO in some contexts, detract from building relationships with children and their families in the case of child maltreatment, and prioritise performance management above professional skills and judgement;
- multi-agency and information sharing processes linked to case work and case management that are predicated on the non participation (and in some instances without the consent or knowledge of) of women and children victims and parents or other carers, and which emphasise the collaboration of agencies;
- mistrust of state agencies by the general public, and mistrust between agencies which results in low levels of self-referral/help-seeking;
- lack of comprehensive and consistent training of professionals, which meant they lacked the specialist knowledge and higher level skills needed to work with these issues – the results in inconsistencies between individual practice and across regions;
- limited availability of basic support services, which may be confined to urban areas, or regional capitals;
- insufficient awareness and resources allocated to services for marginalised groups with additional support needs.

All of the above can result in poor practice which may cause significant harm to children and compromise women's safety.

At the same time there we also encountered factors which appeared to lead in more productive directions.

- the importance of a strong network of civil society organisations which represent the interests of women and children, and are stitched into both the development and delivery of policy, protection and prevention;
- a commitment to, and investment in primary prevention;
- co-ordinating bodies/persons at national, regional and local levels.

Law, policy and practice will continue to evolve across Europe, and there will always be lessons to be learnt about how the balance between protection, prosecution and prevention is negotiated. In one sense this could be seen as a kind of 'tightrope walk' in which the responsibilities of the state to protect and prevent have to be balanced against rights to privacy and self-determination, and the importance of empowering those who have their bodily integrity violated. There are no easy solutions, but continuing to explore and engage across Europe, as the Daphne programme has allowed so many networks and projects to do, will highlight new and fruitful directions of travel.

## APPENDIX I

### MATRIX

Country Key											
<b>AL</b>	Albania	<b>CH</b>	Switzerland	<b>IS</b>	Iceland	<b>ME</b>	Montenegro	<b>NO</b>	Norway	<b>TR</b>	Turkey
<b>BA</b>	Bosnia-Herzegovina	<b>HR</b>	Croatia	<b>LI</b>	Liechtenstein	<b>MK</b>	The Former Yugoslav Republic of Macedonia	<b>RS</b>	Serbia		

Yes    
  No    
  = Information Missing    
 1, 2, etc., indicate a qualified yes or no (comments as footnotes).

**Table 1: International Instruments and national plans of action**

Legal Provisions	EU Total	Non EU Total	Countries											
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR	
<b>Conventions ratified</b>														
CEDAW	27	11												
CEDAW Optional protocol	24	11												
CRC Optional protocol on CSEC	21	10												
TOC Trafficking protocol	23	11												
ECHR	27	11												
CRC	27	11												
COE convention on trafficking	18	7												
COE Convention on CSEC	5	3												
European convention on Compensation for victims of crime	17	7												
<b>National Plans of Action</b>														
<b>VAW since 2002</b>	15	3												
Uses UN definition	4	0												
Locates in human rights	8	2												

**Table 1: International Instruments and national plans of action (continued)**

Legal Provisions	EU Total	Non EU Total	Countries										
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR
Locates as gender equality issue	10	3					1						
Prevention a priority	9	2										2	
Monitoring mechanisms	9	2											
<b>DV/FV since 2002<sup>3</sup></b>	<b>8</b>	<b>5</b>				4					4		
Locates in human rights	3	5				5							
Locates as gender equality issue	2	4											
Prevention a priority	5	5											
Monitoring mechanisms	5	1											
<b>NAP on Trafficking since 2002</b>	<b>20</b>	<b>7</b>											

1 The NAP addresses domestic and sexual violence against women and children and refers to gender-based violence

2 For domestic violence

3 DV/FV have only been indicated in the table if there is no wider NAP for VAW as NAPs for VAW always include DV

4The former Yugoslav Republic of Macedonia and Croatia note that this is a “national strategy”

5 There is specific reference to violation of human rights

**Table 2: Intimate Partner Violence/Domestic Violence (IPV/DV)**

Legal Provisions	EU Total	Non EU Total	Countries										
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR
Dedicated DV/IPV law <sup>1</sup>	18	11											
IPV and criminal law													
IPV as an aggravated circumstance	11	7											
a specific criminal offence	10	8											
Specific law uses as a legal concept:													
Family violence	12	7											
DV	10	6											
IPV	5	2											
Gender based violence	2	3					2						

1 A law that specifically defines acts of violence in a domestic context as the target of the law and encompasses more than mere administrative regulation

2 Gender-based violence is defined in equality law, but not in criminal law

**Table 2: Intimate Partner Violence/Domestic Violence (IPV/DV) continued**

Legal Provisions	EU Total	Non EU Total	Countries											
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR	
Police competence includes:														
Emergency removal order	11	6												
Civil law protection orders can order:														
to leave the residence (go-order)	23	7												
to prohibit presence in certain locations	22	9												
to prevent any contact with victim	20	7												
to refrain from violence	13	6												
Civil Protection orders available regardless of criminal procedures	21	9												
Rules/policy defining prosecution as in the public interest <sup>3</sup>	9	3												

<sup>3</sup> Sometimes these rules are absent because, in some States, prosecution is always mandatory

**Table 3: Rape**

Legal Provisions	EU Total	Non EU Total	Countries											
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR	
Definition based on:														
force	11	6				1				1		1		
extended force	7	4											2	
force and consent	6	1												
consent	3	0												
Marital rape exemption explicitly removed	26	7												
Is framed as a crime against:														
sexual integrity/autonomy	18	7		3										
sexual crime	9	5												
morality	6	3		3										
sexual freedom	6	4		3										

1 Use of force or threat to directly attack upon the life or body of another or upon the life or body of someone close to that person.

2 Violating the sexual integrity of a person. Force and penetration are both aggravating circumstances of sexual assault (the overarching offence).

3 In republic of Sprska and District Brcko rape is a crime against sexual integrity/autonomy whereas in the Federation of BIH it is a crime against sexual freedom and morality

**Table 3: Rape continued**

Legal Provisions	EU Total	Non EU Total	Countries											
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR	
All penetrative acts included	11	7		4	5	4					4			
Special arrangements in:														
Prosecution	11	2												
Investigation	8	2												
Court procedure	8	2												

4 Definition as “sexual intercourse or equivalent acts”; other forms of sexual penetration could be included by interpretation.

5 The term “rape” is reserved to forcible intercourse with a woman, while all other forced sex or penetration against either a woman or a man is sexual coercion. Thus, all of the above are penalized, but as coercion, not as rape.

**Table 4: Stalking**

Legal Provisions	EU Total	Non EU Total	Countries											
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR	
Specific law	12	1					1							
Specific law is in:														
criminal	12	1					1							
civil	2	0												
police	0	0												
Legal definition includes:														
course of conduct	10	1					1							
fear/anxiety	8	0												
threats	7	0												
malicious intent	7	0												
harm/alarm distress	4	1							2					
Dealt with under existing law	18	9					1							
Civil protection orders are available	18	3												

1 Definition corresponds to sexual harassment and presupposes abuse of a position of trust or at work

2 In a way that is likely to seriously disrupt the victim’s way of life

**Table 5: Sexual Harassment (SH)**

Legal Provisions	EU Total	Non EU Total	Countries										
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR
Provision specifically prohibiting SH:	<b>27</b>	<b>11</b>											
In equality law	<b>22</b>	<b>8</b>											
In labour law	<b>18</b>	<b>6</b>											
In criminal law	<b>11</b>	<b>7</b>											
Legal definition specifies:													
unwelcome sexual act undermining dignity	<b>26</b>	<b>10</b>											
unwelcome sexual act creating hostile environment	<b>26</b>	<b>10</b>											
sexual act that reasonably be regarded as offensive	<b>23</b>	<b>9</b>											
sexual act where victim could be treated differently if they rejected it	<b>18</b>	<b>4</b>											
abuse of power to obtain sexual favours	<b>6</b>	<b>5</b>											

**Table 6: Trafficking**

Legal Provisions	EU Total	Non EU Total	Countries										
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR
Specific law	<b>25</b>	<b>11</b>		<b>1</b>									
Dealt with under general criminal law	<b>2</b>	<b>0</b>											
Trafficking offence requires proving recruitment, transportation, exploitation:	<b>22</b>	<b>11</b>											
A single element required													
A combination required	<b>4</b>	<b>0</b>											
There is a national competent authority	<b>19</b>	<b>7</b>											
(Binding) rules/guidelines on identification of victims <sup>4</sup>	<b>11</b>	<b>5</b>											
Reflection period available as right	<b>25</b>	<b>4</b>		<b>2</b>									
28-40 days	<b>16</b>	<b>2</b>											
41-60 days	<b>10</b>	<b>1</b>											
more	<b>8</b>	<b>3</b>											
requires cooperation with investigation	<b>2</b>	<b>2</b>											

1 Penalised in section of law dealing with war crimes

2 Right to 15 days and requires cooperation

3 If victim is under 18 years, reflection period may be prolonged

4 Written rules exist but may not be binding

**Table 7: Child maltreatment**

Legal Provisions	EU Total	Non EU Total	Countries										
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR
Law founded on principle of the best interests of the child:													
Yes in all aspects	4	1											
Yes but not in criminal law and proceedings	23	9											
Age of sexual consent													
12-13	2	0											
14-15	16	7											
16-18	9	2											
<b>Family/Child Protection law proceedings</b>													
Separate legal representation and/or support worker	25	6			1								1
Duty to hear child	23	10			2		2		2	2		2	
Specialised courts dealing with child protection	14	4											
<b>Corporal Punishment</b>													
Corporal punishment in schools/institutions prohibited	24	8		3									4
All corporal punishment forbidden	17	2				5							
<b>Sexual abuse</b>													
Law criminalises:													
all penetration by penis	27	11											
all other forms of penetration	27	7											
Sanctions on convicted perpetrators include:													
Prohibition of working with children	20	3											
<b>Investigation of child maltreatment</b>													
Duty to report suspicions to child protection agency													
For groups of professionals working with children	13	9			6								
For all citizens	9	9											
None, reporting is not mandatory	1	1											
Duty to report child maltreatment to Criminal Justice System	18	7					7		8		9	8	

1 If there is a conflict of interest with parents

2 Judge decides upon assessment of child and circumstances of the case

3 Unlawful but no specific law prohibiting it

4 Only in public schools

5 But forbidden to parents, guardians, or in families

6 Teachers have no legal duty to report, but if they know of abuse of a child and do not prevent its continuation, they can be punished for breach of fiduciary duty

7 No clearly defined duty. In practice, child protection committees report regularly to police.

8 In case of offences prosecuted ex-officio

9 If in the best interest of the child

**Table 8: Commercial Sexual Exploitation of Children (CSEC)**

Legal Provisions	EU Total	Non EU Total	Countries											
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR	
Age where illegal to appear in porn/sell sex	23	5			1									
15-17	23	0												
18	0	4												
21	0	1												

1 But recently set at 18 years (2011)

**Table 9: Forced marriage**

Legal Provisions	EU Total	Non EU Total	Countries											
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR	
FM is recognised in: criminal law	6	4												
civil law	4	6												

**Table 10: Honour based violence (HBV)**

Legal Provisions	EU Total	Non EU Total	Countries											
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR	
Concept of HBV recognised: in criminal law	5	1												
as aggravating factor	4	1												
Is possible to plead a defence of honour	0	0												

**Table 11: Female Genital Mutilation**

Legal Provisions	EU Total	Non EU Total	Countries											
			AL	BA	CH	HR	IS	LI	ME	MK	NO	RS	TR	
Specific provision in: criminal law	9	2			1									
child protection law/procedure	12	0												

1 However, a new criminal law provision has been introduced on September 14<sup>th</sup> 2011

## APPENDIX 2 - EMERGENCY BARRING ORDER

TABLE 1: CHARACTERISTICS OF THE LEGAL REGULATION OF THE EMERGENCY BARRING ORDERS

Country (acronym)	Austria AT	Germany DE	Czech Rep CZ	Netherlands NL	Spain ES	UK	
Total country population (million)	8.4	[81.8]	10.5	16.5	[47.2]	[62.0]	
Region and regional population (million)		<i>Berlin</i> 3,5	<i>Baden Württemberg</i> 10,7		<i>Madrid (city)</i> 3,3	<i>England/ Wales</i> 54,5	
Number of police registered DV cases <sup>117</sup>	12.503 (2010) <sup>118</sup>	16.285 (2009) 15.972 (2010)	7.103 (2009) 7.353 (2010)	568 <sup>119</sup>	63.841 (2008) <sup>120</sup>	20.863 <sup>121</sup> (2009-Madrid) 5.061 (until March 2010)	293.000 (2009) 290.000(2010) <sup>122</sup>
Number of emergency barring orders issued	6731 (2009) 6759 (2010)	1.641 (2009) 1.321 (2010)	2.566 (2009) 2.530 (2010)	778 (2009) 1058 (2010)	2150 (2009) 2874 (2010)	7.579 (2009) 2010 Not available	N/A

<sup>117</sup> Note that the national numbers of registered DV cases by the police are difficult to compare due to differences in (legal) definitions of the category 'domestic violence' and/or to differences in registration systems used.

<sup>118</sup> Statistic of the Federal Ministry of Justice, provided by Verein Wiener Interventionsstelle gegen Gewalt in der Familie (Domestic Abuse Intervention Centre).

<sup>119</sup> <http://www.policie.cz/clanek/statisticke-prehledy-kriminality-650295.aspx> These are the number of dv-cases that were *investigated* as a criminal offence. The number of reported cases are inevitably higher.

<sup>120</sup> No police registration data on DV externally available on 2009 and 2010 due to ongoing checks on internal reliability of data (Communication with the National taskforce on domestic violence and the police, 18 August 2011).

<sup>121</sup> Statistics from the Equality Division of the Ministry of Health, Social Justice and Equality. Sources consulted in relation to reported gender violence cases: General Council of the Judiciary (Consejo General del Poder Judicial). It should be pointed out that statistics do not distinguish between domestic violence and other forms of gender based violence.

<sup>122</sup> Home Office Statistical Bulletin. 'Crime in England and Wales 2009/10. Findings from the British Crime Survey and police recorded crime', July (2010), table 3.01 at p. 61. As domestic violence is not a specific offence in law, it is not recorded separately by the police, but under the individual offence that took place, usually a form of violence against the person. The figure provided is from the British Crime Survey (BCS) and it should be noted that findings from the survey indicate that the police only came to know about 45% of violent incidents.

Country (acronym)	Austria AT	Germany - Berlin Be	Germany - Baden-Württemberg BW	Czech Rep CZ	Netherlands NL	Spain ES	UK-England/Wales
<b>Legal regime</b>	Police Law	Police Law	Police Law	Police Law	Admin. Law	Criminal Procedural Law	Criminal Procedural Law
<b>Core legal provision</b>	Police Act (SPG), 38a	Police Act (ASOG Bln), 29a	Police Act, 27a	Police Act, 44	Law on temporary home eviction	Law on protection orders and law on integrated protection	Crime and Security Act 2010
<b>General Measures provided</b>	Eviction of aggressor from home and surroundings and prohibition to return	Eviction of aggressor from home and surroundings; Prohibition to come to place of work or education, or place where the victim is there at regular intervals	Eviction of aggressor from the home and surroundings, prohibition to return, and prohibition to approach the victim	Eviction of aggressor from home and surroundings and prohibition of any contact	Eviction of aggressor from home and prohibition of any contact.	Prohibition of contact and eviction from the home	Eviction from the home, prohibition to come within certain distance and prohibition of molestation
<b>Time between reporting incident &amp; imposition of EBO</b>	Immediate	Immediate	Immediate	Immediate	Immediate	Within max. 72 hrs.	Immediate
<b>Can the order be issued at a later moment?</b>	Yes*	Yes*	Yes*	Yes*	Yes	Yes	Yes*
<b>Duration of the EBO</b>	14 days	14 days	4 working days	10 days	10 days	Judge's discretion	Max. 48 hours
<b>EBO extendable (without a gap in protection)</b>	Yes*	No.	Yes*	Yes*	Only for first extension*	Yes	Yes*
<b>Costs for victims for renewal of the EBO</b>	None	None	None	None	None	None	None

Country (acronym)	Austria AT	Germany - Berlin Be	Germany - Baden-Württemberg BW	Czech Rep CZ	Netherlands NL	Spain ES	UK-England/Wales
<b>Persons covered</b>	Persons of any household (no relation to the aggressor/perpetrator is required)	Residents of the same household, regardless of kinship or intimate relationship	Residents of the same household regardless of kinship or intimate relationship	Residents of the same household regardless of kinship or intimate relationship	Residents of the same household (i.e. who share a household 'more than incidentally') regardless of kinship or intimate relationship	(Ex-) partners, or similar relationship, even without cohabitation, disabled persons, or any other family member living in same household	Associated persons <sup>123</sup>
<b>Criteria for imposing the EBO</b>	Preceding assault or facts that suggest that dangerous attack on the life, health or freedom of an individual is imminent	Physical assault or other facts that suggest danger to the body, health or freedom of residents.	Imminent or substantial danger, and injuries or threats.	Previous assaults or well-established facts that reasonably indicate a possible serious attack against life, health or freedom or grave attack against human dignity	Serious and imminent risk to the safety of residents.	Objective risk to the life, physical or moral integrity, sexual freedom, freedom or safety*	Reasonable grounds for believing that violence or threats of violence towards an associated person has occurred and that PO is necessary to protect that person
<b>History of previous violence legally required</b>	No	No	No	No	No	No	No
<b>Assessment of the violence criteria (severity/danger/risk)</b>	Standardised report with elements of a risk assessment instrument	Formal guidelines	General guidelines	Guidelines and formal risk assessment instrument*	Dedicated risk assessment instrument	Judge's discretion. (police has guidelines/criteria for arrest)	Dedicated risk assessment instrument (DASH) <sup>124</sup>

<sup>123</sup> The full list of *associated persons*: Husband and wife or ex husband and wife, Civil partners or former civil partners, Cohabitants or former cohabitants, Living or have lived together in same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder, Relatives, Engaged/formerly engaged/ agreed to form a civil partnership, Parents of, or people who have parental responsibility for same child, Parties to same family proceedings, People who have an intimate personal relationship of significant duration (whether they are same-sex or an opposite sex couple).

<sup>124</sup> DASH: Domestic Abuse, Stalking and Harassment.

Country (acronym)	Austria AT	Germany - Berlin Be	Germany - Baden-Württemberg BW	Czech Rep CZ	Netherlands NL	Spain ES	UK-England/Wales
<b>Providing contact details by aggressor</b>	Compulsory	Compulsory	Compulsory	Compulsory	Compulsory	Non- compulsory	Non- compulsory*.
<b>Authority deciding on issuing the EBO</b>	Police	Police	Police/Community Police	Police	Senior Police officer	Judge	Superintendent Police Officer (or above)
<b>Legal option for victim to request the EBO</b>	No	No	No	No	No	Yes	No
<b>Legal option for victim to challenge the EBO</b>	No	No	No	No	No	Yes	No
<b>Legal option for aggressor to challenge the EBO</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes*
<b>Free legal aid</b>	Victim: yes, Aggressor: yes*	Yes	Yes	No (only legal advice)	Victim: no (only legal advice) Aggressor: yes.	Yes	Yes, only to the perpetrator
<b>Monitoring of the issuing of the EBO</b>	Police authority/administrative authority	Local police station	Community Police	Regional Police Directorate	Admin. Authority	In pre-trial, Trial and Appeal	Commanding officer.
<b>Guidelines for intervention in DV/IPV</b>	Yes, general guidelines	Yes, binding guidelines.	Yes, general guidelines	Yes, general guidelines	Yes binding guidelines	Yes, binding guidelines.	Yes, waiting for final approval
<b>Specialized DV police unit</b>	No*	No*	No*	No* (except for Brno)	No	Yes	Yes
<b>Sanction upon breach of barring order</b>	Admin. fine	Admin. fine/custody	Admin. fine/custody	Admin. fine/custody <sup>125</sup>	Custody	Custody/electronic bracelet/	Arrest 24 hrs, remand

<sup>125</sup> This depends on the severity. Light breaches can only be fined administratively. Serious and repeated breaches constitute a criminal offence.

TABLE 2: CHARACTERISTICS OF THE SUPPORT AND INTERVENTION MEASURES AVAILABLE (IN GENERAL AND WITH EBO)

Country	Austria	Germany - Berlin	Germany - Baden Württemberg	Czech Republic	Netherlands	Spain - Madrid	UK - England/Wales
<b>General: National VAW or DV helpline</b>	Yes, VAW helpline	Not yet <sup>126</sup>	Not yet <sup>127</sup>	Yes, DV helpline	Yes, DV helpline*	Yes, national helpline (and local/municipal lines)	Yes, DV
<b>General: DV shelters</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>General: DV counselling /crisis centres</b>	Yes, network	Yes, network	Yes, assigned civil organizations	Yes, network	Yes, network	Yes, two types: for victims with protection orders, and without	Yes
<b>EBO Multi-agency intervention/support Programme</b>	Yes	Yes	No, not standard in B-W	Yes	Yes	Yes	Yes*
<b>Target population of EBO intervention /support programme</b>	Victims (Aggressor*)	Victims (Aggressor*)	Victims (Aggressor*)	Victims	Victims and aggressor	Victims	Victims (Aggressor*)
<b>Specialized body coordinating the EBO intervention/support programme</b>	DV Intervention centre	BIG- Coordination	DV Counsel/intervention centres	DV Intervention centre	DV Support and Advice Centre	Point of Coordination	No
<b>Geographical location of coordination</b>	One per province (9)	One for the city of Berlin	One designated organization per district.	One per region (16)	One per larger municipality (35)	One for the city of Madrid	N/A
<b>Formal status of coordinating body</b>	designated NGO	designated NGO	Varies across municipalities (unique or multiple organizations)	Designated victim support NGO and/or women's NGO's	Governmental (municipal) organization	Administrative dependency.	N/A

<sup>126</sup>Starting on 1.1.2013.

<sup>127</sup>Starting on 1.1.2013 Some municipalities within Baden-Württemberg offer local help lines.

Country	Austria	Germany - Berlin	Germany - Baden Württemberg	Czech Republic	Netherlands	Spain - Madrid	UK - England/Wales
<b>Protocol for communication between agencies</b>	No*	Yes	Yes (strictly limiting exchange of information)	No	Yes	No	Yes
<b>Main agency providing EBO support</b>	Intervention Centre	BIG help line and BIG prevention	Local Round Tables (civil organizations)	Intervention Centre or designated NGO	Domestic Violence Support and Advice Centre	Municipal Point of the Regional Observatory on GBV.	?
<b>Is there a pro-active approach towards the victim</b>	Yes	Yes*	Yes*	Yes	Yes	Yes	Yes*
<b>Is treatment of aggressor possible as part of EBO intervention measures</b>	Yes*	Yes*	Yes*	No	Yes*	Yes*	Yes*
<b>National protocol regulating EBO support and intervention</b>	Yes	Yes	No	No	Yes	Yes	No
<b>National protocol enabling to share confidential information between agencies</b>	No	N/A	Yes (limiting/prohibiting exchange of information)	No	Yes*	Yes	Yes*
<b>Are there support services exclusively granted in connection to EBOs?</b>	No	No*	No	No	No*	Yes	No
<b>Main kind of (integrated)<sup>128</sup> support provided</b>	General advice; integrated support referral to other services	General Advice, referral to other services, monitoring of agencies involved	General Advice, psycho-social support, referral to other services	General advice, psycho-social support, referral to other services, legal advice.	General advice; integrated support, referral to other services Case management and coordination of agencies.	Psycho-social support, general advice, referral to other services (legal advice)	

<sup>128</sup> Integrated support in this context refers to legal, financial, psycho-social support.

<b>Country</b>	<b>Austria</b>	<b>Germany - Berlin</b>	<b>Germany - Baden Württemberg</b>	<b>Czech Republic</b>	<b>Netherlands</b>	<b>Spain - Madrid</b>	<b>UK - England/Wales</b>
<b>Extension of provision of services possible after end of barring order</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Funding source</b>	Federal Gov. (dedicated DV/EBO)	Local (dedicated IPV)	Local (general social work; no dedicated EBO funding)	Local and national Gov. (dedicated EBO)	Local and national Gov. (dedicated DV/ EBO)	Regional/Local (dedicated GBV)	N/A

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