

**Register of Commission documents: International Marriage Brokers and Mail
Order Brides - Analysing the Need for Regulation Document date: 2016-10-14
IPOL STU(2016)571377 Study**

European Union News

November 3, 2016 Thursday

Copyright 2016 Plus Media Solutions Private Limited All Rights Reserved



Length: 61471 words

Dateline: New York

Body

Brussels: Public Register European Parliament has issued the following document:

DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C: CITIZENS' RIGHTS AND

CONSTITUTIONAL AFFAIRS

WOMEN'S RIGHTS & GENDER EQUALITY

International Marriage Brokers and Mail

Order Brides. Analysing the need for

regulation

STUDY

Abstract

The study was requested by the European Parliament's Committee on Women's

Rights and Gender Equality and commissioned, overseen and published by the

Policy Department for Citizen's Rights and Constitutional Affairs. This Study

analyses the socio-legal status of the Mail-Order Bride industry in the EU, in terms of regulation, protection of rights, and the consequences of Mail-Order Bride relationships for women, men and children involved. It focuses on the United Kingdom, Germany, the Netherlands and Ireland; defines the Mail-Order Bride (MOB) phenomenon. The report uses a combination of sociological and

legal research methods including desk research, expert interviews and a mapping of International Marriage Broker (IMB) websites. It finds that it is difficult to distinguish between MOB and other groups of female marriage migrants. The report identifies three main legal gaps, namely the lack of regulation of IMB activities, the lack of a harmonized regime for family reunification, and the lack of harmonized protective measures for women in case of relationship break up. There is a need for additional prevention and protection measures, since female marriage migrants are considered particularly vulnerable to domestic violence.

PE 571.377 EN

ABOUT THE PUBLICATION

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

Policy departments provide independent expertise, both in-house and externally, to support European Parliament committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU external and internal policies.

To contact the Policy Department for Citizen's Rights and Constitutional Affairs or to

subscribe to its newsletter please write to: poldep-citizens@europarl.europa.eu

RESEARCH ADMINISTRATOR RESPONSIBLE

Martina SCHONARD

Policy Department C: Citizens' Rights and Constitutional Affairs

European Parliament

B-1047 Brussels

E-mail: poldep-citizens@europarl.europa.eu

AUTHOR(S)

Ms Julia REINOLD, Researcher, Maastricht Graduate School of Governance | UNU-MERIT

Ms Inez ROOSEN, Researcher, Maastricht Graduate School of Governance | UNU-MERIT

Mr Alexander HOOGENBOOM, Researcher, Maastricht University

Ms Ingrid WESTENDORP, Researcher, Maastricht University

Ms Katharina KOCH, Research Assistant, Maastricht Graduate School of Governance | UNUMERIT

PROJECT COORDINATORS

Ms Hildegard SCHNEIDER, Project Coordinator, Maastricht University

Mr Ren é de GROOT, Project Coordinator, Maastricht University

Ms Melissa SIEGEL, Project Coordinator, Maastricht Graduate School of Governance | UNUMERIT

Mr Paul VROONHOF, Project Coordinator, Panteia

ACKNOWLEDGEMENTS

The authors are grateful to Luca Bücken and Janis Rosewick for valuable research assistance in the preparation of this report. Finally, we extend our gratitude to all the experts who took the time to speak with us and shared their knowledge.

LINGUISTIC VERSIONS

Original: EN

Manuscript completed in September, 2016

© European Union, 2016

Policy Department C: Citizens' Rights and Constitutional Affairs

This document is available on the internet at:

<http://www.europarl.europa.eu/supporting-analyses>

DISCLAIMER

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

Policy Department C: Citizens' Rights and Constitutional Affairs

3

CONTENTS 3

LIST OF ABBREVIATIONS 6

LIST OF TABLES 8

LIST OF FIGURES 8

EXECUTIVE SUMMARY 10

1. INTRODUCTION 13

1.1. Problem Statement, Research Questions, Objectives and

Definitions 13

| | |
|--|----|
| 1.1.1. Objectives | 14 |
| 1.1.2. Definitions | 15 |
| 1.2. Context and Background Mail-Order Brides | 16 |
| 1.3. Methodological Framework of the Study | 20 |
| 1.4. Structure of the Study | 22 |
| 2. MAPPING OF INTERNATIONAL MARRIAGE BROKERS' WEBSITES | 23 |
| 2.1. Origin Country Background Information | 23 |
| 2.1.1. The Development of the MOB Industry in Russia | 23 |
| 2.1.2. The Development of the MOB Industry in the Philippines | 25 |
| 2.1.3. Concluding Remarks | 28 |
| 2.2. Current Situation | 28 |
| 2.2.1. General Overview Websites | 29 |
| 2.2.2. Credit System versus Membership Upgrades | 31 |
| 2.2.3. Services and Information Provided | 32 |
| 2.2.4. LGBT | 36 |
| 2.3. Rights and Obligations of International Marriage Brokers | 36 |
| 2.4. Analysis of Hotspots of Trafficking through International Marriage Brokers | 37 |
| 2.5. Concluding Observations | 42 |
| Policy Department C: Citizens' Rights and Constitutional Affairs | |

| | |
|---|----|
| 3. CURRENT <u>LEGAL</u> SITUATION | 43 |
| 3.1. International and Council of Europe Frameworks | 43 |
| 3.1.1. UN Framework | 43 |

3.1.2. Council of Europe Framework 50

3.1.3. Concluding Remarks 54

3.2. European Union Framework 55

3.2.1. The 'family' under Eu Law 56

3.2.2. Migration Aspects of the MOB Phenomenon: a Mosaic of National,

EU free Movement and EU Migration Law. 57

3.2.3. Protective Measures 64

3.3. Country Specific Frameworks 69

3.3.1. Germany 69

3.3.2. The Netherlands 72

3.3.3. Ireland 73

3.3.4. United Kingdom 75

4. ASSESSMENT OF CURRENT PROBLEMS AND LEGAL GAPS IN RESPECT

TO THE MAIL-ORDER BRIDE INDUSTRY IN THE EU AND THE

RESEARCHED MEMBER STATES 77

4.1. Gaps in Current Legal Frameworks 77

4.1.1. Lack of Regulation of the Activities of IMBs 77

4.1.2. Lack of a Harmonised Regime for Family Reunification 77

4.1.3. Lack of Harmonised Protective Measures 77

4.2. Social Consequences and Possible Forms of Violence Resulting

from Legal Gaps 78

4.2.1. Women 78

4.2.2. Bridegrooms 79

4.2.3. Children 80

4.3. Concluding Observations 81

5. PROTECTION OF MAIL-ORDER BRIDES, THEIR SPOUSES, AND
CHILDREN 82

5.1. Overall Outcomes of the Interviews 82

5.1.1. Experts 82

5.1.2. Representatives of the Marriage and Dating Industry 85

5.1.3. Ksenia Droben 86

5.1.4. Joseph O'Connor 87

5.1.5. Personal Experiences 88

5.1.6. Women 89

5.1.7. Men 90

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

5

5.2. Best Practices 90

5.3. Comparison with 2001 Council of Europe Report and the European
Commission Project HeiRat 93

5.4. Concluding Observations 95

6. POSSIBLE ROLE OF THE EU AND THE COUNCIL OF EUROPE IN
ADDRESSING THE PROTECTION OF MAIL-ORDER BRIDE SPOUSES
AND CHILDREN INVOLVED 96

6.1. Possible Role of the Council of Europe 96

6.2. Possible Role of the European Union 96

6.2.1. **Legal** Scope for Action 96

7. CONCLUSIONS, POLICY OPTIONS AND RECOMMENDATIONS 98

7.1. Definition of the Term 98

7.2. **Migration** and Family **Law** 99

7.3. Domestic Violence 100

7.4. Children 101

7.5. Regulation of IMB Services 102

7.6. Cooperation and Information Sharing 103

7.7. Ideas for Further Research 103

REFERENCES 105

LEGISLATION AND CASE **LAW** 112

TREATIES AND UN DOCUMENTS 116

ANNEX 1 118

ANNEX 2 121

ANNEX 3 124

Policy Department C: Citizens' Rights and Constitutional Affairs

6

LIST OF ABBREVIATIONS

CIS Commonwealth of Independent States

CEDAW Committee on the Elimination of
Discrimination Against Woman

CESCR Committee on Social and Cultural Rights

CFO Commission for Filipinos Overseas

CSO Civil Society Organizations

DEVAW Declaration of the Elimination of Violence

Against Woman

ECHR European Convention on Human Rights and

Fundamental Freedoms

ECtHR European Court of Human Rights

ENFiD European Network Of Filipino Diaspora

EU European Union

FWO Filipino Worker Overseas

GR General Recommendation

GREVIO Group of Experts on Action Against Violence

Against Woman and Domestic Violence

HRC Human Rights Committee

IAF International Accreditation Forum

IND Immigration and Naturalisation Department

ICCPR Covenant on Civil and Political Rights

ICESCR Covenant on Economic, Social and Cultural
Rights

IMB International Marriage Broker

IMBRA International Marriage Broker Regulation Act

INIS Irish Naturalisation and Immigration Services

LGBT Lesbian, gay, bisexual or transgender

MEP Member of the European Parliament

MOB Mail-Order Bride

MOS Mail-Order Sponsor

MoA Memorandum of Agreement

MoU Memorandum of Understanding

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

7

MS Member States

NGO

OFW

Non-governmental Organisation

Overseas Filipino Workers

TCN Third Country National

TFEU Treaty on the Functioning of the European

Union

TIP Trafficking in Persons

UDHR Universal Declaration of Human Rights

UK United Kingdom

UN United Nations

US United States

VAWA Violence Against Women Act of 1994

VIS Visa Information System

Policy Department C: Citizens' Rights and Constitutional Affairs

8

LIST OF TABLES

Table 1:

Legal and Sociological Sub-Questions 13

Table 2:

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

Table 3:

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

Table 4:

List of Interviewed Experts 82

Table 5:

List of Interviewed Representatives of the Marriage and Dating Industry 85

LIST OF FIGURES

Figure 1:

Outcomes Mapping : Women Origin Countries Search Terms 29

Figure 2:

Outcomes Mapping: Most Frequent Visitors of MOB Websites perEU Country 30

Figure 3:

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

Figure 4:

Print Screen 1 - Specific Requirements for Women on IMB website

filipinokisses.com 32

Figure 5:

Outcomes Mapping: IMBs Payment Methods 32

Figure 6:

Mapping Outcomes: IMBs Refunding Promise 33

Figure 7:

Mapping Outcomes: IMB Websites Mention Risks 34

Figure 8:

Print Screen 2 - Example of Scam Dating Websites, Swindlers and Scammers

(dating-world.net) 34

Figure **9**:

Mapping Outcomes: IMBs Mention to Comply with IMBRA 35

Figure 10:

Mapping Outcomes: IMBs Offer **Migration** Support 35

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

9

Figure 11:

Mapping Outcomes: Possibility of Gender Selection on IMB Websites 36

Figure 12:

Print Screen 3 - Example of the Distribution of a Picture of a Ukrainian Woman

Without Consent 38

Figure 13:

Trafficking Hotspots in Europe 40

Figure 14:

Graph Indicating the Contact Countries of the Mapped MOB Websites 41

Figure 15:

Print Screen 4 Ksenia Droben's Call for Support of the

Current Research Project 88

Policy Department C: Citizens' Rights and Constitutional Affairs

10

EXECUTIVE SUMMARY

Background

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

The intent is that she subsequently joins him in his country of residence (migration).

The international marriage agency profits from bringing potential partners in contact with each other and facilitating the marriage.

2. A combination of sociological and legal research methods were used, including desk research, expert interviews (with authorities, academics, representatives of dating and marriage industry and NGOs) and a mapping of International Marriage Broker (IMB) websites. This research aimed to also include first-hand experiences from MOBs

and MOSs. Due to time constraints, however, this was not possible and experiences were based on second-hand stories provided by the expert interviews.

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

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

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

6. Whether there is a link between the entrapments of women in sex industries via the MOB industry, and human trafficking, is still insufficiently supported by data. In case International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

11

MOBs would find themselves trapped in an abusive relationship they could be considered as victims of servitude of slavery-like practices.

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

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

High risks for MOBs:

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

High risks for MOSs:

Men in MOB relationships can become victims of internet fraud often due to scamming on IMB websites. Furthermore, men frequently underestimate the

expected financial support to their wife's family living abroad.

High risks for children growing up in MOB relationships:

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

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

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

11. Comparing the results of this research to earlier studies, risks and recommendations for the protection of MOBs largely remain the same. Considering technological

12

advancements and the rise of the internet, mobile phones and social media, it is ever more challenging to differentiate between MOBs and other female marriage migrants.

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

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

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

13

1. INTRODUCTION

1.1. Problem Statement, Research Questions, Objectives and

Definitions

The Mail-Order Bride (MOB) phenomenon is often associated with various potential problems for individuals subscribing to international marriage broker (IMB) websites and engaging in MOB relationships. The possible problems are multifaceted and often related to

human rights aspects. Despite the long history of the phenomenon, research on the status of the MOB industry in the European Union (EU) is limited, and its impact on the rights of women, men, and children involved is unclear.

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

Table 1: **Legal** and Sociological Sub-Questions

1: Which EU **legal** frameworks are currently available for the regulation of the Mail-Order Bride industry, in terms of protection of both the third country women and the EU bridegrooms? Area

2: How is the available EU **legal** framework currently implemented in relation to the Mail-Order Bride industry, including sexual and digital trafficking?

3: Which additional EU legislation should be developed in order to regulate the Mail-Order Bride industry, in terms of protection of both the third country women and the EU bridegrooms?

4: Are there national **laws** available which specifically focus on the regulation of the marriage agency industry? If so, are they effective?; and if not, would such legislation or regulation be needed?

5: Are third country women particularly vulnerable to domestic violence and

abuse due to their Mail-Order Bride relationship?

6: Do women from third countries encounter problems regarding matters related

to migration and family law (e.g. residence permit), in particular their legal rights and responsibilities in relation to their status as a Mail-Order Bride?

7: To what extent are both third country women and (male) EU citizens informed about the potential risks of a MOB relationship?

8: Do third country women have access to social benefits and support schemes, and can they return to their countries of origin in case of a relationship break-up?

9: Are there childcare and family support care issues that arise when a Mail-Order Bride relationship breaks up?

Policy Department C: Citizens' Rights and Constitutional Affairs

14

1.1.1. Objectives

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

Main Objectives

1. To seek cooperation between sending and receiving States in order to gain insight into the dissemination of information in the countries of origin and map out the scope and extent of the problems of MOBs.
2. To assess the impact of the MOB business on the human rights of the women involved.
3. To investigate how best to protect MOBs against domestic violence and sexual exploitation.

4. To explore the susceptibility to abuse of the male EU citizens who engage in ordering a bride from a third country and to assess the percentage of men who are victims of MOB practices.

5. To examine the situation after divorce and how women and children can access welfare and support schemes.

6. To investigate the possibility towards developing regulations and monitoring mechanisms to control the international marriage broker business.

7. To ascertain the best way to exchange information on sex offenders among European **law** enforcement authorities and agencies.

8. To examine the adequacy of using existing international and European rules and regulations to offer protection to MOBs in the receiving States.

9. To explore the possibilities towards developing specific European rules and regulations that would strengthen the position of MOBs, both legally and economically.

Specific Objectives

1. To provide a workable definition of MOBs in order to make it possible to investigate the scope and extent of the problem and gain a clear idea of how countries of origin and receiving States could cooperate and exchange information to curb the influx of MOBs who come into the EU under false perceptions and expectations.

2. To draw up guidelines on how to disseminate information on MOBs in countries of origin in order to inform potential MOBs of the dangers involved and the difficulties that may be encountered in order to guarantee that these women can make an informed choice.

3. To draw up guidelines on how to disseminate information on MOBs in receiving states so that potential male customers are made aware of the intricacies of the

MOB business and realize that the myths and stereotypes concerning women from third countries are not a reflection of reality.

4. To map out the possible consequences of the MOB business on the human rights of the MOBs with a focus on their rights to equality, non-discrimination, and physical integrity.

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

15

5. To analyse the legally and economically dependent position of MOBs due to immigration laws that deny these women independent residence permits and work permits.

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

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

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

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

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

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

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

1.1.2. Definitions

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

In contrast to traditional dating websites, MOB websites have the stated purpose of facilitating marriage between spouses from different countries. This first implies that the desired outcome of signing up on a MOB website is marriage, whereas the desired outcome of signing up on a traditional dating website is more ambiguous, including various forms of

Policy Department C: Citizens' Rights and Constitutional Affairs

16

relationships. Second, MOB websites include an element of migration: the MOB leaves her country of origin to join the Mail-Order Sponsor (MOS). In contrast, dating websites often aim at matching individuals living relatively close to each other. Finally, the context of MOB websites is a fundamentally different one: IMBs capitalise on the inability of their male clients to find suitable partners in their own society, whereas many of the women sign up wishing to escape poverty and the lack of prospects in their home countries.

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

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

1.2. Context and Background Mail-Order Brides

After having defined the purpose of this study, it is important to review the literature on the MOB phenomenon to arrive at a better understanding of its context and background. Today's MOBs are the consequence of a highly complex combination of demographic, political, cultural, technological, and economic shifts that have been taking place over the last decades.¹ Notwithstanding, the MOB phenomenon can be traced back to the early 1600s in the United States (US) after the establishment of the British and French colonies.²

Migration to the US was highly commended by both countries as it was deemed necessary for successful colonial development. This led to the establishment of the first International Marriage Brokers (IMBs) in the 1700s and 1800s, helping European women to cross the ocean to the US, Australia, and New Zealand.³ Rather than being questioned for potential risks, international marriages were viewed as the ideal solution to reduce the gap in the marriage market.⁴ In some cases, women were even regarded as saviours since their sacrifice would restore the balance in America.⁵

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

¹ Narayan, "Male Order' Brides: Immigrant Women, Domestic Violence and Immigration **Law**", *Hypatia*, 10(1), 1995, p. 104-119

² Zug, 'Lonely Colonist Seeks Wife: The Forgotten History of America's First Mail Order Brides', *Duke Journal of*

Gender **Law** & Policy, 20, 2012, p. 85-125

3 Lawton & Callister, 'Mail-order brides: are we seeing this phenomenon in New Zealand?', "Missing Men"

Background Paper', Institute of Policy Studies, 2011

4 Kelly, 'Marriage for Sale: The Mail-Order Bride Industry and the Changing Value of Marriage', The Journal of Gender, Race & Justice, 5, 2001, p. 175-195.

5 Kelly, 2001

6 Rushchenko, 'Docile Housewives or Empowered Entrepreneurs? Gender, Fraud, and Victimisation in the Context of Transnational Marriages in Germany', [Doctoral thesis], Utrecht, The Netherlands: Utrecht University and Hamburg, Germany: Universität Hamburg, 2016

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

17

abuse, and various forms of exploitation raises a need to examine the contemporary policies and regulations upheld by national and supranational authorities.⁷

Another phenomenon contributing to the increasing demand of MOB in Western countries is the liberation of women on the labour market, which was initiated during the upsurge of postmodern feminist movements.⁸ This emergence led to a new allocation of gender roles, enabling women to become less dependent on men. Such financial independence gradually

elicited a decreasing urge for women to marry purely for survival.⁹ It is therefore not surprising that some scholars argue that the current demand for MOB is based on the aversion of feminist women.¹⁰ Simultaneously, increasing divorce rates in the US and Western Europe — often paired with difficult experiences — have created great uncertainty for numerous men to date Western women, inducing these men to seek foreign spouses.¹¹

IMBs fulfil this increasing demand of Western men by portraying the image of beautiful, exotic, and submissive women, coming from less-wealthy regions in Southeast Asia,

Eastern Europe, Latin America, and Africa, who are willing to marry them at a given price.¹²

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

The issue of transnational marriages also reaches the political spectrum, posing new challenges to governments concerning the transparency of legislation and accountability of international perpetrators. For instance, some countries are more prone to criminal

⁷ Stoecker, “Human Trafficking: A New Challenge for Russia and the United States,” in Human Traffic and

Transnational Crime: Eurasian and American Perspectives, Susan Stoecker and Louise Shelley (eds.), Rowman and

Littlefield, 2005; Tetley, 2009

⁸ Kelly, 2001

⁹ Estin, ‘Maintenance, Alimony, and the Rehabilitation of Family Care’, NCL Review, 71, 1992, p. 721

¹⁰ Chun, ‘The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and

Stereotypes’, University of Pennsylvania Journal of International Economic Law, 17(4), 1996, p. 1155-1208;

Stepnitz, Male-Ordered: The mail order bride industry and trafficking in women for sexual and labour exploitation, The POPPY Project, London, 2009; Kusel, 'Gender Disparity, Domestic Abuse, and the Mail-Order Bride Industry',

Albany Government **Law** Review, 7, 2014, p. 166-186

11 Chun, 1996; Stepnitz, 2009; Kusel, 2014

12 Chun, 1996; Stepnitz, 2009; Jackson, 'To honor and obey: trafficking in 'mail-order brides'', George Washington

Law Review, 70(3), 2002, p. 475-569; Burner, 'The Marriage Market: The Mail-Order Bride Industry in the United States!', 2014, Retrieved on 7 January 2016, from

http://digitalcommons.chapman.edu/cgi/viewcontent.cgi?article=1037&context=cusrd_abstracts

13 Rushchenko, 2016; Constable, Romance on a global stage: Pen pals, virtual ethnography, and "mail order"

marriages, University of California Press, Oakland, 2003; Belleau, 'Mail-order brides in a global world', Albany **Law** Review, 67, 2003, p. 595

14 Constable, 2003; Belleau 2003; Rushchenko, 2016

15 Merriman, 'Holy Matrimony Plus Shipping and Handling: A Libertarian Perspective on the Mail-Order Bride Industry', The Independent Review, 17(1), 2012, p. 81-93; Sarker et al., 'The "Mail-Order-Bride" (MOB) Phenomenon in the Cyberworld: An Interpretive Investigation', ACM Transactions on Management Information Systems, 4(3), 2013

16 Rushchenko, 2016

Policy Department C: Citizens' Rights and Constitutional Affairs

18

activities, such as human trafficking, as their institutions allow for a higher degree of

corruption. This form of **legal** neglect could directly or indirectly facilitate the illicit traffic of

women through the mail-order industry. Such is the case in Russia, which has experienced a rising trend in organized crime and corruption since the fall of the Soviet Union.¹⁷

Although very little research has been conducted on the correlation between human trafficking and the MOB industry, some researchers have argued that the two are interlinked for two reasons: first, pressure tactics, such as bribery and extortion of government officials, lawyers, diplomats, and **law** enforcement, are often used by traffickers to transport women illegally for sexual exploitation.¹⁸ The most convenient manner to expedite this process is through the legitimate channels of the MOB industry. Second, a majority of the scholars agree that Russians for example are aware of the high degree of human trafficking for sexual exploitation in their country and that they perceive even the most general public services as corrupt.¹⁹ Such feelings of powerlessness could incentivize women to look for a better life across the borders of their homeland, as the lack of effective **law** enforcement continues to prevail.²⁰

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

One of the main reasons why men choose MOB is because of the women's traditional family values and often more submissive nature.²⁷ Studies revealed that many of these men have suffered traumatic experiences such as harsh divorces and breakups, increasing the likelihood of social alienation.²⁸ The idea of a submissive MOB from an exotic country is therefore often perceived as reassuring. An alternative reason why men desire an international marriage is to increase the likelihood of being able to found a family.

Generally, men looking for MOB seem to experience a quantitative and qualitative

17 Mazur, 'Human Trafficking in the Russian Federation', Tulane Journal of International Affairs, 1(2), 2012;
Aronowitz, Human trafficking, human misery: The global trade in human beings, Greenwood Publishing Group, Santa Barbara, 2009; Venard, 'Organizational Isomorphism and Corruption: An Empirical Research in Russia', Journal of Business Ethics, 89(1), 2009, p. 59-76

18 Venard, 2009

19 Stoecker, 2005; Tiurukanova, 'Human Trafficking in the Russian Federation: Inventory and Analysis of the Current Situation and Responses', UNICEF, 2006, Retrieved on 10 June 2016 from

[http://www.unicef.org/ceecis/Unicef_EnglishBook\(1\).pdf](http://www.unicef.org/ceecis/Unicef_EnglishBook(1).pdf)

20 Hughes, "Trafficking for sexual exploitation: The case of the Russian Federation", International Organization for

Migration, 2002

21 Belleau, 2003

22 Belleau, 2003

23 Hughes, "The Internet and sex industries: Partners in global sexual exploitation", Technology and Society Magazine, IEEE, 19(1), 2000, p. 35-42

24 Sarker et al., 2013

25 Sarker et al., 2013

26 Sarker et al., 2013

27 Villapando, "The business of selling mail-order brides" in Making Sense of Women's Lives: An Introduction to Women's Studies, Rowman and Littlefield Publishers: Oxford, 2000, p. 178-84

28 Jackson, 2002; Kelly, 2001; Jedlicka, Affinographs: A Dynamic Method for Assessment of Individuals, Couples, Families, and Households, Springer Science & Business Media, New York, 201

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

19

mismatch on the marriage market; there are not enough partners with the desired physical, emotional, and intellectual attributes.²⁹ IMBs and online dating sites adapt to such preferences for the "exotic" and subsequently play a discernible role in convincing men to select a particular broker agency.³⁰

Most common IMBs seem to supply mainly Philippine, Thai, Ukrainian, and Russian women as well as women from Latin America. Although very little literature has been written on

nationalities and migration trends of MOB to Europe, a majority of the popular websites clearly display women with the previously mentioned backgrounds. Based on stereotypes of cultural traditions as well as physical and behavioural characteristics, men are able to choose between a wide variety of broker agencies.³¹ For instance, Latin American women are perceived as sensual and outgoing, whereas Thai women are seen as slender, affectionate, and caring and Eastern-European women as strong, independent, as well as domestic.³²

Women who subscribe on IMB websites often have an idealised picture of the West and romanticised ideas about Western men based on Hollywood movies.³³ Due to economic circumstances in their home country, a substantial number of women are willing to marry abroad for a better future. Additionally, cultural pressures of marriage and gender

imbalances in the country of origin are further incentives to subscribe to IMB services.³⁴ For various reasons, many of these women seem to experience a lack of available and suitable men in their home country, amplifying their interest for a marriage outside their national borders. This is often the case in Latin America where the ideology of Machismo is still strongly embedded in the culture. The dominant behaviour of Latin men is widely interpreted as extremely prevalent, leaving women with a general feeling of powerlessness.³⁵ This goes especially for highly educated women, whose hope it is to find a man that — unlike the men in their country of origin — allows them to further develop and educate themselves.³⁶ Another reason women consider an international marriage is because family members in the country of origin are often economically reliant on them.³⁷ MOBs thus consider the option of a better future for their family and potential children as a valid solution to the lack of social, cultural, and economic welfare.³⁸ However, economic dependency increases socio-cultural pressures, often depriving women from their selfdetermination.

39

The combination of economic, legal, and cultural imbalances between future husbands and fiancées, along with stereotypical ideas and expectations on both sides, can create an unbalanced base for a marriage, often disadvantaging the women involved.⁴⁰ However, the libertarian approach to IMB practices does not consider women to be exploited but rather to benefit from the services they provide, under the assumption that women are aware of both the consequences and advantages of such services. They are arguably willing to marry Western men taking certain risks and envisioning their advantages in the long-term.

29 Zug, 2012

30 Narayan, 1995; Sterckx et al., *Huwelijksmigratie in Nederland: Achtergronden en leefsituatie van huwelijksmigranten*, Sociaal en Cultureel Planbureau, Den Haag, 2014

31 Villapando, 2000

32 Sterckx et al., 2014

33 Chun, 1996

34 Chun, 1996; Merriman, 2012

35 Rushchenko, 2016

36 Sterckx et al., 2014

37 Rushchenko, 2016; Kelly, 2001

38 Rushchenko, 2016; Kelly, 2001

39 Rushchenko, 2016

40 Brocato, 'Profitable Proposals: Explaining and Addressing the Mail-Order Bride Industry Through International

Human Rights Law', Georgetown University Law Center, 2003

Policy Department C: Citizens' Rights and Constitutional Affairs

20

According to this libertarian approach, these women are oppressed in their origin country and therefore move to a free country, where they can benefit from social security and economic prosperity giving their (future) children everything they never had.⁴¹

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

1.3. Methodological Framework of the Study

In order to answer the main research question and sub-questions, the methodological

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

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

Furthermore, relevant IMB websites are mapped to find out what services and information they provide and to whom. The mapping of IMB websites forms an important part of this report. Due to advances in modern technology including enhanced accessibility to new communication technologies, IMB websites are very accessible to the general public.

Furthermore, borders between IMB websites, premium internet dating, traditional online dating, and social media are blurred. The following approach has been applied to narrow the mapping of IMB websites. The search has been limited to the results of the first ten pages of Google search results for the terms “Russian brides,” “Ukrainian brides,” “Thai brides,” and “Philippine brides” and the respective German and Dutch translations (German: “Russische Bräute,” “Ukrainische Bräute,” “Thailändische Bräute,” and “Philippinische Bräute”; Dutch: “Russische bruiden,” “Oekraïense bruiden,” “Thaïse

41 Merriman, 2012

42 Burner, 2014; Stepnitz, 2009; Hughes, 2001, Role of Marriage Agencies in Trafficking in Women and Trafficking in Images of Sexual Exploitation. The Group of Specialists on the Impact of the Use of New Information Technologies on Trafficking in Human Beings for the Purpose of Sexual Exploitation; A Study of the Users (EG-SNT)

Committee for Equality between Women and Men (CDEG), Council of Europe report. Retrieved on 7 January

2016, from http://www.uri.edu/artsci/wms/hughes/study_of_users

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

21

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

As a second step, the most popular websites among visitors from EU Member States are identified with the website Alexa, which provides a tool to estimate traffic ranks based on the browsing behaviour of a sample of internet users “in Alexa’s global data panel over a rolling 3 month period,” which are updated on a daily basis. This is only possible if website metrics are certified. Otherwise, the ranks are estimated based on Alexa’s data panel including “traffic patterns across the web as a whole [...] using data normalization to correct for biases.”⁴³ It should be noted that the accuracy of the ranks decreases with lower traffic.

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

“Marriage **Migration** as Immigration Gate: The Situation of Female Marriage Migrants from Third Countries in the EU Member States” (acronym: HeiRat I) and the 2004 “Protection and Aid Measures for Female Marriage Migrants from Third Countries in the Member States of the European Union” project (acronym: HeiRat II).^{44 45}

Besides the detailed mapping of the MOB websites, several websites facilitating marriages for the LGBT community have been identified to find out if there is an industry for this. As

results were very few and LGBT marriages are much more complicated in legal terms, these websites have not been analysed in detail.

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

43 Alexa, 'How are Alexa's traffic ranks determined?' Retrieved on 2 June 2016 from

<https://support.alexa.com/hc/en-us/articles/200449744-How-are-Alexa-s-traffic-rankings-determined->

44 Hughes, 2001

45 European Commission, 'Project Reference Number: 2004-2-052-W HEIRAT III - Female Marriage Migrants – Awareness Raising and Violence Prevention.' Retrieved on 25 August 2016 from

[http://ec.europa.eu/justice/grants/results/daphne-toolkit/en/content/heirat-iii-female-marriage-migrantsawareness-](http://ec.europa.eu/justice/grants/results/daphne-toolkit/en/content/heirat-iii-female-marriage-migrantsawareness-raising-and-violence-prevention)

raising-and-violence-prevention

Policy Department C: Citizens' Rights and Constitutional Affairs

Moreover, this research aimed at interviewing individuals directly involved in the MOB industry like brides, bridegrooms and service providers who were interviewed to receive a

more thorough understanding of their experiences, as well as problems and challenges related to being involved in the industry. A call for women and men who have experience in searching a partner via IMB websites was spread by Ksenia Droben, a German-Russian marriage broker supporting this research, via her websites and in closed social media groups for clients.

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

This study contributes to studies on the MOB industry by a) updating existing knowledge and b) tailoring it to a European-specific context. The research activities analyse the overall European context, looking particularly into four case studies, namely the UK, Germany, the Netherlands and Ireland, where the legal and policy initiatives related to this topic will be mapped. The countries are chosen as they are among the most prominent European destinations for MOBs and based on their assumed high numbers of cases of human trafficking in relation to marriage,⁴⁶ previous research on MOBs migrating to Europe, specific interest of the EP Members in this topic, and feasibility (language, proximity, and available networks). We base our choice of EU countries on an assumption because there is no data on how many MOBs actually live in each of the EU countries. It is beyond the scope of this report to look at all 28 Member States of the Union.

1.4. Structure of the Study

In Chapter 2, the outcomes of the mapping of the IMB websites are discussed. The current legal frameworks on a UN, Council of Europe, EU, and country-case level are reviewed in

Chapter 3. Chapter 4 assesses the current problems MOB spouses encounter, gaps in the current **legal** frameworks, and the related social consequences for the spouses and children. The gaps and problems described in Chapter 4 will be used as input for Chapter 5 where the protection of MOB spouses and children is analysed and best practices are examined. Chapter 6 concludes the study by providing policy options and recommendations for the EU and other relevant authorities in addressing the protection of MOB spouses and children involved, with special attention to the role and potential input by the European Parliament in this context.

46 Jackson, "Marriages of Convenience: International Marriage Brokers, Mail-Order Brides, and Domestic Servitude", University of Toledo **Law** Review, 38, 2007, p. 895-922

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

23

2.MAPPING OF INTERNATIONAL MARRIAGE BROKERS'

WEBSITES

2.1. Origin Country Background Information

Before coming to the analysis of the IMB websites identified during the mapping process, it is important to provide some background information to better understand the development of the MOB industry. The following sections give a brief overview about demographic, economic, **legal**, and political aspects contributing to the development of the MOB industry in the CIS (Commonwealth of Independent States)⁴⁷ region and Southeast Asia. Since developments in the respective regions are similar, the sections focus on Russia as an example for the CIS region and the Philippines for Southeast Asia. Another reason why the sections focus on these countries in particular is that information on other

countries in the region (including Ukraine and Thailand) is scarce.

2.1.1. The Development of the MOB Industry in Russia

The exploitation of the Russian market by IMB agencies occurred comparatively late in 1992, but Russia then quickly developed to become one of the most predominant origin countries of MOBs globally.⁴⁸ This rise can be attributed to the breakdown of the economy in the former states of the Soviet Union and the coincidental rise of the Internet in the same decade.⁴⁹ Many Russian women faced challenging economic and social conditions as a consequence of the economic depression and perceived offers by IMBs as a unique opportunity to leave the country.⁵⁰ In 2001, a study of the US MOB market found that approximately 500 marriage agency websites were advertising 62,000 women from Russia.⁵¹ In the same year, a study of the Council of Europe found that a total of 120,000 women from the former Soviet Union were being advertised as MOBs.⁵²

Regarding the structure of the Russian IMB industry, multiple reports point towards a significant involvement of criminal organisations in the market, as well as the use of MOB schemes to cover human trafficking and prostitution operations.⁵³

Demography and background of MOBs in Russia

An analysis of the average profile of Russian MOBs demonstrates that potential MOBs mostly live in urban or tourist areas where they have been exposed to Western culture.⁵⁴

⁴⁷ Countries included in CIS are Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.

⁴⁸ Chun, 1996, p. 1173

⁴⁹ Morgan, "Here Comes the Mail-Order Bride: Three Methods of Regulation in the United States, the Philippines, and Russia," The George Washington International **Law** Review, 39, 2007, p. 437

⁵⁰ Clark, "Mail-order Brides: Exploited Dreams," US Senate Committee on Foreign Relations, 2004

⁵¹ Hughes, 2001

52 Council of Europe, Group of Specialists on the Impact of the Use of New Information Technologies on Trafficking

in Human Beings for the Purpose of Sexual Exploitation (EG-S-NT) Final Report, Council of Europe Action against Trafficking in Human Beings, 2003; Smith & Mattar, "Creating International Consensus on Combating Trafficking in Persons: U.S. Policy, the Role of the UN, and Global Responses and Challenges," The Fletcher Forum of World Affairs, 28 (1), 2004, p. 155

53 Jackson, 2002; Hughes, 2002, p. 25; Clark, 2004; Richard, "International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime," DCI Exceptional Intelligence Analyst

Program, 1999, p. 27, Retrieved on 10 June 2016 from <https://www.cia.gov/library/center-for-the-study-ofintelligence/>

csi-publications/books-and-monographs/trafficking.pdf; Miller, "Sex Gangs Sell Prostitutes over the Internet," The Guardian (UK), 16 July 2000, Retrieved from

<https://www.theguardian.com/technology/2000/jul/16/internetnews.theobserver1>; Caldwell, "Crime & Servitude:

An Expose of the Traffic in Women for Prostitution from the Newly Independent States", Global Survivor Network, 1997

Policy Department C: Citizens' Rights and Constitutional Affairs

24

Furthermore, IMBs appear to prefer Russian women that are Caucasian and, therefore, look more European.⁵⁵ Although of significant contextual relevance, it is generally observed that the individual economic situation does not provide sufficient motivation for women to marry a foreigner.⁵⁶ In this context, the common expectation in many Russian regions that women should marry at a young age has led older Russian women, for example university graduates aged 23 or older, to register with IMBs.⁵⁷ Another contributing factor to the

perceived attractiveness of IMBs for Russian women is the 3.3 million excess women aged 15-64 compared to the male demographic⁵⁸ and the disproportionately large number of divorced and widowed women.⁵⁹ When engaging in the search for a partner, Russian women as MOBs are observed to be selective and not “desperate,” while willing to make compromises in terms of their own selection criteria (usually this means accepting a large age difference).⁶⁰ Russian women often believe that Western men will be in principle less drunk and/or abusive, but more faithful and respectful compared to Russian men.⁶¹

Legislation and policies

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

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

Impact and enforcement

Russia's policy to choose a non-regulatory approach to the MOB industry may be the most promising solution in a comparative analysis with the policies of other countries.⁶⁶ Since

MOBs are not the result of a defect in laws, IMBs will persist to exist and circumvent

regulations as long as the social situations are not addressed. Consequently, Russia's

54 Clark, 2004; Sims, "A Comparison of Laws in the Philippines, the U.S.A., Taiwan, and Belarus to Regulate the

Mail-Order Bride Industry," Akron Law Review, 42(2), 2009, p. 606-638

55 Sims, 2009; Constable, 2003, p. 97, 224

56 Constable 2003, p. 84

57 Johnson, Dreaming of a Mail-Order Husband, Duke University Press, Durham, 2007, p. 8

58 The Russian Federation, Census, 2002; Lawton & Callister, 2011

59 Fodor, "Gender and the Experience of Poverty in Eastern Europe and Russia after 1989," Communist and Post-Communist Studies, 35(4), 2002, p. 380.

60 Johnson 2007, p. 17; Lawton & Callister 2011, p. 12

61 Mobydeen, "Something old, something new, something borrowed, something mail-ordered? The mail-order

industry and immigration law." Wayne Law Review, 4, 2004, p. 939

62 The Russian Federation, "Concept of the Foreign Policy of the Russian Federation," Approved by President of the

Russian Federation V. Putin on 12 February 2013, Retrieved on 10 June 2016 from

http://archive.mid.ru//brp_4.nsf/0/76389FEC168189ED44257B2E0039B16D

63 Morgan, 2007

64 US Department of State, Trafficking in Persons Report, 2003 , p. 128

65 Markee, "A Call for Cultural Understanding in the Creation, Interpretation and Application of Law. Is the United

States Meeting the Needs of Russian Immigrant 'Mail-Order Brides?'" California Western International Law Journal,

31(2), 2001, p. 277-296

66 Morgan, 2007

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

25

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

Comparison with regional countries

The neighbouring countries and former MS of the Soviet Union are equally associated with the MOB phenomenon.⁶⁸ The development of the MOB industry to a large extent shares the same characteristic with Russia.⁶⁹ Hughes found in 2004 that Ukraine (32,000 MOBs offered online) and Belarus (13,000 MOBs offered online) comprised the prevalent countries of origin in addition to Russia.⁷⁰ A significant amount of MOBs from Kazakhstan (3,037), Kyrgyzstan (4,190), Latvia (1,760), and Uzbekistan (1,139) were also offered online.⁷¹

Similar to Russia, the study observed that recruitment by IMBs was not conducted uniformly across the mentioned countries but focused on urban and tourist area, where women have had more interaction with the Western culture.⁷² In recent media reports, the war in Ukraine was reported as having newly increased the amount of MOBs leaving the country.⁷³ Most countries have followed Russia's choice to not regulate IMBs in their country by means of legislation.⁷⁴ Latvia, Estonia, and Lithuania are currently engaged in a research, training, and prevention project, funded by the EU, for the prevention of human trafficking and sham marriages.⁷⁵ Belarus, however, chose to regulate the industry to some extent by primary and secondary legislation adopted in 2005, which requires all agencies that send Belarus citizens abroad for commercial purposes to be licensed by the Ministry of

Internal Affairs.⁷⁶ Although initially ignored by the domestic IMBs, the Belarus law enforcement agencies increasingly investigated and subsequently prosecuted commercial agencies for human trafficking.⁷⁷

2.1.2. The Development of the MOB Industry in the Philippines

The rise of MOBs leaving the Philippines began in the 1970s with increased marriage

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

⁶⁷ cf. Miller, 2000; Caldwell, 1997; Jackson, 2002; Richard, 1999, p. 27; Hughes, 2002, p. 25; Clark, 2004

⁶⁸ Morgan, 2007; Chun, 1996

⁶⁹ Hughes, "The Role of 'Marriage Agencies' in the Sexual Exploitation and Trafficking of Women from the Former Soviet Union," International Review of Victimology, 11, 2004 p. 49-71

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ The Guardian, 2014; Ukraine Today, 2015

⁷⁴ Hughes, 2004

⁷⁵ European Commission, 2015

⁷⁶ Sims, 2009, p. 628

⁷⁷ Ibid., p. 629

⁷⁸ Jackson, 2002

79 Kelly & Lusi, "A Call for Cultural Understanding in the Creation, Interpretation and Application of Law. Is the United States Meeting the Needs of Russian Immigrant 'Mail-Order Brides?'" , California Western International Law Journal, 31(2), 2006, p. 277-296

80 cf. Sims, 2009; Morgan, 2007

81 Sims, 2009; Constable, 2003, p. 96; Perez, "Woman Warrior Meets Mail-Order Bride: Finding An Asian American

Voice in the Women's Movement," Berkeley Women's Law Journal, 18, 2003, p. 215

Policy Department C: Citizens' Rights and Constitutional Affairs

26

estimate the Philippines to be the largest exporter of MOBs worldwide.⁸² In 2002, the Philippines was amongst the countries with the highest number of marriage immigrants to the United States.⁸³ The Commission for Filipinos Overseas (CFO) lists 436,854 Filipinas to have left the country as marriage migrants between 1989 and 2014. Since 2011, the annual amount of registered female marriage migrants has been stable between 20,000 and 22,000.⁸⁴ These statistics are, however, not indicative for the number of MOBs since other types of marriages are also included. One CFO statistic suggests the annual percentage of foreign marriages in the Philippines that are connected with marriage bureaus to be 0.32 per cent of the total amount of marriages with foreigners.⁸⁵ Since marriage bureaus are outlawed in the Philippines, it is questionable whether this statistic can be seen to be representative at all.

Demography and background of MOBs in the Philippines

It is observed that the Filipinas who choose to emigrate to developed nations in general and in particular advertise themselves to foreign spouses are usually motivated by economic incentives and the promise of a better life abroad.⁸⁶ However, poverty and

financial insecurity do not exclusively explain the popularity of the MOB phenomenon in the Philippines.⁸⁷ The expectations that daughters will financially support their families in spite of a preferential treatment of males in terms of inheritance⁸⁸ together with the social pressure to marry⁸⁹ are observed as contributing factors in their decision to marry a foreigner. Furthermore, the success of the MOB industry in the Philippines also links to the country's military occupation by the US from 1898 to 1946, resulting in widespread, temporary or permanent, partnerships between US military personnel and Filipinas.⁹⁰ Foreign military bases and flourishing sex tourism continued to contribute to a national acceptance and positive perception of marriage to foreigners also after the gaining of independence.⁹¹ The 2014 migration statistics of Filipinas leaving the country to marry foreign men (n.b. these numbers are not limited to MOBs specifically) show that 55 per cent are between 20 and 29 years old.⁹² Thirty-one per cent are college graduates, 19 per cent have had vocational training, and another 19 per cent have a high school degree.⁹³

Legislation and policies in the Philippines

The governmental promotion of overseas migration for the purpose of mitigating the effects of unemployment and generating foreign exchange began in 1974 with the adoption of the Philippine Labour Code and the introduction of the Overseas Employment Program.⁹⁴ The

⁸² Lind & Brzuzy, *Battleground: Women, Gender, and Sexuality*, ABC-CLIO, Santa Barbara, 2008, p. 309; So, "Asian Mail-Order Brides, the Threat of Global Capitalism and the Rescue of the U.S. Nation State," *Feminist Studies*, Summer 2006; Carungcog 1998

⁸³ Miller, *Human Trafficking: Mail Order Bride Abuses* Hearing Before the Subcommittee on East Asian and Pacific Affairs and the Senate Committee on Foreign Relations, 2004

⁸⁴ Commission for Filipinos Overseas, 2016

⁸⁵ Ibid.

86 Mobydeen, 2004; Miller, 2004

87 Lee, "Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions."

Asian Law Journal, 5, 1998

88 Ibid.

89 Lawton & Callister, 2011; Constable, 2003

90 Poulin, "Globalization and the Sex Trade: Trafficking and the Commodification of Women and Children,"

Canadian Woman Studies, 22(3&4), 2003, p. 38-47

91 Lee, 1998

92 Commission for Filipinos Overseas, 2016

93 Ibid.

94 Guevarra, "Managing 'Vulnerabilities' and 'Empowering' Migrant Filipina Workers: The Philippines Overseas

Employment Program." Social Identities: Journal for the Study of Race, Nation and Culture, 12 (5), 2006, p. 523-

541

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

27

MOB phenomenon, however, was rejected and labelled by President Corazon Aquino as

"pernicious trade" and perceived as an "insult to national pride." 95 The concerns of sexual

and economical exploitation, also linked by scholars to a patriarchal culture in the

Philippines which viewed the marriage of Filipinas with foreign spouses critically, 96 lead to

the ban of the MOB industry in 1990. 97 Republic Act Number 6955 outlawed the

solicitation, advertisement, and operation of marriage-matching Filipinas with foreign

nationals for profit. The legal sanctions for violating the ban include six to eight years of

imprisonment, a fine between eight to twenty thousand pesos, and deportation and ban

from the country for any foreigner violating the law.⁹⁸ The enactment of the Anti-Trafficking Act in 2003⁹⁹ further supplemented the 1990 ban by including the operation of MOB businesses as a human trafficking offence.¹⁰⁰ Neither piece of legislation criminalizes the act of the woman who offers herself as a MOB,¹⁰¹ nor do they pay consideration to the consent of the latter when prosecuting IMBs.¹⁰² In today's practice, Filipinas who wish to migrate for the purposes of marrying a foreign spouse are obliged to attend a country-specific guidance and counselling session concerning intermarriage and migration issues. Like Overseas Filipino Workers (OFW), they can only leave the country upon presentation of a certificate of attendance and a corresponding CFO sticker in their passport.¹⁰³

Impact and enforcement

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

96 Zug, 2012, p. 174

97 Sims, 2009

98 § 2-5 Republic Act No. 6955

99 Republic Act No. 9208

100 § 4 Republic Act No. 9208; Kim, "Trafficked: Domestic Violence, Exploitation in Marriage, and the Foreign-Bride

Industry," The Virginia Journal of International Law Association, 51(2), 2010

101 Litong, "Anti-Mail Order Bride Legislation and Feminist Legal Theory: An Inquiry Towards A Rescript Of The

Diasporic Filipino Bride Phenomenon In The Philippines," Philippine Law Journal, 86, 2011, p. 146-174

102 § 17 Republic Act No. 9208

103 Commission of Filipinos Overseas, 2013

104 Morgan, 2007, p. 440; US Department of State, Trafficking in Persons Report, 2007, p. 168-170; Lloyd,

"Wives for Sale: The Modern International Mail-Order Bride Industry." Northwestern Journal of International Law &
Business, 20(2), 2000, p. 359

105 Zug, 2012; Lloyd, 2000; Calvo, "A Decade of Spouse-Based Immigration Laws: Coverture's Diminishment, but
not its Demise." North Illinois University Law Review, 24, 2004, p. 197

106 Perez, 2003

107 Paredes-Maceda, "Filipino Women and Intermarriages," Asian Migrant, 8(4), 1995, p. 110

108 Ibid.

109 Jackson, 2002; Sims, 2009; Chaffin, "Regulation or Proscription?: Comparing American and Philippine
Proposals to Solve Problems Related to the International Marriage Broker Industry," Pennsylvania State

International Law Review, 23, 2005

Policy Department C: Citizens' Rights and Constitutional Affairs

28

Comparison with regional countries

In the east of Asia, migration flows of MOBs have been found to exist in Cambodia, China, Japan, Korea, Laos, Malaysia, Singapore, Taiwan, Thailand, and Vietnam.¹¹⁰ In none of these countries have the numbers of MOBs reached the scale of the Philippines. Japan, Korea, Singapore, China, and Malaysia are predominantly receiving countries or countries with domestically operating MOB businesses, where women from poorer regions within the country are linked to men located in other provinces.¹¹¹ China regulated the trade of Chinese MOBs by virtue of Article 3 of the Chinese Marriage Law, prohibiting any marriage arranged by a third party. Cambodia instituted several bans over the past decades, sometimes focusing specifically on marriages with older foreign men or Korean men.¹¹² Most recently, the government adopted a ban on all foreign marriages in 2008.¹¹³ Similarly, Vietnam issued a decree invalidating marriages mediated by commercial matchmaking agencies in 2003.¹¹⁴ Finally, a very interesting approach is observed in the bilateral cooperation between South Korea, a main recipient country of MOBs, and the Philippines. The countries have signed a separate memorandum of understanding (MoU). The MoU covers the better information provision for newly arriving migrants, including possible MOBs, and different programs for policy dialogue as well as welfare and protection projects to be key aspects of the bilateral partnership.¹¹⁵

2.1.3. Concluding Remarks

In summary, the Russian MOB industry emerged relatively late compared to the Filipino industry which has its origins in the 1970s. In both countries, the MOB industry is associated problematic outcomes, however, concrete data on the MOBs with Russian or

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

2.2. Current Situation

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

This chapter provides an overview of the most important results of the mapping.

110 Mobydeen, 2004; Morgan, 2007; Kim, 2010

111 Kuah, Chinese Women and the Cyberspace, Amsterdam University Press, Amsterdam, 2008, p. 241

112 Zug, 2012, p. 174

113 Ibid, p. 174-175

114 Wang, Hidden Spaces of Resistance of the Subordinated: Case Studies from Vietnamese Female Migrant

Partners in Taiwan. International **Migration** Review, 41(3), 2007, p. 706-727

115 MOGED & Commission for Filipinos Overseas, 2012

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

29

2.2.1. General Overview Websites

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

Figure 1: Outcomes Mapping : Women Origin Countries Search Terms

Source: Panteia

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

Policy Department C: Citizens' Rights and Constitutional Affairs

30

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

EU Country

Source: Panteia

To check where IMBs are established, the contact details of the websites were mapped.

More than half of the cases in which the contact details were provided on the website have their headquarters within the EU, such as the UK and Germany (53.45%; see figure 3).

Almost one third of the websites are located outside the EU mostly in countries such as Australia, the Seychelles, and Russia (31.03%). For 15.52 per cent of the websites, no information on a location was found on the websites. These sites mostly worked with an online chat service or a direct e-mail correspondence system. During the mapping, it was observed that three businesses located in London, UK (27.59%), Gold Coast, Australia (6.90%), and Berlin, Germany (5.17%) operated multiple IMB websites.

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

Source: Panteia

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

31

2.2.2. Credit System versus Membership Upgrades

For men, the threshold to enter IMB websites is mostly very low. Most of the websites considered (77.59%) offer free registration whereby the men only need to provide basic information such as their name, e-mail address, age, country, and city of residence. It is important to mention that for women this registration process can be just as easy, but it can often include more questions and the obligation to provide a valid phone number. In some cases (see Print Screen 1), the website obliges only the women to provide a scan of their passport or identification card, a webcam picture, and a picture of the woman holding her handwritten e-mail address, while none of these requirements were asked of the men.

The remaining 22.41 per cent of the mapped IMB websites require a fee to sign up, ranging from €29 to €850, or mention that costs are defined on a case-by-case basis. The majority of the websites use the free sign up as a trigger to receive more money from subscribers who receive numerous messages and so-called “smiles” or “kisses” from available ladies in a short period of time. Responding to the ladies requires either a higher membership level (40%; ranging from \$9.99 - \$39.99/month for a basic upgrade) or the purchase of credits (39.66%). The purchase of credits as such is mostly transparent. However, the use of credits and costs for services are often complicated which is why these systems are perceived as not transparent.

Policy Department C: Citizens' Rights and Constitutional Affairs

32

Figure 4: Print Screen 1 - Specific Requirements for Women on

IMB website filipinokisses.com

Source: Filipino Kisses

Figure 5: Outcomes Mapping: IMBs Payment Methods

Source: Panteia

2.2.3. Services and Information Provided

The main service provided on the mapped IMB websites is correspondence between the men and the women on the websites via e-mail, chat, telephone, or Skype calls (often with an interpreter). However, some websites offer the possibility to purchase flowers or gifts for the women, including pictures of the delivery of the gift at the ladies' place. Less frequent

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

33

but also offered are background checks, dates, holidays and immigration advice. From the services provided, 51.72 per cent of the websites claim to refund the money in case the client is not satisfied. This refund policy often entails many limitations though and is not very transparent.

Figure 6: Mapping Outcomes: IMBs Refunding Promise

Source: Panteia

Most IMB websites provide information on the risks that are involved in using IMB websites or online dating. These risks mainly focus on online risks, such as scamming,¹¹⁶ and not on the actual relationship difficulties. When the websites provide information about possible risks involved in online dating, this prevention information is mostly tailored only to men (51.72%) considering scamming risks. One should note, however, that in some cases, information on risks for women is provided on separate websites in the women's native language. Some websites also offer a "trust rate" for the available women, which is a special calculation of the woman's trustworthiness from the IMB based on several characteristics of the woman. However, these characteristics are not known due to privacy reasons. One noteworthy example of protecting men and women from scammers comes from Dating World (see Print Screen 2). On this website, several websites as well as men and women are described in detail to inform their visitors of these risks.

¹¹⁶ The term scamming is used frequently in the context Internet fraud and can be defined as the non-delivery of merchandise (Federal Bureau of Investigation, n.d.). In the context of MOB websites, scamming often refers to men sending money to women to finance their trip to the men's home countries, but the women never arrive.

Policy Department C: Citizens' Rights and Constitutional Affairs

 34

Figure 7: Mapping Outcomes: IMB Websites Mention Risks

Source: Panteia

Figure 8: Print Screen 2 - Example of Scam Dating Websites, Swindlers and

Scammers (dating-world.net)

Source: dating-world.net

Furthermore, as another means of protection, the IMBRA was implemented in 2005 to prevent risks related to marriages arranged by IMBs. From the mapped websites, 43.10 percent claim to comply with this regulation. In many cases, the compliance with the IMBRA law is explained in detail on the website. It is important to stress that this study focusses on IMB websites most frequently visited by European customers, which might have influenced this outcome. Furthermore, another interesting observation is that IMBs often provide legal information on their news or FAQ pages. The latest news update in this regard, which appeared on numerous websites, is that the EU has offered visa liberalization for Ukraine since April 26, 2016. Only 24.14% of the IMB websites were observed to actively offer migration support to enable the migration process of the MOB to the country International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

35

of her future husband. The most observed offered migration support on the IMB websites was legal assistance with support of a lawyer with expertise in family reunification.

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

Source: Panteia

Figure 10: Mapping Outcomes: IMBs Offer Migration Support

Source: Panteia

Policy Department C: Citizens' Rights and Constitutional Affairs

36

2.2.4. LGBT

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

Figure 11: Mapping Outcomes: Possibility of Gender Selection on IMB Websites

Source: Panteia

2.3. Rights and Obligations of International Marriage Brokers

IMBs who have settled in the EU have rights and obligations as set out in the legislation of the relevant EU MS on whose territory they have registered, including relevant EU law. For such agencies, it might be possible to devise legislation to regulate their behaviour for the protection of the MOBs and MOSs similar to the 2005 IMBRA adopted by the US. It is far more difficult to impose obligations on IMBs that have been established outside of the EU. Private businesses which have settled outside of the EU are legal subjects in the state in which they have registered, but they are not considered subjects of international law.¹¹⁷ This means that, under international law, such a company will not have rights or obligations, which makes it difficult to protect women from possible harmful practices of

such agencies that operate in EU territory by way of Internet sites. There is some scope, however, for the extraterritorial application of legislation leveraging the fact that IMB activities are contingent on successful migration of the MOB to the country of residence of the MOS.

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

117 Shaw, M. International Law, 7th ed. Cambridge University Press, Cambridge, 2014
International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

37

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

This also begs the question whether European MS have the obligation to monitor the ways in which IMBs conduct their businesses or whether IMBs can be obliged to monitor the result of the relationships that have been made possible because of their intermediary actions. It may be expected from bona fide IMBs that they have a follow-up procedure and can produce data regarding the success rate of relationships that became possible because of their mediation. Other questions to consider include: Do IMBs offer any support to female clients who are victims of abuse and therefore want to terminate their marriage?

What do they do about male clients who have abused their partners? Are these men banned from future services and are they put on a blacklist that is also available to other IMBs?

2.4. Analysis of Hotspots of Trafficking through International Marriage Brokers

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

Women might be "sold as commodities in transactions that are legitimized through the recognition of the legal binding of marriage [...]. However, the [MOB] industry [can be seen as] a unique form of exploitation because it attempts to legitimize human trafficking through the respectable guise of marriage".¹²¹ In a worst case scenario, trafficking can also be a consequence of trying to engage in a MOB relationship. Women might arrive to Europe under false pretences and might be deceived when the MOSs present themselves inaccurately, lying about their housing or financial situation.¹²² There are even cases in which men are guaranteed a trial period by the IMB, in which the man is able to return or switch out the MOB for any reason (German: Umtauschrecht). The woman, on the other hand, is obligated to accept the man.¹²³ If the potential couples never get married, women

might become stuck in Europe with huge debts for signing up to the IMB, making them even more vulnerable.¹²⁴ Since the MOB industry is hardly regulated, IMBs are arguably able to provide a good cover for trafficking operations.¹²⁵

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

¹¹⁸ Sims, 2009; Burner, 2014

¹¹⁹ Stepnitz, 2009

¹²⁰ Jackson, 2007;

¹²¹ Sico, "In the Name of 'Love': Mail Order Brides-The Dangerous Legitimization of Sex, Human and Labor

Trafficking," Public Interest Law Reporter, 18(3), 2013, p. 199-206

¹²² Interview with Rohlee de Guzman, 2016

¹²³ Interviews with Babette Rohner, Asunción Fresnoza-Flot, Lea Ackermann, 2016; Heine-Wiedenmann &

Ackermann, Umfeld und Ausmass des Menschenhandels mit Ausländischen Mädchen und Frauen. Schriftreihe des

Bundesministers für Frauen und Jugend, Verlag W. Kohlhammer: Stuttgart, Berlin, Köln, 1992, p. 112

¹²⁴ Interviews with Lea Ackermann, Aleksandra Jolkina, Melita Maria-Thomeczek, 2016

¹²⁵ Interview with Kenneth Franzblau, 2016

Policy Department C: Citizens' Rights and Constitutional Affairs

38

barrier, and low earning power that results from difficulty in finding a job.¹²⁶ Still, it is critical to note that not all MOBs are necessarily victims of trafficking. In a recent interview conducted for the present project, Rohlee de Guzman (2016) suggests that the MOB industry is a grey area and may be characterized as a lessened form of trafficking. Yuliya

Zabyelina (2016) similarly argues that the line between human trafficking and the MOB industry is blurred, but that one should not conflate the two.

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

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

Source: russischevrouwen.blogspot.nl

According to the European Commission's 2016 Report on the Progress Made in the Fight Against Trafficking in Human Beings, there were 30,146 registered trafficking victims between 2010 and 2012 and 15,846 registered trafficking victims between 2013 and 2014.

Of these, the majority were women registered in the sex industry and victims of other types of exploitation, such as forced marriages and domestic servitude.¹²⁹ Due to their status, MOBs might be vulnerable to domestic trafficking, forced marriages, and sexual

¹²⁶ Jackson, 2007

¹²⁷ Stepnitz, 2009; Hughes, 2001

¹²⁸ Ibid.

¹²⁹ European Commission, Report from the Commission to the European Parliament and the Council: Report on the

progress made in the fight against trafficking in human beings, COM(2016) 267 final, 2016

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

39

exploitation specifically. For this reason, the connection between trafficking and MOB agencies is explored here. Cases of marriages that covered human trafficking have been specifically identified in Germany and Norway, among other countries.¹³⁰

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

Source: Eurostat, 2015

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

¹³⁰ Jackson, 2007

¹³¹ Most frequently victims of trafficking come from Nigeria, Brazil and China. The numbers of victims from those countries exceed the numbers of Russian, Ukrainian, Filipino and Thai victims by far (Eurostat, 2015).

40

Figure 13: Trafficking Hotspots in Europe

Source: Generated via ArcGIS

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

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

Tier Placements

Origin

Country

2012 Tier 2016

Tier

Destination

Country

2012

Tier

2016

Tier

Russia 2 Watch

List

3 Spain 1 1

Ukraine 2 2 Watch

List

Poland 1 1

Philippines 2 1

UK 1 1

Thailand 2 Watch

List

2 Watch

List

Source: US TIP Report (2012; 2016)

The 2012 tier placement for each country corresponds to the time period of the data provided in Table 2, but especially for origin countries, the tier placements changed between 2012 and 2016. This suggests that it is possible that the data in Table 2 will have fluctuated between 2012 and 2016. The 2016 US TIP Report provides a brief overview on the placement of each country: While the government of the Philippines currently meets the standards for the elimination of trafficking, it is still a major source country for International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

41

trafficking victims. On the other hand, Thailand, Ukraine, and Russia are considered source, destination, and transit countries of trafficking victims. As of 2016, Thailand and Ukraine are not fully compliant with the standards to eliminate trafficking despite efforts to do so and Russia is not at all compliant with minimum standards. Based on the same report, Spain, Poland, and the UK are all compliant with the minimum standards required for the elimination of trafficking and are each categorized as being source, transit, and destination countries for women subjected to labour and sex trafficking.¹³²

As literature is missing on the connection between different forms of human trafficking and

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

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

Source: Panteia

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

132 US Department of State, Trafficking in Persons Report, 2016

Policy Department C: Citizens' Rights and Constitutional Affairs

42

agencies, does not appear to be a trafficking hotspot for victims from Ukraine, Russia, Thailand, or the Philippines. At the same time, when considering other origin countries outside of these four, Germany still has a relatively high amount of trafficking victims.¹³³ However, despite the possible connections that are seen here, it is important to recognize the limitations of this comparison before making any assumptions and coming to concrete conclusions regarding the relationships between trafficking and MOB marriages. The mapping considers the top 58 MOB websites, yet it does not include websites that are present on the dark web. It also only identified IMBs using English, Dutch, and German language as these were the case studies. The number of IMBs found and the overlaps seen with the trafficking hotspots would likely be different had IMBs in Polish or Spanish language also been considered. Further, it is not known whether the number of trafficking victims reported in the 2015 Eurostat report also include MOBs and the ways in which they got trafficked, for example, domestic trafficking, forced marriage, and sexual exploitation. It is also difficult to determine the exact routes that these victims took before and after being registered as trafficking victims within the Schengen zone. The registration numbers of trafficking victims in each country is also likely highly dependent on the legislation and regulations in place in these countries as well as how effectively they are followed, something which might skew the country's position as a "trafficking hotspot."

2.5. Concluding Observations

In conclusion, the limited mapping of 58 websites is assumed to provide a respectable overview of MOB websites visited most frequently by European MOSs, but it does not provide a complete picture. A majority of websites have their headquarters in the EU and advertise women of various origins. In most cases, registration for men is relatively easy compared to the registration of women, representing a significant asymmetry. The easy

and oftentimes free registration for male customers serves as a trigger to pay higher costs for services provided by the agency such as correspondence and sending gifts. Some agencies also offer organising dates and romance tours as well as support regarding the

migration process of the MOB. Further, a majority of websites apply a refund policy if the MOS is not satisfied with the services. Both costs for services and conditions for refunding are in many cases non-transparent. Information on possible risks of signing up for IMB services mostly includes scamming and targets the male customer. In addition, it is noteworthy that services are almost exclusively offered to heterosexual couples. Rights and obligations of IMBs depend on the country in which the agency's headquarters are registered and raise many questions. Furthermore, one can establish a link between the MOB industry and human trafficking but should not conflate the two. This study shows that there is a particular overlap between the number of MOB agencies registered and the official numbers of Thai female victims of human trafficking in the UK.

133 Eurostat, Trafficking in humans beings Report, 2015

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

43

3. CURRENT **LEGAL** SITUATION

3.1. International and Council of Europe Frameworks

The MS of the EU have already taken several obligations upon themselves to protect women against gender-based violence, such as domestic violence and trafficking for the purpose of sexual exploitation, by becoming parties to international (human rights) treaties and treaties under the Council of Europe. These have to be taken into account when considering any new EU legislation or policy regulations to protect MOBs. In this section,

only treaties that have been ratified by MS of the EU will be discussed. If one or more of the MS is not party to a specific treaty, this will be explicitly mentioned.

3.1.1. UN Framework

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

International Human Rights treaties

General instruments include the International Bill of Human Rights. The Bill consists of the Universal Declaration of Human Rights (UDHR),¹³⁴ the Covenant on Economic, Social and Cultural Rights (ICESCR),¹³⁵ and the Covenant on Civil and Political Rights (ICCPR).¹³⁶

Although the UDHR has no binding force, it serves as an important guideline that lays the foundation for the international human rights treaties. The UDHR is based on the ideas that men and women are equal and that discrimination based on sex is not allowed.¹³⁷ However, protection against gender-based violence was not an issue that was considered at the time that the Declaration was adopted.

In a similar vein, that the two main Human Rights Covenants offer protection in a very general sense because of the contents of Common Article 3 stipulating that men and women are equally entitled to the enjoyment of the rights contained in the respective treaties,¹³⁸ but they lack a specific provision entitling women to protection in case of gender-based violence.

Protection against abuse, especially domestic violence

The Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) goes a step further, however.¹³⁹ It explicitly protects women against trafficking and forced prostitution in article 6,¹⁴⁰ and through the interpretative work of its monitoring body the Committee on the Elimination of Discrimination Against Women (CEDAW), the

134 UN General Assembly resolution 217 A (III) 67/97, The Universal Declaration of Human Rights, A/RES/3/217 A,

10 December 1948

135 International Covenant on Economic, Social and Cultural Rights, 16th December 1966, entered into force 3 January 1976.

136 International Covenant on Civil and Political Rights, 16th December 1966, entered into force 23rd March 1976.

137 Universal Declaration of Human Rights, article 2.

138 Article 3 ICCPR and ICESCR reads: The States Parties to the present Covenant undertake to ensure the equal

right of men and women to the enjoyment of 1) all civil and political rights 2) all economic, social and cultural rights set forth in the present Covenant.

139 Convention on the Elimination of All Forms of Discrimination Against Women, GA Resolution 34/180, 18th December 1979, entered into force 3rd September 1981.

140 Article 6 reads: 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'.

Policy Department C: Citizens' Rights and Constitutional Affairs

44

Convention has also gained relevance in other cases of violence against women.¹⁴¹ In the course of its existence, CEDAW gradually became more and more engaged with issues of violence against women. The first step that was taken to explain to the States Parties their obligation to offer more protection to victims was the adoption of General Recommendation (GR) No. 12.¹⁴² This rather short and vague GR was succeeded by the seminal GR No. 19 on Violence Against Women.¹⁴³ This recommendation links the issue of gender-based violence to the rights of equality and non-discrimination by claiming that violence against women is a serious form of discrimination against women as defined in article 1 of the

Convention.¹⁴⁴ Although strictly speaking GR No. 19 is not legally binding, it has a huge impact on States parties, and thus on the EU MS, because it obliges them to report on the issue of violence against women under article 1 of the Convention.¹⁴⁵ This entails that, on a regular basis, the national legislation and policies have to be assessed and possibly adapted in order to guarantee compliance with the obligations under the Women's Convention. If MOBs run a higher risk of abuse — for instance in respect of domestic violence or sexual exploitation — this would entail the States' obligation to take adequate measures to protect the victims in addition to the protection that is already available for victims of these crimes.¹⁴⁶ States parties that fail to provide adequate protection may be held coresponsible for the crimes next to the actual perpetrator.¹⁴⁷

Obligations concerning eliminating stereotypes

States parties are recommended to give specific training to teachers, the judiciary, the police, and local authorities including traditional or religious community leaders.¹⁴⁸ States may also be advised to conduct such programmes in collaboration with Civil Society Organizations (CSOs).¹⁴⁹ Sometimes, the state party is urged to revise the contents of textbooks for school children with the purpose of eradicating traditional role patterns and stereotypical images.¹⁵⁰ Much emphasis is put on the role of the media. States parties are

¹⁴¹ CEDAW is a body of independent experts monitoring compliance with the obligations ensuing from the Women's

Convention. See article 17 Women's Convention.

¹⁴² CEDAW is authorized to adopt General Recommendations under article 21 of the Women's Convention. These

Recommendations are authoritative interpretations of the Convention that have to be taken into account by the States parties in their periodical reports which they are required to submit under article 18 of the Convention.

CEDAW GR No. 12. Violence Against Women (8th session, 1989) merely requests States to report on gender-based

violence and the measures they have taken.

143 CEDAW GR No. 19 Violence Against Women (11th session, 1992). Of particular importance in this context is para. 11 addressing the obligations under articles 2(f), 5 and 10(c) and which reads in part: 'Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women.

144 CEDAW GR No. 19, para. 7.

145 Idem, para. 24(t) (v).

146 The protection that has to be offered consists among other measures of Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials

147 This has become clear of CEDAW's jurisprudence. For instance, communications 4 and 5 against Austria where

the failure of respectively the police and the public prosecutor to undertake adequate measures to protect the victims made Austria responsible for their deaths in the view of the Committee.

148 E.g.: UN doc. CEDAW/C/ALB/CO/3, Concluding Observations, Albania, 16 September 2010, para. 25; UN doc.

CEDAW/C/KEN/CO/7, Concluding Observation, Kenya, 5 April 2011, para. 18(a); UN doc. CEDAW/C/MWI/CO/6, Concluding Observations, Malawi, 5 February 2010, para. 2; UN doc. CEDAW/C/PNG/CO/3, Concluding Observations, Papua New Guinea, 30 July 2010, para. 24; UN doc. CEDAW/C/RWA/CO/6*, Concluding Observations, Rwanda, 8 September 2009, para. 22.

149 E.g. in the case of Albania, Botswana, Egypt, Fiji, Liechtenstein, Papua New Guinea, Russian Federation, South

Africa, Sri Lanka, Turkey, and Uganda.

150 E.g.: UN doc. CEDAW/C/CHN/CO/6, Concluding Comments, China, 25 August 2006, para. 18; UN doc.

CEDAW/C/ISR/CO/5, Concluding Observations Israel, 5 April 2011, para. 34; UN doc. CEDAW/C/UKR/CO/7,

Concluding Observations, Ukraine, 28 January 2010, para. 24.

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

45

requested to work with the media,¹⁵¹ influence the media,¹⁵² or use the media

themselves¹⁵³ to abolish stereotypes and/or degrading images of women and instead

portray girls and women in a positive, non-stereotypical, and non-discriminatory way.¹⁵⁴

That eradicating stereotypes and harmful traditional patterns which impede the

achievement of women's equality in practice is indeed a legal obligation is also the view of

the Human Rights Committee (HRC) monitoring compliance with the ICCPR¹⁵⁵ and the

Committee on Economic, Social and Cultural Rights (CESCR), the monitoring body for the

ICESCR.¹⁵⁶ Although such an obligation is not explicitly included in the two Covenants,

according to the two monitoring bodies, this obligation is implicitly included in common

article 3. The legal obligation to influence stereotypes and traditional roles in society that

perpetuate unequal socio-economic positions between men and women is a key issue here

since the MOB business heeds to the European male clients' wishes to marry a "traditional"

wife who is economically dependent on them and who is willing to play the role of

homemaker and mother.¹⁵⁷ According to the literature¹⁵⁸ and the research done by the UN

Special Rapporteur on Violence Against Women,¹⁵⁹ inequality between the marriage

partners and particularly the weak and dependent socio-economic position of the wife may

be risk factors for domestic violence. The subordinate position of the MOB's may in addition

be exacerbated because of their legal dependency on their husbands which makes leaving

an abusive relationship rather problematic. The explicit legal obligation contained in article

5 of the Women's Convention prescribes that States parties take "all appropriate measures"

to modify the harmful patterns which are based on stereotypes and prejudices that form

the basis for the systemic discrimination against women in practice. CEDAW has not yet

adopted a specific GR on article 5, but discrimination based on gender, i.e. the cultural

understanding of women's role in society based on stereotypes with its corollary negative

impact on women's equality, is explained and rejected by the Committee in its GR Nos. 25

151 E.g. UN doc. CEDAW/C/BGD/CO/7, Concluding Observations, Bangladesh, 22 March 2011, para. 18(b); UN doc.

CEDAW/C/BLR/CO/7, Concluding Observations, Belarus, 6 April 2011, para. 18; UN doc. CEDAW/C/BOT/CO/3,

Concluding Observations, Botswana, 26 March 2010, para. 24; UN doc. CEDAW/C/EGY/CO/7, Concluding

Observations, Egypt, 5 February 2010, para. 22; UN doc. CEDAW/C/FJI/CO/4, Concluding Observations, Fiji, 16

September 2010, para. 21; UN doc. CEDAW/C/KEN/CO/7, Concluding Observation, Kenya, 5 April 2011, para.

18(c); UN doc. CEDAW/C/LIE/CO/4, Concluding Observations, Liechtenstein, 5 April 2011, para. 19(b).

152 For instance in the case of Albania: While respecting the independence of the media and the right to freedom of

expression, the media should be encouraged to project positive non-stereotypes images of women and of their

equal status and role in the private and public spheres. UN doc. CEDAW/C/ALB/CO/3, Concluding Observations,

Albania, 16 September 2010, para. 25; Or with regard to Sweden: The Committee calls upon the State party to

strengthen its strategies to combat sexualization of the public sphere and to take proactive measures to ensure

that media production and coverage are non-discriminatory and increase awareness of these issues among media

proprietors and other relevant actors in the industry. UN doc. CEDAW/C/SWE/CO/7, Concluding Observations,

Sweden, 8 April 2008, para. 23.

153 E.g.: UN doc. CEDAW/C/CHN/CO/6, Concluding Comments, China, 25 August 2006, para. 18; UN doc.

CEDAW/C/CUB/CO/6, Concluding Comments, Cuba, 25 August 2006, para. 18.

154 E.g.: UN doc. CEDAW/C/BOT/CO/3, Concluding Observations, Botswana, 26 March 2010, para. 24; UN doc.

CEDAW/C/KEN/CO/7, Concluding Observation, Kenya, 5 April 2011, para. 18(c); UN doc. CEDAW/C/PNG/CO/3,

Concluding Observations, Papua New Guinea, 30 July 2010, para. 26; UN doc. CEDAW/C/USR/CO/7, Concluding Observations, Russian Federation, 16 August 2010, para. 21; UN doc. CEDAW/C/ZAF/CO/4, Concluding Observations, South Africa, 5 April 2011, para. 21.

155 See Human Rights Committee General Comment No. 28, 29 March 2000.

156 See CESCR General Comment No. 16, 13 May 2005.

157 It seems that IMBs respond to their clients' wishes for a 'traditional' wife by advertising the brides in accordance with stereotypes and traditional patterns as regards the role that men and women are supposed in the family and in society. This was also observed during the mapping of the IMB websites, such as 'Single Baltic Lady'

(<http://www.single-baltic-lady.com/>)

158 For example, Coomaraswamy & Kois, 'Violence Against Women', in Kelly D. Askin and Doreen M. Koenig eds.,

Women and International Human Rights Law, vol. 1, Transnational Publishers, Ardsley, New York, 1999, p. 179.

159 According to Radhika Coomaraswamy, the first UN Special Rapporteur on Violence Against Women, the main cause of gender-based violence is the unequal power relation between men and women. UN doc. E/CN.4/1995/42, Preliminary report by the Special Rapporteur on violence against women, its causes and consequences, 22 November 1994, paras 49-57.

Policy Department C: Citizens' Rights and Constitutional Affairs

46

and 28.160 Furthermore, CEDAW points out the importance of and the obligations under article 5 on a regular basis to States parties in its concluding observations.¹⁶¹ Finally, article 5 plays an important role in the Committee's jurisprudence both in cases of gender-based violence and in cases of discrimination based on gender.¹⁶²

The extra-legal obligations that States have in this regard include education (both formal

and informal) and public information (including media campaigns) with the purpose of bringing about a change in mentality by creating awareness of, and developing understanding for, the equality between women and men and the need to eradicate gender stereotypes. In some cases, the necessity to communicate their interpretation of this article to the States parties has induced the two Committees to adopt General Comments in which they explain to what extent States parties has induced the two Committees to adopt General Comments in which they explain to what extent States parties are obliged to abolish or modify stereotypes and traditional practices. The HRC is the more explicit of the two by stating that States parties are obliged to ensure that attitudes that are rooted in culture, religion and tradition are not to be used as justifications to maintain inequality between men and women.¹⁶³

Obligations towards married women

Women's legal status may change when they marry and the family is not always a place where all members are treated with respect and dignity or where all resources are equally and fairly divided among the family members. Gendered labour division within the family may affect women's economic well-being and the breakdown of the family may hit women harder than men. The Women's Convention pays specific attention to the position of married women in the family in article 16. The specific entitlements of women and the corollary obligations that States parties have in this regard have been worked out in detail in GRs No. 21 and 29.¹⁶⁴ The obligations contained in these Recommendations may prove to be of importance to MOBs who are trapped in a traditional relationship and who want to break free or develop their own capacities. According to CEDAW, the obligations under article 16 include that States parties provide for equal access by both spouses to the marital property and equal legal capacity to manage it.¹⁶⁵ They should ensure that the right

of women to own, acquire, manage, administer and enjoy separate or non-marital property

is equal to that of men.¹⁶⁶ In case of divorce, legal provisions should ensure that husbands cannot shirk their financial obligations towards their wives.¹⁶⁷

Modern form of servitude

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

¹⁶⁰ CEDAW GR No 25 on Temporary Special Measures (2004) and CEDAW GR No 28 on the core obligations of States parties under article 2 of the Convention (2010).

¹⁶¹ Concern that patriarchal attitudes and deep-rooted stereotypes form a root cause for the persistence of violence against women in general and domestic violence in particular is for instance expressed by CEDAW in its Concluding Observations on Cuba, Egypt, Fiji, Kenya, Malawi, Mexico, Russian Federation, and Uzbekistan.

¹⁶² E.g. Cases of A.S. v Hungary, Şahide Goekce v Austria, Fatma Yildirim v Austria, Karen Vertido v The Philippines.

¹⁶³ GC No. 28, para. 5.

¹⁶⁴ CEDAW GR No. 21, Equality in marriage and family relations, 13th session 1994; CEDAW GR No. 29, Economic

consequences of marriage, family relations and their dissolution, 30th October 2013

¹⁶⁵ Marital property is the property that has been accumulated during the marriage by the spouses.

¹⁶⁶ CEDAW GR No. 29, para. 38

¹⁶⁷ CEDAW GR No. 29, paras. 38 and 40

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

husband entailing that they are supposed to perform certain activities — doing the household tasks and performing sexual acts — for which they are not paid, without the possibility of becoming economically independent and without having a way out of such a relationship because of legal impediments,¹⁶⁸ this is indeed a situation that is very similar to servitude. The servitude will last at least as long as the woman has no possibility to be legally and economically independent from her husband.

MOBs have to be protected against such a situation of servitude first of all by informing them of their rights and the possibility to get help in case of abuse when they enter the destination country. Such information may be provided by the authorities like the immigration and naturalisation services in the receiving State but also by civil servants working at the embassy in the country where they apply for their visa. If abuse happens, the obligation to protect may consist of providing safe houses, free legal aid when the women want a divorce and the possibility of independent permanent residency even before fulfilling the required legal term of marriage in order to gain autonomous residency.¹⁶⁹

Protection of children

Another human rights treaty that is relevant for the protection to any children born out of the MOB relationship or brought by the woman when she settled in the EU is the Convention on the Rights of the Child.¹⁷⁰ This Convention gives priority to the best interest of the child and guarantees that a child shall not be separated from her or his parents against the child's will.¹⁷¹ This entails that, after divorce, the mother will not have to leave the country and will be entitled to independent residency irrespective of how long she has been married.

In respect to MOB relationships, three different categories of children can be discerned.

First are the children who are born during the marriage. In all EU countries, their rights are

very strong. They get the (European) nationality of the father and they will enjoy all rights as European citizens. The second category concerns children who were brought by the mother into the relationship but who have been recognised or adopted by the husband. Their position is similar to children that are born out of the relationship. They enjoy the rights of European citizens and they can remain in Europe even when the marriage breaks down in an early stage. The third category of children has been brought to Europe by their mothers, but they have not been recognised or adopted by their mother's husband. Their position is weak. They will not have a European nationality and they are dependent on the husband of their mother as their sponsor. If the marriage breaks down and the mother has to leave the country because she is not yet entitled to independent residency, these children will have to leave as well.¹⁷²

UN Treaties against trafficking

Individuals who become victims of trafficking¹⁷³ can make use of the protection offered by

¹⁶⁸ Such an impediment could be that a migrant wife will not be entitled to an autonomous residence permit for the first few years of her marriage.

¹⁶⁹ This would be similar to the possibility of independent residency for MOBs who are victims of domestic violence have in the USA under the VAWA (The Violence Against Women Act of 1994).

¹⁷⁰ Convention on the Rights of the Child, GA Resolution 44/25, 20 November 1989, entered into force on 2 September 1990

¹⁷¹ Convention on the Rights of the Child, article 9

¹⁷² Interview with Prof. Gerard René de Groot, 2016

¹⁷³ According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, trafficking in persons is defined as: [...] 'the recruitment, transportation, transfer, harbouring or receipt

Policy Department C: Citizens' Rights and Constitutional Affairs

48

the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)¹⁷⁴ and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000).¹⁷⁵

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

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

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

care for the victims of trafficking in persons.

Soft law

In respect of violence against women including domestic violence, important guidelines are offered by the Declaration on the Elimination of Violence Against Women (DEVAW).¹⁷⁷

DEVAW does not have binding legal authority; nevertheless, it is a strong statement of the international community on the duty to protect against violence against women. The most important aspect of the Declaration is that it mentions clear steps, such as the

establishment of legal, political, and cultural awareness programmes and training

programmes for law enforcement, to combat domestic violence. Furthermore, it urges the States' authorities to research and collect data on domestic violence.¹⁷⁸

of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.' [...], article 3(a).

¹⁷⁴ Only a limited number of EU MS have ratified this Convention. For instance, Germany, Ireland, the Netherlands,

and the United Kingdom are not parties to this treaty.

¹⁷⁵ All EU MS are parties to the Protocol.

¹⁷⁶ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), articles 5, 16 and 19 respectively.

¹⁷⁷ UN General Assembly Resolution A/RES/48/104, Declaration on the Elimination of Violence against Women, 20

December 1993.

¹⁷⁸ Ibid. article 4(k)

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

49

The Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women in 1995, also confirms that domestic violence is in itself a violation of the human rights of women.¹⁷⁹

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

With regard to trafficking, the most important soft law instruments include the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN High Commissioner on Human Rights (2002) and reports by the UN Special Rapporteur on Violence Against Women. The Guidelines on Human Rights and Human Trafficking particularly focus on the protection and support for trafficked persons in Guideline 6.¹⁸² The Guideline calls upon States to provide safe and adequate shelter for the victims of trafficking in the receiving State, irrespective whether they want to give evidence in the criminal proceedings against the alleged perpetrators. If they do want to give evidence,

they should receive legal and other assistance and be effectively protected from harm. If the victims wish to return to their country of origin, they must be helped with the resettlement in the form of assistance and support with their reintegration and they should be protected against re-trafficking.

In her report on trafficking in women and women's migration,¹⁸³ the Special Rapporteur gives her own definition of trafficking. The most important elements of this definition include 1) a lack of consent, 2) brokering of a human being, 3) transport, and 4) the exploitative or servile conditions of the work or relationship.¹⁸⁴ Because of this new interpretation of trafficking, it will also include MOB's who end up in servitude- or slaverylike situations. The Special Rapporteur explicitly mentions organized marriages between developing countries and foreign nationals and warns that these women are especially vulnerable for violence and abuse.¹⁸⁵ She particularly cautions States that the fact that the

legal residence of MOB's is linked to the citizen husband's continuing sponsorship means

that women are put in a vulnerable position under the law which in turn makes them susceptible to domestic violence and servile domestic situations.¹⁸⁶

¹⁷⁹ Beijing Declaration and Platform for Action, U.N. Fourth World Conference on Women, U.N. Doc. A/CONF.177/20 (1995) & A/CONF.177/20/Add.1 (1995).

¹⁸⁰ Until now there have been four female Special Rapporteurs with a very broad mandate covering causes and consequences of violence against women.

¹⁸¹ All reports of the four Special Rapporteurs who have fulfilled the mandate until now can be found on the

website of the UN under: <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>.

¹⁸² UN doc. E/2002/68/Add.1, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Office of the High Commissioner for Human Rights, 20 May 2002.

¹⁸³ UN doc. E/CN.4/2000/68, Report of the Special Rapporteur on Violence Against Women, on trafficking in

women, women's migration and violence against women, 29 February 2000

184 Ibid, para. 17.

185 Ibid, para. 29.

186 Ibid, para. 41.

Policy Department C: Citizens' Rights and Constitutional Affairs

50

3.1.2. Council of Europe Framework

All EU Member States are also members of the Council of Europe, founded in 1949 with the

goal to promote human rights, democracy, and the rule of law in its MS. The most important body of the Council of Europe is the European Court of Human Rights (ECtHR), which enforces the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR).

The Council has developed multiple initiatives to protect women against gender-based violence. These initiatives have resulted in the adoption of a Recommendation of the Committee of Ministers in 2002. In the Recommendation Rec (2002)5 of the Committee of Ministers to Member States on the protection of women against violence domestic violence is defined as: 'any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life'. Even though it seems clear that domestic violence violates several rights protected by the ECHR, it was not until 2007 that the ECtHR dealt substantively with a case on the subject.¹⁸⁷ Since then, the Court has, in all cases connected to violence against women, established that domestic violence constitutes a violation of the ECHR; a landmark case on

the subject is *Opuz v Turkey*.¹⁸⁸ In this case, the applicant claimed that the Turkish authorities had failed to protect her and her family from serious domestic violence originating from her husband and resulting in her mother's death. In its judgement, the Court found a violation of Article 2 ECHR due to the failure of the Turkish authorities to protect the right to life of the applicant's mother. The Court also found a violation of Article 3 ECHR, which is the right to be free from torture and inhuman or degrading treatment. It considered the violence suffered by the applicant as sufficiently serious, and due to the failure of the authorities to provide sufficient national legislation, the applicant was not protected from such violence. The Court also recognized a breach of Article 14 ECHR, which prohibits discrimination.¹⁸⁹

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

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

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

¹⁸⁷ Case of *Kontrova v. Slovakia* (Application no. 7510/04), judgment of 31 May 2007.

188 Case of Opuz v. Turkey (Application no. 33401/02), judgment of 9 June 2009, final 09/09/2009. Other important cases on domestic violence are for example Bevacqua and S v. Bulgaria (Application no. 71127/01) or E.S. and Others v. Slovakia (Application no. 8227/04).

189 Ibid. pp.51-52.

190 Article 13 and Article 14 Istanbul Convention.

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

51

anger-management courses.¹⁹¹ With regard to protective measures, the Convention mainly focusses on removing obstacles which may hinder victims to report crimes to the official authorities.¹⁹² States shall grant the police the power to evict perpetrators from their homes and to put them in custody, and States shall further create support measures such as shelters, 24/7 telephone hotlines, crisis centres, and legal assistance centres. It further outlines that access to adequate information must be provided to victims, as it is not enough to simply set up protection structures. The third leg of the Convention is prosecution.¹⁹³ It also defines and criminalizes various forms of gender-based violence including domestic violence.

States that are parties to the Istanbul Convention have to introduce several new offences into their national legal system should these not yet be included. In addition, the Convention is based on the idea that governments and agencies or institutions are required to work together. An effective response to violence requires that all institutions pull together and are on the same page. The Convention not only addresses governments, but it is also directed towards NGOs, local authorities, and society as a whole. Every man and

every woman must learn that problems cannot be solved with violence. With regard to enforcing and monitoring the Convention, a group of independent experts, called GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence), was set up to ensure that the States parties are fulfilling their Convention obligations. States parties have to submit reports on a regular basis in order to provide GREVIO with the necessary information.

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

The implementation of the very promising Istanbul Convention may be hindered by the fact that GREVIO's only monitoring tool is the reporting procedure and the reports have been drafted by the States parties themselves. Another critique is that, although the Convention has entered into force with the required ten ratifications, until now only 22 Member States have ratified it.¹⁹⁴ Germany, Ireland, and the UK have signed but not yet ratified the Convention.

The Istanbul Convention appears to only address domestic violence in rather general terms, not taking into account special vulnerabilities of certain groups. However, the situation of migrant women (including MOBs) is referred to in article 59, where it is stipulated that migrant women who are victims of domestic abuse and who want to leave their husband, are entitled to an autonomous right of residence, irrespective of the duration of the marriage or relationship.¹⁹⁵

191 Article 15 Istanbul Convention.

192 Articles 18-28 Istanbul Convention.

193 Articles 49-58 Istanbul Convention.

194 The Istanbul Convention has been ratified by: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Denmark, Finland, France, Italy, Malta, Monaco, Montenegro, the Netherlands, Poland, Portugal, Romania, San

Marino, Serbia, Slovenia, Spain, Sweden and Turkey. See [www.coe.int/en/web/conventions/full-list/-](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures)

/conventions/treaty/210/signatures last consulted on 19-08-2016.

195 Article 59(1) reads: Parties shall take the necessary legislative or other measures to ensure that victims whose

residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances,

Policy Department C: Citizens' Rights and Constitutional Affairs

52

There is no provision obliging States parties to take special protection measures in regards to this vulnerable group of women. The fact that the Council is not specific enough on the different groups which shall be offered protection is surprising, since it already published a report in 2001 in which it clearly stated the need for protection of MOBs, as foreign women who marry Western partners through marriage agencies are at a higher risk of becoming victims of domestic violence.¹⁹⁶ Furthermore, it was the first European organisation to recognise the need for regulation with regard to abused MOBs as seen by its 2004 Recommendation, which was exclusively devoted to servitude, exploited au pairs, and abused MOBs, under the umbrella term of domestic slavery.¹⁹⁷

According to this Recommendation, all three situations have to be understood as modern

forms of domestic slavery. What women in these situations have in common is that they find it difficult to extract themselves from their situation. Being in a foreign country usually entails that the victims do not speak the language, let alone understand the laws and customs of the country. Many women do not know where to turn for help, as they do not dare to go to the police due to fear of deportation. Modern forms of slavery, just like old forms of slavery, should not be tolerated by the Council of Europe and its MS, just because they happen to take place in private situations. The Recommendation proposes that MOB — in particular if they are victims of violence or other abuses — should be included in the scope of the draft for a trafficking definition, which is being drawn up to fight human trafficking. Connections between the MOB industry and human trafficking have been referenced by many academic scholars, governments, and newspaper agencies, noting that MOB can fall victim to trafficking or that the industry can facilitate trafficking. The more interesting argument is, however, that the MOB industry inherently constitutes trafficking.¹⁹⁸ This position has so far been the minority position. If the MOB industry could fall under the trafficking definition, it could be used as an indirect protection law for domestically abused MOB, as the Council of Europe Convention on trafficking sets forth certain obligations with regard to victims' protection and especially because the Convention has been recognized and ratified by 45 Member States of the Council.¹⁹⁹

The trafficking of women and the MOB industry seem to have several things in common, although it remains important to stress that data to support this link is still missing. Women in these marriages could suffer the same disadvantages as trafficked women for the purpose of, for example, sexual exploitation, leaving those specific MOB as unidentified victims of trafficking. Due to these similarities, the industry might facilitate the trade of women. However, rather than just simply facilitating trafficking in women, the industry could also in itself constitute a form of trafficking. Although one can argue that it might be

difficult to say that consensually-arranged marriages fall within the trafficking rubric, it is argued in this section that the MOB industry could in itself constitute human trafficking as it fulfils the criteria set forth by the Council of Europe Convention on Action against Human Trafficking. According to article 4(a) of the Convention, trafficking is defined as: upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.

196 Hughes, 2001, p.3.

197 Parliamentary Assembly of the Council of Europe (2004). Domestic slavery: servitude, au pairs and mail-order brides. Recommendation 1663 (2004) and the report on the recommendation by the Committee on Equal Opportunities for Women and Men from April 19, 2004.

198 Ibid. para. 6.4.

199 Only two MS of the Council of Europe have not yet ratified this Convention. These States are the Czech Republic and Russia. Chart of signatures and ratifications of the Council of Europe Convention on Action against

Trafficking in Human Beings. Retrieved via http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/signatures?p_auth=C8VCXTSf.

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

53

.....”the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or

benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".²⁰⁰

The definition is divided into three parts or three elements: the action, the means, and the purpose. All three elements must be sufficiently satisfied for an activity to fall within the scope of the definition.²⁰¹ The activity is, in this case, the mail-order industry, the business of bride trade or marriage matching, which in itself often treats women as a commodity to be sold to foreign men.

The act is the first element, performed through either the recruitment, transportation, transfer, harbouring, or receipt of persons, which is easily satisfied by the MOB industry.

The recruitment could be done by the agencies who advertise their services in local newspapers. A transfer has taken place as well, since the brides leave their home countries to start a new life in the West. Also, one could say that the obtaining of a person has taken place through the husbands who receive the women. The means is the second element and follows from the action. It refers to the manner in which the act is carried out. Among other means, the definition lists coercion, fraud, and abuse of power or of a position of vulnerability. Coercion is a problematic element, because it is not clear what actually amounts to coercion. The literal interpretation of "to coerce" essentially means to persuade someone to do something against their will. As such, it is very hard and almost impossible to argue that any form of coercion has been used in the MOB situation, especially if it is assumed that the women willingly entered the marriage. However, since the definition does not clearly define what coercion means, there may be room for a broad interpretation of the term.²⁰² Due to the wording "force or other form of coercion" in the definition, it is

evident that physical force is not necessary and that psychological coercion, for example, could suffice as well.²⁰³

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

²⁰⁰ Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005,

CETS 197. Retrieved via <http://www.refworld.org/docid/43fded544.html>.

²⁰¹ Jackson, 2002; Kim, 2010; Elliot, The role of consent in human trafficking, Routledge, London, 2015

²⁰² Elliot, 2015, p. 230

²⁰³ Ibid, p.68

Policy Department C: Citizens' Rights and Constitutional Affairs

The third element is the purpose element, the mens rea of the trafficking definition. The trafficking definition does not define exploitation but rather provides an open-ended list that includes, at a minimum, prostitution, sex exploitation, forced labour or services,

slavery or practices similar to slavery, servitude, or the removal of organs. The Council of Europe has, as mentioned above, labelled the MOB industry as a modern form of slavery. As such it would fall under the part of the trafficking Convention which is called “practices similar to slavery,” and therefore fulfil the criteria of the definition. This would entail that the Council’s Trafficking Convention can be used as an additional instrument — next to the Istanbul Convention — to protect victims of domestic violence after entering Europe through the MOB industry. Nevertheless, neither of the Conventions seems to sufficiently protect domestically abused MOBs as both lack more specific provisions and enforcement mechanisms.

3.1.3. Concluding Remarks

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

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

Translated to the situation of MOBs, this entails that specific information has to be provided

for MOBs who enter a EU country as regards emancipation legislation and policies.

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

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

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

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

55

3.2. European Union Framework

The focus of the section investigating the relevant EU law lies on the migration implications of the MOB phenomenon, as well as the obligations that MS may have under EU law to

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

204 Case C-256/11, Murat Dereci and Others v Bundesministerium für Inneres, ECLI:EU:C:2011:734, para. 70-74.

Policy Department C: Citizens' Rights and Constitutional Affairs

56

3.2.1. The 'family' under Eu Law

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

The MOB as spouse.

A first question that arises is whether the MOB qualifies as a "spouse." This term is used in several EU regulatory acts, including Directive 2004/38 on the right of citizens of the Union

and their family members to move and reside freely within the territory of the Member States²⁰⁵ and the Directive 2003/86 on the right to family reunification.²⁰⁶

However, the term "spouse" is not defined in these Directives.²⁰⁷ The Court of Justice, when it has been called upon to interpret the term, habitually refers to the *lex loci*

celebrationis: a person is a "spouse" when he or she is regarded as such under the law of

the country in which the marriage was celebrated.²⁰⁸ The Court is further unwilling to look beyond the marriage veil; that is to say, separation, non-cohabitation, or even contemplation of divorce proceedings are not such as to call into question the status of “spouse.” Only when the competent authorities have duly terminated the marital relationship can it be regarded as dissolved for the purposes of EU law.²⁰⁹

It follows where a marriage has been validly contracted between the MOS and the MOB (with the consent of both), the latter must be regarded as a spouse for the purposes of EU

law. The fact that the marriage was made possible through the intervention of an IMB is not such as to call this into question. The Commission highlights both in the Guidance for better transposition and application of Directive 2004/38/EC²¹⁰ as well as in the Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-

EU nationals in the context of EU law on free movement of EU citizens²¹¹ that such “arranged marriages” must be considered genuine marriages where the partners intend to establish a durable relationship (rather than simply obtaining a particular benefit). The burden of proof lies with the MS where it seeks to deny existence of a genuine marital relationship.²¹²

It should be noted, however, that the criteria proposed²¹³ by the Commission in assessing whether there a genuine marital relationship may lead to false negatives. It lists, inter alia, the fact that “the couple have never met before their marriage” and “evidence of a sum of money or gifts handed over in order for the marriage to be contracted” as possible indications that MS may take into account when considering whether the marital

²⁰⁵ OJ [2004] L 158/77; see Article 2(2)(a) thereof.

²⁰⁶ OJ [2003] L 251/12; see Article 4(1)(a) thereof.

²⁰⁷ The Court of Justice also remarked on the lack of a definition in Case 59/85, *State of the Netherlands v Ann*

Florence Reed, ECLI:EU:C:1986:157, para. 11-12.

208 Case 59/85, State of the Netherlands v Ann Florence Reed, ECLI:EU:C:1986:157, para. 15. See further Case C-

147/08, Jürgen Römer v Freie und Hansestadt Hamburg, ECLI:EU:C:2011:286, para. 38 and Case F-45/07,

Wolfgang Mandt v European Parliament, ECLI:EU:F:2010:72, para. 62-63. This is echoed by the Commission in

COM(2009) 313 final, Communication from the Commission to the European Parliament and the Council on

guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and

their family members to move and reside freely within the territory of the Member States , para. 2.1.1.

209 Case 267/83, Aissatou Diatta v Land Berlin, ECLI:EU:C:1985:67, para. 20. More recently, see Case C-40/11,

Yoshikazu Iida v Stadt Ulm, ECLI:EU:C:2012:691, para. 58.

210 COM(2009) 313 final, para. 2.1.1.

211 SWD(2014) 284 final, p. 11.

212 COM(2009) 313 final, para. 4.2.

213 COM(2009) 313 final, para. 4.2.

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

57

relationship is genuine or not. These criteria should be applied with care in the context of a

marriage that has resulted through the intervention of an IMB.

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

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

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

- The direct descendants of the MOB only.²¹⁵

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

Dissolving family ties.

For completeness sake, it should be mentioned that just as with the formation of a marriage, the dissolution of a marriage remains in the hands of the MS. However, several MS, including Germany, have adopted Council Regulation (EU) No 1259/2010 of 20

December 2010 implementing enhanced cooperation in the area of the law applicable to

divorce and legal separation.²¹⁷ This Regulation does not set out any material provisions as to the dissolution of marriages, but rather provides for conflict rules for situations involving

a conflict of laws in the context of divorce and legal separation.²¹⁸

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

Movement and EU Migration Law.

The set of legislation applying to the possible migration of the MOB to one of the MS of the EU is relatively complex. Depending on the nationality and residence status of the MOS,

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

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

In the situation in which the MOS resides in his own MS (for example, the MOS is a Dutch national living in the Netherlands), EU law as a rule does not apply.²¹⁹ This is normally

referred to as a situation wholly or purely internal to one MS. In such circumstances,

national **law** will apply to the question of entry and residence of the MOB.²²⁰ It is important

to note, however, that there are three exceptions to this rule.

²¹⁴ See per analogiam Article 2(2)(d) Directive 2004/38.

²¹⁵ E.g. Case C-413/99, Baumbast and R v Secretary of State for the Home Department, ECLI:EU:C:2002:493, para. 56-57.

²¹⁶ Case C-275/02, Engin Ayaz v Land Baden-Württemberg, ECLI:EU:C:2004:570, para. 41, 45-47 and Joined Cases C-356/11 and 357/11, O. and S. v Maahanmuuttovirasto; Maahanmuuttovirasto v L., ECLI:EU:C:2012:776, para. 54-56. See also ECtHR, Wagner and J.M.W.L. v Luxembourg, No. 76240/01, of 28 June 2007.

²¹⁷ OJ [2010] L 343/10.

²¹⁸ Article 1 Regulation 1259/2010

²¹⁹ Joined cases C-64/96 and C-65/96, Land Nordrhein-Westfalen v Kari Uecker and Vera Jacquet v Land Nordrhein-Westfalen, ECLI:EU:C:1997:285, para. 16, 23.

²²⁰ Refer to the sections below containing the country studies for an indication of the **legal** framework.

Policy Department C: Citizens' Rights and Constitutional Affairs

58

First, where the MOS EU citizen has exercised his free movement rights and subsequently returns to his MS of origin, Directive 2004/38 will apply by analogy to the question of residence of any family members.²²¹ This is conditional on the requirement that the period spent abroad in another MS was sufficiently extensive as to constitute (an attempt at) settlement in that MS.²²² This is, in turn, normally held to be the case where the Union citizen has resided abroad on the basis of article 7 of the Directive 2004/38 rather than simply under article 6 of that Directive – that is to say the residence abroad must normally

have lasted some three months or more.²²³

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

Deliberate attempts by Union citizens to make use of this “U-turn construction” (moving abroad, settling, and subsequently returning to the MS of origin) and thereby avoiding

national law are not, as a rule, considered an abuse of EU law.²²⁴ The conditions set out by Directive 2004/38 for entry and residence of the spouse will be elaborated below.

Secondly, there is what may be dubbed the “frontier exception.” In situations in which the MOS EU citizen lives in his own MS but is engaged in other MS (e.g. as a frontier worker²²⁵ or because he regularly travels abroad to provide services²²⁶), he may also be able to rely on EU law to claim a right of residence for his MOB spouse. In the case S & G, the Court has held that:

The effectiveness of the right to freedom of movement of workers may require that a derived right of residence be granted to a third country national who is a family member of the worker – a Union citizen – in the MS of which the latter is a national.²²⁷

The exact parameters of this exception to the wholly internal situation rule have not been clarified. Where, for example, the spouse enables the MOS to work abroad due to her care for their children, this may be sufficient.²²⁸ Alternatively, it is conceivable that where the MOS and MOB own a business together and are frequently engaged abroad, deportation of the MOB would undermine the effectiveness of the free movement rights so exercised.

The third situation concerns the Ruiz Zambrano rule. That case concerned the residence of the TCN parent of two Union citizens, whereby the latter were residing in their MS of

nationality (Belgium). The Court ruled that:

Article 20 TFEU precludes national measures which have the effect of depriving

citizens of the Union of the genuine enjoyment of the substance of the rights

conferred by virtue of their status as citizens of the Union.²²⁹

²²¹ Case C-456/12, O. v Minister voor Immigratie, Integratie en Asiel and Minister voor Immigratie, Integratie en

Asiel v B, ECLI:EU:C:2014:135, para. 44-50. The actual **legal** basis for the rights so derived is Article 21 TFEU.

²²² Ibid, para. 51.

²²³ Ibid, para. 52-54.

²²⁴ Case C-109/01, Secretary of State for the Home Department v Hacene Akrich, ECLI:EU:C:2003:491, para. 55.

²²⁵ Case C-457/12, S. v Minister voor Immigratie, Integratie en Asiel and Minister voor Immigratie, Integratie en

Asiel v G, ECLI:EU:C:2014:136.

²²⁶ Case C-60/00, Mary Carpenter v Secretary of State for the Home Department, ECLI:EU:C:2002:434.

²²⁷ Ibid, para. 40. See also, Case C-60/00, Carpenter, ECLI:EU:C:2002:434, para. 39.

²²⁸ Case C-457/12, S. & G., ECLI:EU:C:2014:136, para. 43.

²²⁹ Case C-34/09, Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm), ECLI:EU:C:2011:124, para. 42.

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

59

In this case, it was held that the lack of a right of residence of the TCN parent (and the

concomitant right to work) would constitute such an interference, as this would have the

consequence that the children would have to leave the **territory** of the Union in order to

accompany their parents.²³⁰

The decisive criterion in these cases is the degree of dependency that is present between

the Union citizen and the TCN: this must be such as to force the former to leave and

accompany the latter where he or she is not granted a right of residence.²³¹ In follow-up cases, the Court has denied that such relationship of dependency exists, as a rule, between spouses;²³² in other words, where a MOB would not be granted a right of residence in the MS of nationality of the MOS, she, in the eyes of the Court, is not as such forced to leave the territory of the Union. As a point of departure, therefore, the MOS/MOB couple cannot rely on the Ruiz Zambrano rule to claim a right of residence for the MOB in the MS of nationality of the MOS.

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

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

Consider the following example as a point of departure:

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

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

to a national of a MS and attempts to enter its territory without being in possession

of a valid identity card or passport or, if necessary, a visa, where he is able to prove

his identity and the conjugal ties and there is no evidence to establish that he

230 Ibid, para. 43-44.

231 Joined Cases C-356/11 and 357/11, O. and S., ECLI:EU:C:2012:776, para 56.

232 See Case C-434/09, Shirley McCarthy v Secretary of State for the Home Department, ECLI:EU:C:2011:277,

para. 49, 54, Case C-256/11, Murat Dereci and Others v Bundesministerium für Inneres, ECLI:EU:C:2011:734,

para. 67-68, Joined Cases C-356/11 and 357/11, O. and S., ECLI:EU:C:2012:776, para 56.

233 See Article 3(1) Directive 2004/38.

234 Case C-127/08, Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform,

ECLI:EU:C:2008:449, para. 81-99.

235 Article 2(2)(a) Directive 2004/38.

236 Article 5(2) Directive 2004/38.

237 Ibid.

Policy Department C: Citizens' Rights and Constitutional Affairs

60

represents a risk to the requirements of public policy, public security or public health

(...)238

After entry, the first three months of residence are simply subject to the requirement that

Nastya has to hold a valid passport.²³⁹ In addition, from the moment of entry as a family

member of Erik, Nastya has the the right to work²⁴⁰ and the right to equal treatment with

host MS nationals under the conditions specified in the Directive.²⁴¹

After three months, however, Erik (as the “sponsor”/EU citizen from whom the right of

residence of Nastya is derived)²⁴² must fulfil the conditions in Article 7 of the Directive.

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

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

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

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

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

²³⁸ Case C-459/99, *Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) v Belgian State*,

ECLI:EU:C:2002:461, para. 62.

239 Article 6(2) Directive 2004/38.

240 Article 23 Directive 2004/38.

241 Article 24 Directive 2004/38.

242 See Article 7(2) Directive 2004/38. Case C-40/11, Iida, ECLI:EU:C:2012:691, para. 51.

243 Article 7(1)(a) Directive 2004/38.

244 Article 7(1)(b) Directive 2004/38.

245 Article 7(1)(c) Directive 2004/38.

246 Case C-200/02, Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department, ECLI:EU:C:2004:639, para. 28-30.

247 Some administrative formalities will have to be complied with, however. See Articles 8-11 Directive 2004/38.

However, whereas non-compliance with these formalities may lead to sanctions, it will not call into question the right of residence: Case 48/75, Jean Noël Royer, ECLI:EU:C:1976:57, para. 38.

248 See Article 16 Directive 2004/38.

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

61

Where the MOS is a TCN lawfully residing in one of the MS of the EU, the regime of Directive 2003/86 in principle sets out the conditions under which the MOB is allowed to join her husband.²⁴⁹

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

Nanda is an Indian national who has resided in Belgium for a period of two years on

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

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

- a) "Accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State;
- b) Sickness insurance in respect of all risks normally covered for its own nationals in the MS concerned for himself/herself and the members of his/her family;
- c) Stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the MS concerned (...)"²⁵³

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

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

²⁴⁹ See in addition, COM(2008) 610 final, Report from the Commission to the European Parliament and the Council

on the application of Directive 2003/86/EC on the right to family reunification and COM(2014) 210 final,

Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification.

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

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

252 The report on the transposition of the Directive that all Member States with the exception of Sweden required proof of stable and regular resources, that a majority had requirements relating to accommodation and, finally, about half required proof of sickness insurance, see COM(2008) 610 final, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification and COM(2014) 210 final, Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, para. 4.3.1-4.3.3.

253 Article 7(1)(a) Directive 2003/86.

254 Article 7(2) Directive 2003/86.

255 Article 4(5) Directive 2003/86.

256 See Article 6 Directive 2003/86.

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

258 Case C-578/08, Rhimou Chakroun v Minister van Buitenlandse Zaken, ECLI:EU:C:2010:117, para. 43.

Policy Department C: Citizens' Rights and Constitutional Affairs

62

stable and regular resources, was precluded. This was despite the fact that this meant that the sponsor could be eligible for certain special social assistance benefits (but not general minimum subsistence benefits).²⁵⁹ In addition, no fixed amount may be set below which all family reunification requests are refused; a reference amount may be set, but individual circumstances must be taken into account.²⁶⁰

Similarly, whereas a civic integration test (societal knowledge and a degree of language knowledge) to be taken abroad was allowable as a precondition for family reunification, special circumstances of test takers (e.g. disabilities, age) had to be taken into account and fees could not be excessive²⁶¹ — for example, a fee imposed by the Dutch authorities of some 460 euros was considered excessive. Finally, of particular importance to the situation of MOB is that MS cannot distinguish as to “when” the family was formed: the provisions apply equally to pre-existing family ties (families previously having lived together) or those newly formed (as with MOB who normally have not lived together at an earlier stage).²⁶² Overall, the conditions as listed represent the “outer limits” under which MS must authorise family reunification. Once admitted, the position of the MOB is harmonised with that of the sponsor:²⁶³ she can benefit from equal treatment rights as regards education and in principle has the right to work (although a waiting period may be applied)²⁶⁴ in the same way as the sponsor. A final point to remark is the interaction with Directive 2003/109 concerning the status of TCNs who are long-term residents:²⁶⁵ after five years of continuous residence, the MOS and the MOB should qualify for long-term residence²⁶⁶ provided the couple has stable and regular resources and comprehensive sickness insurance and has complied, where applicable, with integration conditions.²⁶⁷

The status of children.

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

Where the MOS is a Union citizen.

For the purposes of EU free movement law, in order to count as a family member, the child should either be under the age of 21 or be dependent on either (or both) of his parents.²⁶⁸

Dependency is a question fact only (it is not relevant whether the child could be independent) ²⁶⁹ and is characterised by a need for material support that exists in the state of origin at the moment of application for entry and residence.²⁷⁰ Subsequent entry to

²⁵⁹ Ibid, para. 49-52.

²⁶⁰ Ibid, para. 48.

²⁶¹ Case C-153/14, K and A, ECLI:EU:C:2015:453, para. 57-59, 67-70.

²⁶² Case C-578/08, Chakroun, ECLI:EU:C:2010:117, para. 59-66.

²⁶³ See Article 14(1) Directive 2003/86.

²⁶⁴ Article 14(2-3) Directive 2003/86.

²⁶⁵ OJ [2004] L 16/44.

²⁶⁶ Article 5 Directive 2003/109. This is provided the persons in question do not constitute a threat to public policy, public security or public health: see Article 6 Directive 2003/109.

²⁶⁷ See further Case C-579/13, P and S v Commissie Sociale Zekerheid Breda and College van Burgemeester en Wethouders van de gemeente Amstelveen, ECLI:EU:C:2015:369.

²⁶⁸ See Article 2(2)(c) Directive 2004/38.

²⁶⁹ Case 316/85, Centre public d'aide sociale de Courcelles v Marie-Christine Lebon, ECLI:EU:C:1987:302, para. 22.

²⁷⁰ Case C-1/05, Yuning Jia v Migrationsverket, ECLI:EU:C:2007:1, para. 37.

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

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

Where the Union citizen resides in his MS of nationality, the situation is normally considered

as “wholly internal” to that Member State. It follows, as set out before, that national law applies to the question of whether the child of the MOB spouse can join the couple.

However, as seen before, three main exceptions exist to this rule that EU law does not apply.

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

With regards to the “frontier exception,” its application in the absence of further

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

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

Where the MOS Union citizen has exercised free movement rights.

In this situation, the position of the child of the MOB is equivalent to that of the MOB itself (as also noted above). He or she will have a right to entry and initial residence (for the first

three months), as well as continued residence if the conditions of article 7 are fulfilled.

Similarly, he or she will have a right to work (where applicable) and equal treatment rights under the conditions of article 24 of the Directive. See above for a full exposition of the relevant conditions.

Where the MOS is a third-country national.

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

²⁷¹ Case C-423/12, *Flora May Reyes v Migrationsverket*, ECLI:EU:C:2014:16, para. 29-33.

²⁷² The age of majority being determined by the relevant Member State in which reunification is sought: Article 4(1) Directive 2003/86.

²⁷³ Dependency is assessed in the same manner as set out above.

²⁷⁴ In case of shared custody, agreement of the person with whom custody is shared is necessary.

Policy Department C: Citizens' Rights and Constitutional Affairs

The actual conditions attached to for reunification are largely the same as above:

accommodation, stable resources, and comprehensive health insurance on the part of the sponsor are a precondition as well as that there must not be a threat to public policy, public security, or public health. Some important differences exist, however. First, minor children under the age of 12 cannot be subjected to integration measures abroad (but may be

subjected to integration measures at a later stage in accordance with Article 7(2) Directive 2003/86); where they are over the age of 12 and arrive independently from the MOB, their admission may be made subject to verification of a condition of integration.²⁷⁶ In addition, some Member States may require that the child must have been under the age of 15 when submitting the application for reunification; if over the age of 15, entry and residence must still be authorised if the conditions are fulfilled but on other grounds than family reunification.²⁷⁷

3.2.3. Protective Measures

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

Protecting the MOS.

A common danger for the MOS is the fact that the Internet-based approach makes him susceptible to being scammed. In addition, it is not impossible that MOSs can face abuse at the hands of a MOB. Finally, there is a risk in the form of a breakdown of a relationship. The scam risk. In an online dating romance scam, criminals typically “contact their victims through online dating sites or social networking sites, creating fake profiles with stolen photographs of attractive people. While they simulate developing relationships with their victims, the end goal of the scammers is to defraud them of large sums.”²⁷⁸ The scam can take place at two instances. First, the IMB itself may be untrustworthy, creating false profiles while having its customers pay a monthly fee or a fee for contacting the women (who may simply be employees or computer programmes) (false IMB). Secondly, the IMB may be a legitimate business, but the person with whom the MOS communicates could be a scammer (false MOB).

At the EU level, the only relevant protective instrument is the E-commerce Directive.²⁷⁹

This Directive operates according to the “internal market principle,” where a service provider (providing “information society services”²⁸⁰) is established within the EU it applies.

This Directive requires MS to ensure that service providers provide information as to their business (name, address, registration etc.) and to provide minimum requirements for commercial communication and the process of contracting (to receive a particular service).²⁸¹ In addition, MS are obliged to provide means of (*legal*) redress²⁸² and to establish contact points for service providers and recipients to obtain general information as

²⁷⁵ Article 4(2)(b) Directive 2003/86.

²⁷⁶ Article 4(1) Directive 2003/86.

²⁷⁷ Article 4(6) Directive 2003/86.

²⁷⁸ Buchanan & Whitty, ‘The online dating romance scam: causes and consequences of victimhood’, Psychology, Crime & *Law*, 20(3), 2014, p. 262.

²⁷⁹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain *legal* aspects of

information society services, in particular electronic commerce, in the Internal Market, OJ [2000] L 178/1.

²⁸⁰ Defined as ‘any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.’ – See Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ [1998] L 204/37, as amended.

²⁸¹ Articles 6, 7 and 9 Directive 2000/31.

²⁸² Article 17-18 Directive 2000/31.

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

65

to their rights and obligations, possible mechanisms for redress, as well details of authorities and associations capable of providing further support.²⁸³

It is furthermore clear that where an IMB itself is a false IMB, it is *prima facie* liable under civil law. However, an important question to ask is whether the IMB could also be held liable for scams perpetrated by its users (false MOBs). A positive answer to that question would create an incentive on the part of the IMB to actively monitor its content in order to prevent scams. In this respect, the Directive 2000/31 provides in articles 12-14 that MS must exempt so-called intermediary service providers from liability: those whose activity is “limited to the technical process of operating and giving access to a communication network over which information made available by third parties is transmitted or temporarily stored.”²⁸⁴ A classic example would be an Internet service provider not in principle being liable for the content of the web it transmits (e.g. child pornography). An IMB could argue that it would fall under article 14 of the Directive 2000/31, which provides:

Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service (...)

The argument would run that an IMB simply hosts information and provides for interaction between the users (MOSs and MOBs) of its website: content is user created without the IMB having a hand in it. However, in order to rely on this exemption, the Court has held that: “it was necessary to examine whether the role it plays is neutral, in the sense that its conduct is merely technical, automatic and passive, pointing to a lack of knowledge or control of the data which it stores.”²⁸⁵

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

Where, by contrast, the operator has provided assistance which entails, in particular, optimising the presentation of the offers for sale in question or promoting those offers, it must be considered not to have taken a neutral position between the customer-seller concerned and potential buyers but to have played an active role of such a kind as to give it knowledge of, or control over, the data relating to those offers for sale. It cannot then rely, in the case of those data, on the exemption from liability referred to in Article 14(1) of Directive 2000/31.²⁸⁶

Such optimisation possibilities are frequently offered by IMBs. For example, a large IMB website called AnastasiaDate provides a welter of additional options, such as “Flowers & Presents,” “Virtual Gifts,” or other ways to highlight one’s profile. As such, the IMB is not simply a neutral broker, but it takes an active hand in the interaction between its users.²⁸⁷

²⁸³ Article 19(4) Directive 2000/31.

²⁸⁴ Preamble paragraph 42 to Directive 2000/31.

²⁸⁵ Case C-291/13, Sotiris Papasavvas v O Fileleftheros Dimosia Etaireia Ltd and Others, ECLI:EU:C:2014:2209, para. 41

²⁸⁶ Case C-324/09, L’Oréal SA and Others v eBay International AG and Others, ECLI:EU:C:2011:474, para. 116.

²⁸⁷ See also SMART 2007/0037, EU Study on the Legal analysis of a Single Market for the Information Society:

New rules for a new age?, p. 36, available at: [https://ec.europa.eu/digital-single-market/en/news/legal-analysis-single-](https://ec.europa.eu/digital-single-market/en/news/legal-analysis-single-market-information-society-smart-20070037)

market-information-society-smart-20070037 last visited 24 August 2016.

Policy Department C: Citizens' Rights and Constitutional Affairs

66

It follows that it may not rely on the exemption from liability clause, meaning that depending on the domestic system of the MS in question, it could conceivably be held liable for scams perpetrated by its users. Nonetheless, it remains the case that such remedies are ex post only; there is very little by way of ex ante safeguards imposed by EU law to ensure the legitimacy of IMBs and to prevent scams (e.g. requiring IMBs to collect more information about women offering themselves for marriage).

The risk of an abusive relationship; death and divorce. It is not inconceivable that the “MOB-route” puts the MOS at risk of an abusive relationship — after all, such marriages are not normally preceded by extensive contact. Generally, there is no EU legislation which offers protection in case of an abusive (MOB) spouse — rather, reference must in those instances be made to national law. However, once a protective order has been issued, EU legislation provides for the mutual recognition of such orders (whether issued in the context of civil or criminal proceedings) across the MS.²⁸⁸ In terms of the options the MOS has to divest himself of the relationship, these do not seem especially more circumscribed in the context of a MOS/MOB relationship than a groom faced with abuse in a relationship that has come about “conventionally.” After all, the MOS’s residence is as a rule not dependent on the family relationship: neither while residing in his home MS nor when residing in another MS of the EU. As such, separation and divorce remains a viable option. This reasoning is, mutatis mutandis, the same for the situation of a “regular” breakdown of a relationship due to divorce or death of the MOB.

Protecting the MOB.

Common risks faced by a MOB fall into four categories: scams, a potentially abusive MOS,

situations involving the breakdown of the relationship, and the risk of being trafficked.

Scams. Insofar the scams simply involve economic harm, the reasoning is *mutatis*

mutandis the same as above: civil liability, under national law, could exist on part of the

MOS and the IMB. In case of the latter, civil liability is not excluded under EU law.

Abusive relationship. Unlike the MOS, the MOB is in a more vulnerable situation. As a

TCN, she lacks an inherent right of residence in the EU and the relevant MS in particular.

This could create a lock-in effect: the desire to leave the abusive relationship is pitted

against the desire to remain in the relevant MS of the EU.²⁸⁹ At the EU level, there are

currently no specialist legal instruments in place which would protect the MOB in this

situation. Rather, she would have to rely on relevant national law and/or the generalist

provisions of Directive 2004/38 or Directive 2003/86 which refer to death and divorce

(including divorce as the result of domestic violence).²⁹⁰ The relevant conditions in this

regard will be discussed below.

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

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

²⁸⁸ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order OJ [2011] L 338/2 and Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, OJ [2013] L 181/4.

²⁸⁹ See for this issue generally: Orloff et al., "With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women", Family Law Quarterly, 29(2), 1995, p. 313.

²⁹⁰ As before, it should be recalled that EU legislation provides for mutual recognition of protective orders issued

by a Member State

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

67

circumstances, as highlighted before, national law applies in principle exclusively to the question of continued residence of the MOB.

2. Where Directive 2004/38 applies. It will be recalled that this is the case in the “U-turn”

situation (in which it applies by analogy) and in the situation where the MOS Union

citizen is residing in a MS other than that of his nationality together with the MOB.

Article 12(2) of Directive 2004/38 provides for the retention of the right of residence of a TCN family member (such as the MOB and/or any children) in case of death of the MOS.

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

Directive 2004/38 (normally after five years of legal residence).

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

In case of divorce or annulment of marriage, TCN family members (such as the MOB and/or

any children) shall retain a right to residence where:²⁹²

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

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

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

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

²⁹¹ Article 12(3) Directive 2004/38.

²⁹² Article 13(2) Directive 2004/38.

²⁹³ Either by agreement or court ordered.

²⁹⁴ Article 15(3) Directive 2003/86.

295 Article 15(4) Directive 2003/86.

Policy Department C: Citizens' Rights and Constitutional Affairs

68

further have the option of introducing autonomous residence permits for MOBs in case of widowhood, divorce, and separation.²⁹⁶

4. Additional protective rights: Primary EU law as interpreted by the Court of Justice.

Under certain circumstances rights additional to those discussed in the previous options

(the rights specified in Article 12-13 Directive 2004/38) can be derived from EU law –

particularly where children with Union citizenship are involved. For the next part, it will be

assumed that the relationship between the MOS and the MOB has broken down and that

the MOB is the primary carer/has actual custody over these children. For ease of analysis,

moreover, reference will be made to a single child.

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

Where the children are dependent on the MOB, she can derive a right of residence from EU

law following the Ruiz Zambrano case, even in the situation where the Union citizen

children reside in their own MS. According to settled case law of the Court of Justice, if

deportation of a parent would cause Union citizen to have to have the territory of the

Union, this amounts to an interference with the substance of the rights attached to the

status of Union citizenship. In such a context, EU law can thus be relied on to gain rights

beyond those offered under national law: a right of residence and a concomitant right to

work (and possibly equal treatment for the purposes of receiving certain benefits).²⁹⁷

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

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

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

²⁹⁶ Article 15(3) Directive 2003/86.

²⁹⁷ Case C-34/09, Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm), ECLI:EU:C:2011:124, para. 42-44. See also Case C-86/12, Adzo Domenyo Alokpa and Others v Ministre du Travail, de l'Emploi et de l'Immigration, ECLI:EU:C:2013:645, para. 34.

²⁹⁸ Case C-200/02, Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department, ECLI:EU:C:2004:639.

²⁹⁹ Ibid, para. 42-47.

300 A right which has not been specifically confirmed by the Court of Justice. However, we can assume that such a right can be derived from EU law. The Court, after all, confirmed that the parent primary carer of a child had a right to work in the analogous situation of Ruiz Zambrano: Case C-34/09, Ruiz Zambrano, ECLI:EU:C:2011:124, para. 44.

301 See Hughes, 2004

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

69

appropriate measures to combat such trafficking as well as to protect its victims: Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.³⁰²

This Directive requires Members to criminalise:

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

Non-compliance must be penalised with jail terms of up to ten years.³⁰⁴ In addition, the

Directive specifies that MS must ensure that persons with a leading position in legal persons (such as, potentially, IMBs) involved in trafficking can be held liable.³⁰⁵ Sanctions must also be able to be imposed on the legal person, including criminal and noncriminal fines or, for example, judicial winding up.³⁰⁶ Finally, it specifies that human trafficking

victims have the right to assistance and support, including basic subsistence, medical and psychological treatment, and translation and interpretation services, where appropriate.³⁰⁷

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

3.3. Country Specific Frameworks

3.3.1. Germany

Background

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

Legislation

Residence status of the MOB follows the regular rules for family reunification set out in section 6 'Aufenthalt aus familiären Gründen' of the Aufenthaltsgesetz. The basic point of departure is set out in article 27, which provides in conjunction with article 6 of the German

Basic Law a basic right to family reunification subject to certain conditions. No specific set of rules apply to the MOB phenomenon.

³⁰² OJ [2011] 101/1.

³⁰³ Article 2(1) Directive 2011/36.

³⁰⁴ Article 4 Directive 2011/36.

³⁰⁵ Article 5 Directive 2011/36.

³⁰⁶ Article 6 Directive 2011/36.

307 Article 11 Directive 2011/36.

308 Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ [2004] 261/19.

309 Article 8, 14 Directive 2004/81.

310 See generally Block, Policy Frames on Spousal Migration in Germany, Springer, New York, 2016

Policy Department C: Citizens' Rights and Constitutional Affairs

70

Insofar the MOS is a German national (or an EU citizen with a non-German nationality)³¹¹, he must have his or her ordinary residence in Germany; this principle is the primary and only condition.³¹² In exceptional circumstances, the family reunification may be refused if it is clear that the German national lacks sufficient resources.³¹³ This, however, is not normally tested.³¹⁴ No particular requirements are imposed on the MOB. After three years of residence, the MOB is eligible for a Niederlassungserlaubnis (a right to permanent residence), subject to having sufficient knowledge of the German language and there being no reason to expel her.³¹⁵

Where the MOS is a TCN, a more extensive set of requirements is imposed. In such a case, the TCN must be at least 18 years of age,³¹⁶ hold a valid residence permit,³¹⁷ and have resided in Germany for a period of two years.³¹⁸ In addition, he must possess accommodation judged as sufficient for the couple³¹⁹ and as well as sufficient resources.³²⁰

The MOB must be at least 18 years of age and have basic knowledge of the German language (as a condition for family reunification).³²¹ The residence right will be renewed so long as the familial link continues to exist.³²² After five years of residence, the MOB can qualify for a Niederlassungserlaubnis.³²³

Insofar as the MOB has a minor, unmarried child (not common to the couple in the biological or legal sense), he or she can also be authorised to join the MOB. The MOB will act as the sponsor, meaning that reunification is possible only after her acquisition of the appropriate residence status.³²⁴ If the child has already reached the age of 16 at the time of the application and if he or she does not have his or her Lebensmittelpunkt (center of interest) with the parents, than he or she must also show either sufficient knowledge of German or that integration in Germany is likely due to his or her education and living circumstances.³²⁵

In case of breakdown of the familial link (e.g. divorce from or death of the sponsor), the MOB can continue to reside in Germany provided that the family relationship had existed in Germany for a period of three years prior to the breakdown or the sponsor died during the existence of a family relationship in Germany.³²⁶ This minimum length of residence requirement can be set aside in case of hardship, such as domestic violence. ³²⁷

311 Following Case 59/85, State of the Netherlands v Ann Florence Reed, ECJ: EU:C: 1986:157 as well Article 24 jo. 37 of Directive 2004/38, the right of equal treatment of EU citizens extends to issues of migration law. This is in particular relevant where these provisions, such as is the case here, are more favorable than those set out by EU legislation.

312 Article 28(1) Aufenthaltsgesetz.

313 Article 27(3) Aufenthaltsgesetz.

314 See <http://www.aufenthaltsrecht.org/familiennachzug.htm> last visited 24 August 2016

315 Article 28(2) Aufenthaltsgesetz.

316 Article 30(1)(1) Aufenthaltsgesetz.

317 Article 29(1)(1) Aufenthaltsgesetz.

318 Article 30(1)(3)(d) Aufenthaltsgesetz. The residence requirement is not applied where the sponsor holds a

Niederlassungserlaubnis or long-term residence. Exceptions furthermore exist where the marriage predated the acquisition of the residence permit by the sponsor, see Article 30(3)(e) Aufenthaltsgesetz; however considering the definition of MOB for the purposes of this study, this is unlikely to apply.

319 Article 29(1)(2) Aufenthaltsgesetz.

320 Article 5(1)(1) Aufenthaltsgesetz.

321 Article 30(1)(1) jo. 30(1)(2) Aufenthaltsgesetz.

322 Article 30(3) Aufenthaltsgesetz.

323 Article 9 Aufenthaltsgesetz.

324 Article 32(1) Aufenthaltsgesetz.

325 Article 32(2) Aufenthaltsgesetz.

326 Article 31(1) Aufenthaltsgesetz.

327 Article 31(2) Aufenthaltsgesetz.

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

71

Conclusion

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

Policy Department C: Citizens' Rights and Constitutional Affairs

72

3.3.2. The Netherlands

Background

In a recent report of the Sociaal en Cultureel Planbureau on “marriage-migration in the Netherlands,”³²⁸ an attempt is given to contextualise marriage migration as a phenomenon as well as provide a background on the living situation of the migrants involved.³²⁹ IMBs are mentioned as one of the ways by which persons residing in the Netherlands come into contact with foreign partners.³³⁰ The report describes the phenomenon as largely internetbased, with first contact taking place through a website. After an initial “match,” the MOS usually travels to the country of potential MOB for face to face contact. The reverse (MOB visiting the MOS) is uncommon due to visa issues or high administrative fees.³³¹ Despite there being indications that this way of meeting a potential partner seems increasingly popular, no statistics are available as to the actual extent of the MOB popularity in the Netherlands due to the social taboo resting on such relationships.³³²

The fact that such a taboo exists, however, is not to say that the MOB phenomenon is a traditionally controversial or indeed a topical issue in the Netherlands.³³³ Whereas the issue of family reunification is firmly on the political agenda, in that context only very limited attention is paid to the MOB phenomenon. A search of the official parliamentary documentation centre³³⁴ confirms this: the term *postorderbruid* yields zero results. The term *importbruid* returns only 17 results, whereby it must be noted that the meaning of this word is broader and generally denotes a person to whom one is married and whom one is “importing” from abroad. Therefore, this term includes “regular” family reunification and forms of arranged marriages (through family intervention rather than an IMB) in addition to the MOB phenomenon. For comparison, the term *gezinshereniging* (family reunification) yields 2414 results.³³⁵

Legislation

Residence status of the MOB follows the regular rules for family reunification — no specific set of rules apply. Conditions are imposed on both the MOS and the MOB. The MOS must

be 21 years of age³³⁶ and either have the Dutch nationality³³⁷ or be a TCN who possesses a particular non-temporary³³⁸ residence³³⁹ permit.³⁴⁰ In addition, the sponsor must be able to

328 Sterckx et al., 2014

329 Ibid, p. 11.

330 Ibid, p. 164.

331 Ibid, p. 165.

332 Ibid, p. 165.

333 A search in the LexisNexis database of Dutch newspapers from 1980 onwards yields only 60 results for the search key 'postorderbruid'. Only four of those articles directly address the phenomenon, whereas the other results are references to films or books. The search key 'importbruid' yields (a still limited) 439 results, but this word is less specific and also denotes a person to whom one is married and whom one is importing from abroad. This term includes 'regular' family reunification, forms of arranged marriages (through family intervention rather than a IMB) as well as the MOB phenomenon.

334 See <https://zoek.officielebekendmakingen.nl/> last visited 24 August 2016

335 A search in the LexisNexis database of Dutch newspapers from 1980 onwards yields only 60 results for the search key 'postorderbruid'. Only four of those articles directly address the phenomenon, whereas the other results are references to films or books. The search key 'importbruid' yields (a still limited) 439 results.

336 Since the relationship was not pre-existing, the sponsor's minimum age is increased from 18 years of age to 21

years of age; this is due to the distinction is made in the Netherlands between 'family reunification' and 'family formation'.

337 Article 3.15(1)(a) Vreemdelingenbesluit 2000.

338 See Article 3.5(2) Vreemdelingenbesluit 2000; this refers in particular to residence permits granted for the purpose of seasonal work or medical treatment.

339 Article 3.15(1)(b) Vreemdelingenbesluit 2000. This includes, for example, residence permits for the purpose of

work, study or temporary humanitarian grounds. For the full list, see Article 8 (a-e, l) Vreemdelingenwet 2000.

340 In addition, the MOS must declare himself as to be a 'sponsor' (referent) vis-à-vis the MOB: Article 3.22a

Vreemdelingenbesluit 2000.

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

73

show that he has sufficient and regular income; as a reference amount, the minimum

income specified in Wet minimumloon en minimumvakantiebijslag (Law on minimum wage

and minimum vacation bonus) is taken.³⁴¹ For the year 2016, this is set at €1,524.60 per

month (€1,646.57 including vacation bonus).³⁴²

The MOB must be 21 years of age and be validly married to the MOS.³⁴³ Rules also exist for

registered partners or persons in a durable relationship.³⁴⁴ She must moreover pass a

basisexamen testing Dutch language skills and societal knowledge.³⁴⁵ The permit will not be

granted unless she is not a danger to public policy or public security,³⁴⁶ and she may be

required to undergo an examination for tuberculosis.³⁴⁷ Upon arrival, the two must form a

communal household and live together.³⁴⁸ After five years, the MOB is entitled to an

autonomous residence permit.³⁴⁹

Insofar that the MOB has a minor child (not common to the couple in the biological or legal

sense), he or she can also be authorized to join the MOB. In that context, the MOB will act

as the sponsor, meaning that reunification is possible only after her acquisition of the

appropriate residence status.³⁵⁰

As a basic point of departure, where the family link is broken (divorce, widowhood etc.),

the residence right as a family member also lapses (prior to being eligible for an

autonomous residence permit). There are however exemptions for the situations in which

the relationship broke down due to household violence³⁵¹ or in case of death of the sponsor.³⁵²

Conclusion

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

3.3.3. Ireland

Background

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

341 Article 3.22(1) jo. 3.74 Vreemdelingenbesluit 2000. Some exceptions exist for those of pensionable age or those who are permanently incapacitated for work: Article 3.22(2) Vreemdelingenbesluit 2000.

342 Article 8(1)(a) jo. 15(1)(a) Wet minimumloon en minimumvakantiebijslag.

343 Article 3.14(a) Vreemdelingenbesluit 2000.

344 Article 3.14(b) Vreemdelingenbesluit 2000.

345 Article 16(1)(h) Vreemdelingenwet 2000. Exceptions exist for, for example, disabled persons: Article 2.8 Besluit inburgering.

346 3.20 Vreemdelingenbesluit 2000.

347 3.21 Vreemdelingenbesluit 2000.

348 Article 3.17 Vreemdelingenbesluit 2000.

349 Article 3.51(1)(a)(1) Vreemdelingenbesluit 2000.

350 Article 3.14(c) Vreemdelingenbesluit 2000.

351 Article 3.48(1)(f) jo. Article 3.51(1)(j) Vreemdelingenbesluit 2000.

352 Article 3.51(1)(c) Vreemdelingenbesluit 2000.

353 Policy Document on Non-EEA Family Reunification, Irish Naturalisation and Immigration Service (INIS),
Department of Justice and Equality, December 2013.

354 INIS, 2013, para. 2.1.

Policy Department C: Citizens' Rights and Constitutional Affairs

74

increased in Ireland, but unlike other EU States, Ireland does not impose any integration related requirements. Immigrants are strongly advised, however, to take English language courses, especially if they intend to reside in Ireland for a long term or wish to become an Irish citizen.³⁵⁵ According to interviewee Laura Barry, the MOB industry in Ireland has increased since 2005 when she first started to study the phenomenon. Especially older Irish bachelors are interested in MOBs from South-East Asia, in particular from the Philippines because the brides will also be Roman Catholics. MOB relationships seem to have become more acceptable in Ireland.³⁵⁶

Legislation

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

and over a period of three years prior to the application, he must have earned a gross income of not less than 40,000 Euro.³⁵⁹

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

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

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

³⁵⁵ INIS, 2013, para. 9.1.

356 Interview with Laura Barry, 2016

357 Article 4(6) Irish Immigration Act 2004.

358 INIS, 2013, para. 10.1.

359 INIS, 2013, para. 17.2.

360 Marriage of convenience is defined as: a marriage entered into for the predominant purpose of obtaining an immigration advantage for one of the parties. INIS, 2013, para. 5.2 note 1.

361 INIS, 2013, para.

362 INIS, 2013, para. 15.1 and 15.2.

363 INIS, 2013, paras 23.2 – 23.5.

364 INIS, 2013, para. 23.5.

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

75

of such children of the MOB and the children's father, this man's consent is required in respect of the children's residence in Ireland.³⁶⁵

Conclusion

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

3.3.4. United Kingdom

Background

Like Ireland, the UK does not participate in the EU Directive on Family Reunification. There are no specific rules in regard to MOBs, but since 2012, their situation is covered by

Appendix FM of the Immigration Rules. Spouses are the largest single category of migrant settlement in the UK (40% in 2010). However, only limited research on marriage-related

migration has been conducted.³⁶⁶ In 1997, the Primary Purpose Rule was abolished, under which applicants had to prove that their marriage was not a marriage of convenience. Since then, the number of spouses entering the UK has been increasing. In order to curb the influx of immigrants, several measures were taken as of 2006. The period qualifying for settlement in employment was raised from four to five years; the probationary period for settlement before permanent leave can be applied for was set at five, and in certain circumstances, even ten years;³⁶⁷ more stringent financial requirements were introduced;³⁶⁸ there was the introduction of the “Knowledge of Life in the UK” test which was to be passed by immigrants who wish to settle in the UK; the ability of the immigration authority to refuse applications in the name of the public good was enacted.³⁶⁹ It has been argued that the ever increasing strictness as regards applications from non-EU citizens is fuelled by the British resentment of the EU mandated facilitation of free movement for EU citizens.³⁷⁰ Based on reported cases of forced marriage especially concerning persons from Pakistani backgrounds, the minimum age for spouses was raised to 21.³⁷¹ Although a research conducted on behalf of the Home Office does not mention the term MOB or import bride, it is acknowledged that IMBs play a role as regards the arrangement of marriage between UK citizens and, particularly, Filipino and Thai women.³⁷²

Legislation

In order to join the MOS in the UK, the MOB needs to apply for a “family of a settled

person” visa. To that end, the MOS and the MOB need to prove that the MOB is over 18
years of age,³⁷³that the couple has met in person before the application is filed,³⁷⁴ that the
³⁶⁵ INIS, 2013, para. 13.6.

³⁶⁶ Charsley et al., “Marriage-related migration to the UK,” International Migration Review, 46 (4), 2012, p. 861-
890.

³⁶⁷ HC 395, Appendix FM E-ILRP.1.3.

³⁶⁸ HC 395, Appendix FM E-ECP.3.1.

³⁶⁹ Charsley, 2012; HC 395, Appendix FM S-EC.1.1.-3.1. and Barnden, “Family reunification requirements: Barrier
or facilitator to integration” Journal of Immigration, Asylum and Nationality Law, 27(2), 2012, p. 174

³⁷⁰ Barnden, “Family reunification requirements: Barrier or facilitator to integration” Journal of Immigration,
Asylum and Nationality Law, 27(2), 2012, p. 174

³⁷¹ Ibid, p. 7

³⁷² Ibid, p. 10-11

³⁷³ HC 395, Appendix FM E-ECP.2.2- E-ECP.2.3.

Policy Department C: Citizens' Rights and Constitutional Affairs

76

relationship is genuine,³⁷⁵ that there is an intent to continue living with the MOS after the
application,³⁷⁶ that the couple has an adequate place to live in the UK,³⁷⁷ and that the MOB
has good knowledge of the English language.³⁷⁸ Where the couple has not married before
the application is filed, it is nevertheless possible for an applicant to enter the UK as a
fiancée, provided that the couple complies with the abovementioned conditions and that
they have the intent to marry in the following 6 months.³⁷⁹ Furthermore, a financial
requirement is imposed, according to which a yearly salary of £18,600 is required when the

application is filed only for the MOB and £22,400 is required when the application is filed for the MOB and one additional child. An amount of £2,400 is required for each additional child.³⁸⁰ Any joining children must be under 18 years of age. Where the MOB satisfies these conditions, she will be admitted for an initial period not exceeding 33 months.³⁸¹ For an extension of the right of residence, the MOB has to give evidence that she is married to a person present and settled in the UK that they intend to live permanently together, that there will be adequate accommodation without recourse to public funds, that they have sufficient resources, and that she has obtained an English language sufficiency certificate.³⁸² The extension will be issued for a period of 30 months.³⁸³ The right to settle in the UK only becomes available after five years or, depending on the circumstances, ten years of continuous stay in the UK.³⁸⁴

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

Conclusion

In the context of an overall crackdown on perceived influx of migrants to the United Kingdom, the legislative regime in the UK has certainly become more restrictive over time.

Generally, however, MOB's are not singled out; as such, their migration follows the general rules. There is no specific legislation concerning the immigration of MOB's in the UK but the regular rules concerning family reunification are applied. MOB's have to fulfil certain integration requirements, while the male sponsors have to show a certain financial capacity

to maintain their bride-to-be. Also in the UK, MOB's who are victims of domestic abuse can apply for autonomous residency irrespective of the duration of the marriage.

374 HC 395, Appendix FM E-ECP.2.5.

375 HC 395, Appendix FM E-ECP.2.6.

376 HC 395, Appendix FM E-ECP.2.10.

377 HC 395, Appendix FM E-ECP.3.4.

378 HC 395, Appendix FM E-ECP.4.1.

379 HC 395, Appendix FM E-ECP.2.8.

380 HC 395, Appendix FM E-ECP.3.1.

381 HC 395, Appendix FM D-ECP.1.1.

382 HC 395, Appendix FM E-LTRP.1.2.

383 HC 395, Appendix FM D-LTRP.1.1.

384 HC 395, Appendix FM D-LTRP.1.1.-1.2.

385 HC 395, Appendix FM E-DVILR.1.1.- E-DVILR.1.3.

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

77

4. ASSESSMENT OF CURRENT PROBLEMS AND **LEGAL** GAPS

IN RESPECT TO THE MAIL-ORDER BRIDE INDUSTRY IN

THE EU AND THE RESEARCHED MEMBER STATES

4.1. Gaps in Current **Legal** Frameworks

Based on the research conducted and outlined above, some lacunae are revealed in the

existing **legal** framework. Generally, there is no comprehensive set of legislation, either at

the EU, Council of Europe, or MS level that deals with the MOB phenomenon. Given that this report identifies particular risks associated with engaging in MOB relationships which are associated with the women's vulnerable position in the host country, gaps in the current legislation are potentially serious.³⁸⁶ Three such gaps deserve particular attention.

4.1.1. Lack of Regulation of the Activities of IMBs

IMBs operating within EU or providing services directed at clients in the EU are subject only to very generalist legislation (such as national legislation implementing the E-Commerce Directive), due to the lack of regulations of the activities of IMBs. Whereas, under existing rules, there are good reasons to assume that the liability of IMBs in case of fraud is not excluded under EU law, it remains the case that the IMBs are only subject to very limited obligations. Regulation of IMBs is nonetheless seen as a key element in preventing exploitative marriages.³⁸⁷

4.1.2. Lack of a Harmonised Regime for Family Reunification

Three principal situations may be distinguished where it concerns family reunification in the EU: the wholly internal situation in which national law applies, the free movement (of EU citizens) situation in which EU free movement law applies (including in particular Directive 2004/38), and, finally, the lawfully residing TCN in which EU migration law applies (Directive 2003/86). For those EU citizens residing in their own MS, the conditions for admission for their spouses will vary from MS to MS. Of course, this is not specific to the MOB phenomenon; all forms of family reunification of EU citizens in a wholly internal situation have that issue. There are, however, specific risks related to status of MOB. A murky legal status tends to exacerbate the vulnerable position of these women and

increase their dependence on the MOS.³⁸⁸ Such a murky legal status is likely to be the case

as the MOB phenomenon has traditionally not received attention at the EU or national level.

Generalist legislation on family reunification is not always sufficiently sensitive to this

relatively unique migration issue. Moreover, the current patchwork of legislation makes it very difficult for women considering IMB services to inform themselves fully with regard to their rights and legal position in their potential host country.

4.1.3. Lack of Harmonised Protective Measures

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

386 For the importance of appropriate legislation and the need to ensure that MOBs have sufficient resources and possibilities to escape abusive situations, see S. Lyneham and K. Richards, Human trafficking involving marriage and partner migration to Australia, (Australian Institute of Criminology, 2014).

387 Orloff and Sarangapani, 'Governmental and industry roles and responsibilities with regard to international marriage brokers: equalizing the balance of power between foreign fiances and spouses', Violence Against Women,

13(5), 2007, p. 469.

388 Zug, "Mail Order Feminism," William & Mary Journal of Women and the Law (21)153, 2014, p. 168-172

Policy Department C: Citizens' Rights and Constitutional Affairs

Directive 2003/86, for example, has very limited protective measures in place in case of breakdown of the relationship. Under the Directive, MS are not under a general obligation to provide for autonomous residence permits prior to five years of residence.³⁸⁹ This can be

contrasted with Directive 2004/38 which provides for autonomous residence permits to TCN family members from one year's residence onwards.³⁹⁰ The degree of protection afforded will therefore vary widely depending on the nationality and status of the MOS. Examined from the perspective of the MOB and the risks faced by these women, this bewildering maze is unlikely to facilitate protection.

4.2. Social Consequences and Possible Forms of Violence Resulting

from **Legal** Gaps

The previously determined gaps in the legislation can have negative consequences for MOBs, MOSs, and children, including social consequences and possible forms of violence.

While certain **laws** might be in place, problems can arise if these are not regulated and upheld³⁹¹ or when individuals are not aware of and/or unable to access support services.³⁹²

4.2.1. Women

Due to a lack of protective measures in addition to language barriers, cultural differences, difficulties in finding a job, and the possible inability or unwillingness of the husband to encourage integration and/or inform women about their rights, MOBs might face issues such as isolation and violence, which are arguably mutually reinforcing.³⁹³ Facing the risk of becoming completely dependent and reliant on their husbands, MOBs might lead an isolated life with a lack of supportive networks. Having external relationships outside the groom's circle of friends and family is considered crucial for the MOB's wellbeing as well as in contributing to the MOB's knowledge of her **legal** status and **legal** rights, which are difficult to understand.

The possible dependent position of the bride in the relationship is arguably the most significant factor contributing to the likelihood of domestic violence.³⁹⁴ Domestic violence is considered the outcome of an imbalance in social dynamics between two partners, causing

tensions and a systematic deterioration of abusive actions.³⁹⁵ In the context of MOB relationships, women might be forced to oblige their husband's will in case they are legally, financially, and socially dependent on him (interview with Laura Barry, 2016; interview with Kenneth Franzblau). Arguably, the husband does not even do this on purpose or because he does not mean well, but rather because he is afraid of losing his wife.³⁹⁶

The main question for many scholars regarding the MOB industry is the extent to which gender-based violence within in a MOB relationship is growing or stagnating.³⁹⁷ Some studies reveal that women in international marriages run greater risk of ending up in a disadvantaged situation, as their economically and legally dependent position frequently leads to situations of mental and physical abuse from their future husbands.³⁹⁸ Such forms of domestic violence can vary from sexual exploitation, trafficking, and prostitution to

³⁸⁹ See Article 15(3) Directive 2003/86.

³⁹⁰ Article 12ff Directive 2004/38.

³⁹¹ Interview with Alexandra Still, 2016

³⁹² Interview with Kenneth Franzblau, 2016

³⁹³ Sterckx, et al., 2014; Interviews with Laura Barry, Kenneth Franzblau, Sophit Tubtim, Emma Gooding, and Alexandra Still, Susan Rutten, Daria Boll-Palievskaya, and Yuliya Zabyelina, 2016

³⁹⁴ Belleau, 2003; Tettey, 2009; Lloyd, 2000

³⁹⁵ Rushchenko, 2016

³⁹⁶ Interview with Guri Tyldum, 2016

³⁹⁷ Tettey, 2009

³⁹⁸ Lloyd, 2000

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

79

modern slavery, debt bondage, and economic and legal dependency.³⁹⁹ Since comprehensive screening processes for male customers of IMBs are rare and IMB activities are hardly regulated, there is an increased risk of violent men being allowed to buy “advertised” submissive women.⁴⁰⁰ Given the MOB’s immigrant status, a lack of harmonized protective measures, and unawareness of their rights, they may become victims of (sexual) exploitation through debt bondage and other forms of modern slavery. It is, however, difficult to estimate the numbers of MOB’s becoming victims of violence due to the lack of data.

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

particularly vulnerable group, which arguably needs additional protection.

4.2.2. Bridegrooms

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

³⁹⁹ Brocato, 2004

⁴⁰⁰ Chun, 1996; Jackson, 2006

⁴⁰¹ Dutton, Orloff, & Hass, 'Lifetime prevalence of violence against Latina immigrants: Legal and policy implications', International Review of Victimology, 7(1-3), 2000, p. 93-113; Raj & Silverman, 'Violence against immigrant women: The roles of culture, context and legal immigrant status on intimate partner violence', Violence Against Women, 2002, 8; Tjaden & Thoennes, 'Prevalence and consequences of male-to-female and female-to-male

intimate partner violence as measured by the national violence against women survey', Violence Against Women, 6(2), 2000

⁴⁰² Cunneen et al., 'Cultural criminology and engagement with race, gender and postcolonial identities', Cultural criminology unleashed, 2004, p. 97-108.

⁴⁰³ Rushchenko, 2016

⁴⁰⁴ Interview with Benedicta Deogratias, 2016

405 Cunneen et al., 2004; Rushchenko, 2016

406 Sarker et al, 2013

407 Interviews with Lea Ackermann and Daria Boll-Palievskaya, 2016

408 Zug, 2014

409 Interviews with Yuliya Zabyelina, Sophit Tubtim, Emma Gooding, Alexandra Still, and Melita Maria-Thomeczek,

2016

Policy Department C: Citizens' Rights and Constitutional Affairs

80

weak by their environment, especially in non-Western European countries.⁴¹⁰ This adds to the taboo and fear of losing face that grooms in (international) marriages may undergo. As cyberspace has developed itself into a new platform for finding romance, new forms, typologies, and dimensions of scamming and online fraud have risen to the surface.⁴¹¹ This has created an opportunity window for cyber criminals to mislead both men and women through international marriage agencies. Men might also be surprised when they realize they have to provide financial support for the family of the MOB in her country of origin⁴¹² and if the MOB does not behave as submissive as expected.⁴¹³

4.2.3. Children

Generally it was observed that very limited information could be retrieved on the risks and consequences for the children whose parents are involved in a MOB relationship. If women have children before they engage in a MOB relationship, they often leave their children behind in their origin country. It is typically difficult for MOBs to bring their children as getting a visa for them can be a time-consuming process. In these cases, the children oftentimes grow up without their mothers and are taken care of by a family member.⁴¹⁴ If

MOBs manage to bring their children with them, they face the risk of being neglected by the MOS who is not the biological father.⁴¹⁵

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

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

⁴¹⁰ Sarker et al., 2013

⁴¹¹ Sarker et al., 2013

⁴¹² Interviews with Jean-Noël Sanchez, Anonymous I, Lauran Bethell, 2016

413 Interview with Daria Boll-Palievskaya, 2016

414 Interview with Jean-Noël Sanchez, 2016

415 Interview with Kenneth Franzblau, 2016

416 Interview with Asunción Fresnoza-Flot, 2016

417 Interview of Kenneth Franzblau, 2016

418 Interview with Anonymous I, 2016

419 Statistisches Bundesamt, 2011; Interviews with Prof. Gerard René de Groot and Gene Alcantara, 2016

420 Interviews with Babette Rohner, Sopti Tubtim, Emma Gooding, Alexandra Still and Lea Ackermann, 2016

421 Interview with Susan Rutten, 2016

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

81

4.3. Concluding Observations

In conclusion, there is no comprehensive legislation regulating the MOB industry, neither at

national nor at the supranational level. This report identifies three main legal gaps namely

the lack of regulation of IMB activities, the lack of a harmonized regime for family

reunification, and the lack of harmonized protective measures for women in case of

relationship break up. This can be considered a problem because it becomes even more

difficult for the MOBs to understand and make use of her rights. In addition, individuals

might try to circumvent strict rules, for instance by getting married in another MS. These

legal gaps, in combination with additional risks commonly associated with engaging in MOB

relationships (language barriers; cultural difficulties; legal, economic, and social

dependency on the husband), leave MOBs at high risk of being caught in a vicious circle of

dependency, isolation, and violence. If women are caught in such a vicious cycle, it is arguable difficult for them to break it. Men are at risk of becoming a victim of Internet fraud and underestimate the burden to support their wife's family financially. Challenges for children growing up in MOB relationships can be manifold, including for instance being neglected, bullied, used to control one parent and having difficulties in negotiating their identities. One should note that it is dangerous to assume that all women, men, and children involved in MOB relationships equally experience these consequences. Just like female marriage migrants, they are assumed to be more vulnerable in general. However, there is no data indicating how many MOB relationships are successful or not, which is why one should be careful with generalisations.

Policy Department C: Citizens' Rights and Constitutional Affairs

82

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

5.1. Overall Outcomes of the Interviews

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

legislation and regulations, these are specifically mentioned.

5.1.1. Experts

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

Table 4: List of Interviewed Experts

Interviewee Position

Dr. Gwenola Ricordeau Associate Professor of Sociology, University of Lille
(France); Visiting Professor at the University of the
Philippines

Dr. Asunción Fresnoza-Flot Postdoctoral Researcher on migration from the
Philippines, labour migration, and transnational
parenthood at the University of Radboud Nijmegen

Prof. Marcia Zug Professor at the University of South Carolina-Columbia

(USA) teaching Family Law, Advanced Family Law, and

American Indian law, with experience researching the
MOB phenomenon

Dr. Daria Boll-Palievskaya Cultural expert and cross-cultural trainer for Russia

Dr. Babette Rohner Sociologist teaching at Alice-Salomon University of

Applied Science Berlin (Germany) and working as social

worker at the NGO Ban Ying supporting the rights of

female migrants having experienced violence, abuse, or

trafficking.

Dr. Aleksandra Jolkina PhD Candidate at Queen Mary University, London (UK);

As an investigative journalist, she studied sham

marriages between Latvian women and TCNs in the UK

and Ireland.

Gene Alcantara Immigration consultant in the UK, Chairperson of the

European Network for Filipinos (ENFiD)

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

83

Interviewee Position

Eric Gubbels **Legal** Civil Affairs advisor for the Amsterdam

municipality

Melita S. Sta. Maria-

Thomeczek

Philippine Ambassador to Germany

Rohlee De Guzman Policy Advisor, Executive Director, & Development and

Promotions Director at the European Network for

Filipinos (ENFiD)

Kenneth Franzblau Human trafficking expert

Laura Barry Lawyer, investigative journalist, and filmmaker ("Bride

Trafficking Unveiled")

Benedicta Deogratias PhD Candidate at Maastricht University, Private **Law** and

Marriage Captivity

Sister Dr. Lea Ackermann Founder of SOLWODI, a German NGO

Prof. Gerard René de Groot Professor at Maastricht University (Netherlands)

specialized in private international law, comparative law,

family law and nationality Law

Prof. Susan Rutten Professor at Maastricht University (Netherlands),

specialized in law and multicultural cohabitation as well

as person and family law

Sophit Tubtim, Emma

Gooding & Alexandra Still

Experts on Thai Immigration to Belgium (NGO)

Prof. Jean-Noël Sanchez Associate Professor of Université de Strasbourg Expert in

match-making websites in South-East Asia

Anonymous I Expert on Thai Immigration to the UK

Dr. Yuliya Zabyelina Assistant Professor at John Jay College of Criminal

Justice (USA), expert in human trafficking and organized

transnational crime

Dr. Helga Eggebø Senior Project Manager at KUN (Centre for Gender

Equality), PhD: "The Regulation of Marriage Migration to

Norway"

Dr. Pauline Kruiniger Postdoctoral researcher and docent Private Law,

Maastricht University; Specialisation: gender and human

rights, multicultural cohabitation

Anonymous II Human rights expert (CoMensha)

Dr. Guri Tyldum **Migration** Researcher at Fafo (Institute for Labour and
Research) in Norway, experience in research

international marriage **migration**

Lauran Bethell International consultant on human trafficking and

exploitation, particularly experienced with disadvantaged

women working in the sex industry

Policy Department C: Citizens' Rights and Constitutional Affairs

84

To begin with, it is important to note that the majority of the interviewees do not approve of the term "Mail-Order Bride"⁴²² and/or stress that it is important to define the phenomenon properly.⁴²³ Reasons for this are inter alia that the term is associated with negative connotations and stereotypes and that its use might affect attitudes towards and perceptions of international couples in general.⁴²⁴ In addition, the term is perceived as outdated because it is difficult to assess whether or not a woman is a MOB according to the definition applied in this report, particularly since opportunities for women to look for possible partners via other means such as social media, established migrant networks, and diaspora or international communities are increasing. In times of globalisation, women can even meet their future husband in person by, for instance, deliberately visiting well-known tourist hotspots. This possibly relates to the fact that some interviewees were surprised about our research project as they did not perceive the MOB phenomenon as a pressing issue anymore compared to the 1990s when the industry arguably was at its peak.⁴²⁵ There is disagreement, however, regarding the role of the Internet. On the one hand, it might have contributed to the growth of the MOB industry as it becomes easier for IMBs to operate. On the other hand, women are more independent in their search for a Western

partner without relying on services of IMBs. Certainly, the Internet increases the risks for Western men to become a victim of fraud and scamming.⁴²⁶

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

⁴²² Interviews with Laura Barry, Yulia Zabyelina, Daria Boll-Palievskaya, Asunción Fresnoza-Flot, Gwenola

Ricordeau, Gene Alcantara, Jean-Noël Sanchez, Rohlee de Guzman, and Guri Tyldum, 2016

423 Interviews with Laura Barry, Helga Eggebø, Pauline Kruiniger, Lauran Bethell, Guri Tyldum, Babette Rohner,

Asunción Fresnoza-Flot, Gerard René de Groot, Gwenola Ricordeau, Melita S. Sta. Maria-Thomeczek, Eric Gubbels,

Gene Alcantara, Jean-Noël Sanchez, Anonymous I and Anonymous II, 2016

424 Ricordeau, 2012

425 Interviews with Babette Rohner, Gwenola Ricordeau, and Gene Alcantara, 2016

426 Interview with Daria Boll-Palievskaya, 2016

427 Interview with Daria Boll-Palievskaya and Babette Rohner, 2016

428 Interviews with Lauran Bethell and Joseph O'Connor, 2016

429 Interview with Guri Tyldum, 2016

430 Interviews with Kenneth Franzblau, Sophit Tubtim, Emma Gooding and Alexandra Still, 2016

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

85

One cannot only focus on problems of MOB's and ignore the problems of female marriage migrants from third countries in general, which are often rather similar. A majority of the interviewees, therefore, recommends educating female marriage migrants in general and providing them with information on their rights, obligations, and possible contact points (helplines and NGOs) in case they need help. Such information could come in various forms, for instance, as a preparatory course before migrating as in the Philippines, integration courses upon arrival in the host country, or even simply information brochures that are distributed by embassies or immigration services. One should note that it is assumed that a majority of MOB's are aware of the risks but nevertheless decide to become a MOB since they are convinced that they will not become a victim. Consequently,

education and information should not necessarily aim at preventing women from becoming MOBs but instead provide them with something to remember or come back to in case of emergency.⁴³¹ By a majority of interviewees, it is considered crucial that MOBs and migrants in general learn the official language of the destination country to be able to integrate both socially and economically, arguably leading to more equality between partners. Another suggestion is to create more flexible immigration and family laws so that residence permits and visas of MOBs do not depend on the husband, which increases the women's vulnerability and might prevent them from leaving their husband in case of abuse. Other ideas are to facilitate divorce, shorten the period before a marriage migrant can apply for permanent residence, or to give MOBs the possibility to maintain residence in the destination country in case of abuse and relationship breakup.⁴³²

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

5.1.2. Representatives of the Marriage and Dating Industry

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

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

| Industry | Interviewee Position |
|---|--|
| Ksenia Droben | Director of the Match-Making Service Ksenia Droben |
| Partnervermittlung, based in Heidelberg, Germany and St. Petersburg, Russia | |
| Joseph O'Connor | Operations Director at AtlanticThai Internet Co. Ltd |
| based in Bangkok, Thailand | |
| 431 Interviews with Pauline Kruiniger, Guri Tyldum, Asunción Fresnoza-Flot, Lauran Bethell, Jean-Noël Sanchez, Laura Barry, Babette Rohner, Lea Ackermann, Anonymous I and Anonymous II, 2016 | |
| 432 Interviews with Helga Eggebø, Pauline Kruiniger, Guri Tyldum, Marcia Zug and Babette Rohner, 2016 | |
| Policy Department C: Citizens' Rights and Constitutional Affairs | |

86

5.1.3. Ksenia Droben

Ksenia Droben's agency seems to be a role model of an international match-making service. With almost twenty years of experience, Droben is dedicated to facilitating realistic relationships between Russian women and European (mostly German) men. With offices in Russia and Germany, she and her employees get to know both her female and male customers in person to help them find the "perfect match" and to prevent relationships which would be doomed to fail. In order to protect her clients and reputation, Droben reserves the option to reject clients if she notices that they have completely wrong expectations or could be dangerous for their partner. While the Russian office caters more to the needs of the women, the German one focusses on the men's needs. Services offered

by Droben's agency include support with correspondence including translation, the organisation of personal meetings between men and women in Russia, and singles parties in Germany, Russia, Finland, and Ukraine. In addition, the agency offers seminars for men and so-called bridal schools (German: Brautschulen) for women to prepare them for international relationships. Droben and her team are always available for additional consultations and support clients as much as possible with the migration process and legal issues. Furthermore, they aim at staying in touch with their clients through newsletters, blog posts, and social media, which they also use to disseminate additional information. Droben cannot describe typical clients or confirm any stereotypes. Men and women come from all sorts of demographic and socioeconomic backgrounds. Both male and female clients are informed about possible risks an international marriage might involve, such as cultural and mental differences between the partners, restrictions the migration process might bring for the women (e.g. not being allowed or able to work for a certain time), and information on where to find help if necessary. Droben is furthermore dedicated to eliminating unrealistic expectations among her clients such as men looking for significantly younger women and women expecting to live in luxury when marrying a craftsman. Droben claims that most of the couples she and her team brought together stay together and only few get divorced. She would be willing to help women in cases of abuse or violence, but she is not aware of such cases. She does not exclude them either because women might be afraid or embarrassed to talk about it.

Droben is in favour of further regulating the match-making industry and would be willing to cooperate with the authorities in charge. In the current situation, she argues, anyone can open a match-making agency and many fail after a short period of time. In Droben's opinion, this can be dangerous for clients because the service requires a lot of skills and experience to be successful. On the other hand, it can be harmful to the reputation of other

agencies, leading to the assumption that all agencies are criminals engaging in fraud and cheating. For Droben, a possible solution to this problem is to certify match-making agencies so that only those that have been tested and adhere to certain standards can operate. Another idea would be to set up a European database of existing (certified) matchmaking agencies providing contact details and information on experience and other aspects that might help possible clients choose a certain agency. This way, risks to become a victim of fraud, for instance, could be minimised. In addition, Droben would like to find a way to prevent clients from cheating regarding their economic and family situation. Requesting passport copies from clients as a backup and to be able to perform background checks might be one way of doing so. Droben's cooperativeness is further expressed through publishing a call, asking former and current clients to support the current research project (see Print Screen 4, in German).

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

87

5.1.4. Joseph O'Connor

Joseph O'Connor runs an Internet company which operates inter alia a social networking and dating site called ThaiLoveLines, catering to both international dating in Thailand as well as dating among Thais. O'Connor emphasises that his company is not involved in any way with marriage broking or any activity connected with directly introducing marriage partners let alone human trafficking. The idea behind the dating site is to bypass services of IMBs by finding a partner (abroad) independently, thereby avoiding loneliness. By signing up on the website, forms of relationships other than marriage, e.g. friendship, are also possible. It is also interesting to note that ThaiLoveLines caters for all sexual

orientations and stands for an inclusive dating environment. In order to guarantee the security of all users and to prevent Internet fraud, approximately 7.5 per cent of applications to the dating site are rejected on grounds of security or decency standards. Services offered by ThaiLoveLines include chats, Internet calls, correspondence via email, an innovative match service, and a social networking service.

Being married to a Thai woman himself and living in Thailand for more than a decade, O'Connor arrived at a complex understanding of Thai cultures and traditions that helps explain why Thai women look for Western partners in particular. He points out that while individuals in the West grow up thinking marriages are for love, they cannot last if the economic aspect is not settled, which is often forgotten. Further, O'Connor states that, despite being focused on finances, Thai women will still be loving towards their husbands. O'Connor acknowledges that there are cases of fraud and abuse and that oftentimes it is people's own fault that they become victims. What he is most concerned about is that the online dating and match-making industry is conflated with the trafficking industry, although, for him, it is arguably the exact opposite. Online dating and international marriage should rather be seen as a tool for some women to fix their broken lives, which is important in Thailand because, for instance, unmarried mothers, divorced women, and women with darker skin do not have the same opportunities than others. O'Connor suggests that many women in Thailand are faced with a culture of chronic debt and few prospects of advancement.

Regulating the industry and introducing protective measures for all individuals involved should prevent stigmatization of international marriages. O'Connor argues that these relationships should be seen positively rather than being labelled or stereotyped in a negative way. These regulations should stress that the relationships are not the result of trafficking in human beings but a deliberate choice of both partners. According to O'Connor,

while there can be cases of abuse or scamming within these relationships, they are usually equal between the man and his wife. O'Connor suggests that the two individuals will grow to love each other as they go through things together as a couple.

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

Policy Department C: Citizens' Rights and Constitutional Affairs

88

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

Source: Ksenia Droben Partnervermittlung

5.1.5. Personal Experiences

Due to time constraints, the research group was not able yet to establish in depth trust relationships to be able to access the networks of MOBs and MOSs. Therefore, the objective to interview men and women who have engaged in MOB relationships could unfortunately not be realised. MOBs and MOSs the research team identified through personal networks International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

89

were not willing to support the research project. In addition, attempts to find possible interview partners with the help of Ksenia Droben and her match-making service as well as general requests for participants made on immigration fora (such as buitenlandsepartner.nl) failed. This limits the report to second hand knowledge and emphasises the sensitivity of the issue. Thus, examples of both women and men involved in MOB relationships were obtained second-hand solely from the experts interviewed. Through these interviews, a range of experiences with MOB relationships were revealed, from negative to positive.

5.1.6. Women

One big problem for MOBs is that, in some cases, the men looking to engage in such a relationship are entitled to an *Umtauschrecht* (return guarantee), meaning that they are able to try out and return the women if the relationship does not work out, even after sexual contact. In such cases, MOBs, on the other hand, are not allowed this right and are typically required to engage in the relationship.⁴³³ Specifically, Babette Rohner (2016) gave an example of a Thai woman who was presented with two men who she did not accept but she was obliged to take the third. Another example from Lea Ackermann concerned a MOB who had left her violent husband and returned to her marriage broker, who subsequently raped her. This puts emphasis on the asymmetric relationship. The MOS largely defines the relationship and has the power to end it at any time during the first three years,⁴³⁴ whereas the MOB has limited rights and would possibly have to return.⁴³⁵ Unfortunately for the women, this often means that they are themselves responsible for the costs of returning back home, which might force them to work in the sex industry.⁴³⁶

While women can engage in MOB relationships voluntarily, there is often also community pressure for them to become married, especially for financial reasons. Lauran Bethell

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

While MOBs can find themselves in bad relationships, there are also instances where international marriages are positive for all individuals involved and should be seen as an opportunity for both the MOB and the MOS to substantially improve their lives.⁴³⁷ Joseph O'Connor (2016) suggests that, while it is of course not always the case, he has seen five documented situations where Thai women married Western men, moved to their husband's home country, and acquired citizenship of the destination country. He compares their new life to fairy tale.

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

⁴³³ Interviews with Lea Ackermann and Babette Rohner, 2016

⁴³⁴ Speaking in the context of Norwegian immigration law.

⁴³⁵ Interview with Guri Tyldum, 2016

⁴³⁶ Interviews with Lea Ackermann, Babette Rohner, Sopit Tubtim, Emma Gooding and Alexandra Still, 2016

⁴³⁷ Interviews with Guri Tyldum, Asunción Fresnoza-Flot, Laura Barry and Melita S. Sta. Maria-Thomeczek

90

socially in order to resemble a normal relationship. She specifically cites an example of a Thai woman living in the Norwegian countryside, initially without a job or driver's license and caring for her husband's parents. Eventually, she learned Norwegian, was offered a cleaning job, and was able to attain a driver's license after having made her own money. This allowed her to gradually be in a position where she was able to control her own life and to be on an equal footing with her husband.

5.1.7. Men

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

5.2. Best Practices

As noted above, the US has longstanding experience with MOB's and the phenomenon is openly discussed and addressed.⁴³⁸ The latest *legal* development in this regard came with the IMBRA introduced in 2005 after two high profile cases in which MOB's had met their death at the hands of their husbands.⁴³⁹

The act as adopted imposes significant obligations on IMBs which are either established in the US or operate abroad but address the US market. These include:⁴⁴⁰

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

438 See generally: Zug, *Buying a Bride: An Engaging History of Mail-Order Matches*, NYU Press, 2016

439 Pleasant, 'The International Marriage Broker Regulation Act: Protecting Foreign Women or Punishing American

Men?', Campbell Law Review, 29(311), 2007, p. 314.

440 Codified at 8 United States Code § 1375a(d), available at <https://www.law.cornell.edu/uscode/text/8/1375a#d>

last visited 24 August 2016

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

91

o The background information collected on the MOS, in the primary language of the MOB.

o Provision of an information pamphlet (see annex 3)⁴⁴¹ detailing the legal rights and resources available to immigrant victims of domestic violence and other crimes, as developed by the State Department.

- Requirement to obtain consent from foreign clients (the would-be MOBs) before their personal contact information is provided to the (would-be) MOS.

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

Flanking the IMBRA, the US operates a permissive immigration context. The classic immigration route for MOBs, the “K-1 visa,” allows the MOB to enter the US and reside for a period of ninety days during which she can decide whether to marry her fiancé. This provides the prospective bride with a degree of latitude in making her decision and to familiarise herself with the host country. After marriage, she becomes a conditional residence which includes right to leave and re-enter the US, to attend education, and to work. Finally, after two years of residence, the MOB is eligible for permanent residence. This permanent residence can be obtained through self-petition, i.e. without needing the permission of the husband.⁴⁴²

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

1. A firm belief in the autonomy of the women involved. The IMBRA legislation draws few

hard borders (e.g. no children may be advertised) and rather mainly seeks to ensure that the women using IMB services make informed decisions. Indeed, the stated purpose of the IMBRA is to:

(...) to better inform women entering this country as a prospective spouse about the past history of the man she may be marrying and to better inform them of their rights as residents of the United States if they become victims of domestic violence.⁴⁴³

As such, the regulation focusses on IMBs conducting extensive background checks vis-à-vis potential MOS. The information so garnered must be provided to the women in a language they can understand, under penalty of fines and possible imprisonment should the IMB not take sufficient action. It should be noted, however, that actual enforcement of these IMBRA obligations has not consistently been rated as sufficient by the US Government Accountability Office.⁴⁴⁴

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

441 Available at <https://travel.state.gov/content/visas/en/general/IMBRA.html> last visited 24 August 2016

442 Zug, 2014, p. 168.

443 Hearing of senator Maria Cantwell, as cited in Newsome, "Mail Dominance: A Critical Look at the International Marriage Broker Regulation Act and Its Sufficiency in Curtailing Mail-Order Bride Domestic Abuse," Campbell **Law** Review, 29(2), p. 291

444 See GAO-15-3, Immigration benefits: Improvements Needed to Fully Implement the International Marriage

Broker Regulation Act, available at: <http://www.gao.gov/products/GAO-15-3> and GAO-08-862, International

Marriage Broker Regulation Act of 2005: Agencies Have Implemented Some, but Not All of the Act's Requirements,

available at: <http://www.gao.gov/products/GAO-08-862> .

Policy Department C: Citizens' Rights and Constitutional Affairs

92

multilingual information packages targeted towards the MOB as to her rights and legal position, the possibility of a “get-to-know-one-another” visa (fiancé visa), emancipatory rights upon initial family reunification (such as labour market access and access to education), and a view to permanent residence without needing the cooperation of the MOS after a relatively short period of time.

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

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

can be expected in their destination country as well as information regarding social services and the promotion of economical literacy.⁴⁴⁷

Further, some destination countries, such as the Netherlands and Germany, are implementing similar orientation and integration sessions for foreigners not limited to

MOBs. These can be mandatory in some cases depending on what basis individuals migrate to the respective country.⁴⁴⁸ These are intended to help build good local relations as well as inform MOBs of their rights and their new communities. Organizations and associations, such as the European Network of Filipino Diaspora (ENFiD), are also engaging Filipinos to help foster a sense of community abroad.⁴⁴⁹ According to its website, ENFiD is “an active international networking association that seeks to cultivate a sense of shared nationhood and cooperation among Overseas Filipinos in Europe... [It] is active in organising cultural events, relief operations, focused training workshops, fora for the discussion of issues

pertinent to Euro-Filipinos and partnering with institutions for greater access to migration issues on culture and development.”⁴⁵⁰ The organisation is currently active in twenty countries, including the UK, the Netherlands, Germany, France, Belgium, and Denmark, and coordinates worldwide with NGOs, UN agencies, churches, overseas Filipino organizations, and Philippine government institutions in order to support and empower Filipinos abroad.

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

⁴⁴⁵ Interview with Aleksandra Jolkina, 2016

⁴⁴⁶ Interview with Sophit Tubtim, Emma Gooding, and Alexandra Still, 2016

⁴⁴⁷ Interviews with Melita Maria-Thomeczek and Jean-Noël Sanchez, 2016

448 Interviews with Sophit Tubtim, Emma Gooding, Alexandra Still and Ksenia Droben, 2016

449 Interview with Rohlee de Guzman, 2016

450 ENFiD website, <http://enfid.org/>

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

93

information on the various hotlines that women can contact if they find themselves in
distress or in difficult situations within the UK, the Netherlands, and Belgium.⁴⁵¹

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

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

In comparison to Hughes’ 2001 project, it is nowadays difficult to identify exclusive MOB
websites because many websites sell their services as (premium online) dating services.

The sites emphasize that the end result of the relationships they support does not

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

Considering an additional project, the project "Marriage Migration as Immigration Gate: The Situation of Female Marriage Migrants from Third Countries in the EU Member States"

(acronym: HeiRat I) conducted in 2003 aims to address the issue of marriage migration.⁴⁵³

The target group in this project consists of female immigrants from third countries who married either immigrants residing in the EU or EU citizens. The project presents an

overview of the legal regulations on international marriage of the EU Member States as well

as the social situation of the woman, taking into account NGOs, programmes, and

initiatives providing protection to this group of migrants. The second phase of the project,

'Protection and Aid Measures for Female Marriage Migrants from Third Countries in the

Member States of the European Union' (acronym: HeiRat II), conducted in 2004, aims at

451 Love Abroad website, <http://www.loveabroad.org/>

452 Tschechische Traumfrauen and Asian Women Planet

453 See generally: <http://ec.europa.eu/justice/grants/results/daphne-toolkit/en/content/heirat-ii-protection-andaid->

measures-female-marriage-migrants-third-countries-member-states and

<http://ec.europa.eu/justice/grants/results/daphne-toolkit/en/content/heirat-iii-female-marriage-migrantsawareness->

raising-and-violence-prevention

Policy Department C: Citizens' Rights and Constitutional Affairs

94

researching female marriage migrants' access to **legal** and social counselling in the then 15 EU Member States. HeiRat II builds on the findings of HeiRat I by additionally interviewing the women.

HeiRat studied the female marriage **migration** context of TCNs to the EU about 13 years ago. Although the project did not focus on MOBs in particular, it is interesting to consider HeiRat's main points of recommendation and compare them with the current situation.

First, HeiRat stresses that there is a need for enhanced support for female marriage migrants from third countries not only on the social, but also on the legislative level.

Therefore, HeiRat recommended that the females should be provided with information on the procedures before arriving in the destination country. It was suggested that the woman

should be aware of the legislation of their marriage and the procedures they must undertake in order to engage in an international marriage. This would provide these women that are living and married in a foreign country with a sense of agency. The current research identifies similar issues and finds that some basic actions are taken by several host and home countries in providing information to female marriage migrants, but their effectiveness can be questioned. Furthermore, it stresses the importance of language and cultural classes in the host country to enable integration and prevent social isolation and associated risks.

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

Furthermore, in case of experiencing domestic violence, the woman should also be able to access social benefits and welfare and should not be denied public funds.

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

Furthermore, the cooperation between organisations at the local and the national level that work towards the protection of female marriage migrants should be enhanced. Currently, cooperation is still advised. However, it should not be limited on a host country level.

Recent expert interviews show that transnational networks, such as diaspora groups, and home countries are involved in the support and training of marriage migrants, such as MOBs.

In the case of Denmark, the HeiRat projects recommends that restrictions and requirements for family reunification as introduced in 2000 and 2002 should be abolished International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

95

since they violate international conventions and discriminate against marriage migrants.

This act states that Danish residents intending to marry a third country national should not have drawn on welfare funds for the past 12 months, should be 24 years or older, show evidence of permanent residence, and show that they are able to support their spouse upon arrival. Furthermore, both individuals must provide evidence that their ties with Denmark are greater than to any other country. Since this act has not been changed to this date, it is interesting that the current report finds that getting married in Denmark was relatively

easy for TCNs and EU citizens even though they do not reside in Denmark.

5.4. Concluding Observations

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

A majority of interviewees agrees that the industry should not be prohibited but rather regulated in order to better protect all individuals involved and prevent them from taking illegal and more dangerous measures to marry internationally. The representatives of the marriage and dating industry interviewed for this study are very much interested in protecting their clients and would be willing to cooperate with the authorities in charge for this purpose. However, some form of self-selection bias of the representatives of the marriage and dating industry that were willing to be interviewed needs to be noted.

Another reason for not prohibiting the industry is that MOB relationships are assumed to be successful in many cases but overshadowed by those which do not work. Indeed, there is a greater risk for MOBs as well as female marriage migrants in general to become victims of violence and abuse. To decrease their vulnerability, interviewees agree that these women need to be informed about possible risks such a relationship may carry, their rights and obligations, and what to do in case of emergency. Since international marriage migration is likely to persist despite all risks, one should furthermore decrease the women’s dependency on their husbands, for instance, by facilitating divorce and adjusting residence rights in

case of abuse and exploitation.

Best practices identified include the US International Marriage Broker Regulation Act, the Commission of Filipinos Overseas' orientation courses for marriage migrants, integration courses for migrants in destination countries, the organisation of networks and communities in the destination country, and the Love Abroad project offering information regarding marriage migration online. When comparing the results of the current study to earlier ones, it appears that, while it is increasingly difficult to distinguish between MOB and other forms of marriage migration as individuals use other means to find a partner abroad, risks for individuals and recommendations on how to better protect them largely stay the same.

Policy Department C: Citizens' Rights and Constitutional Affairs

96

6. POSSIBLE ROLE OF THE EU AND THE COUNCIL OF EUROPE IN ADDRESSING THE PROTECTION OF MAILORDER BRIDE SPOUSES AND CHILDREN INVOLVED

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

6.1. Possible Role of the Council of Europe

The Istanbul Convention is a very valuable instrument to protect all women — including MOBs — from gender-based violence and in particular domestic violence, but it has not been ratified by many EU MS. Thus, both the Council of Europe and the EU should actively

promote the Convention and impress upon their MS the importance of becoming parties to this treaty. In view of the fact that so far only 22 of the MS of the Council of Europe, including 14 EU MS,⁴⁵⁴ have ratified the Istanbul Convention, it does not seem opportune at the moment to draft a specific convention for MOBs.

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

6.2. Possible Role of the European Union

6.2.1. Legal Scope for Action

Instruments regulating issues specific to MOBs generally fall into two main categories:

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

As regards legislation that would seek to specifically regulate the activities of IMBs, Article

169 (consumer protection) 114 TFEU is capable of constituting the relevant legal basis.

Relying on these articles is justified in order ensure the desired protection for both MOSs and MOBs and to address the fact that the current disparity between the MS of the EU is capable of putting the MOBs at risk and makes the provision of IMB services in the internal market more difficult.⁴⁵⁶ As with Article 79 TFEU, the appropriate procedure for measures

⁴⁵⁴ Austria, Belgium, Denmark, Finland, France, Italy, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden

⁴⁵⁵ Article 79(2)(a,d) TFEU.

⁴⁵⁶ Article 114 TFEU requires that a measure must 'genuinely have as its object the improvement of the conditions for the establishment and functioning of the internal market', see Case C-376/98, Germany v European Parliament and Council, ECLI:EU:C:2000:544, para. 84.

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

97

proposed under this heading is the ordinary legislative procedure. There are furthermore strong grounds to argue the need to integrate both elements (migration and the regulation of IMBs) into one instrument, as they serve the same objective, would likely not be effective on their own (inseparable), and do not have conflicting procedures.⁴⁵⁷

⁴⁵⁷ Case C-155/07, European Parliament v Council, ECLI:EU:C:2008:605, para. 36-37.

Policy Department C: Citizens' Rights and Constitutional Affairs

98

7. CONCLUSIONS, POLICY OPTIONS AND

RECOMMENDATIONS

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

1. Definition of the term

2. Migration and family law

3. Domestic violence

4. Children

5. Regulation of IMBs

6. Cooperation and information sharing

7.1. Definition of the Term

This report finds that a majority of interviewed experts do not agree with the MOB term, as it is associated with negative connotations and leads to stigmatisation of international

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

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

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

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

7.2. Migration and Family Law

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

comprehensive approaches seem necessary because one-sided action might not sufficiently protect female marriage migrants.

Points of Interest

- Consider the creation of more flexible immigration and family laws to decrease the dependency of female marriage migrants from third countries on their husbands.

- Lack of linguistic skills, information on how society is organised, and where to go for support might lead to dependency and isolation and is likely to increase the women's vulnerability for abuse. Thus, it should be the responsibility of the EU MS to provide obligatory cross-cultural seminars. These mandatory (language) seminars should include information on the culture and legislation in the receiving state.

However, there should not be a test to determine whether the MOB's have achieved a certain level of proficiency. The mandatory character of the courses will be necessary considering that some husbands might not support their wives' integration.

- The requirements related to the seminars and their obligations for participation should be standardized/ harmonized throughout the EU.

- The EU MS should make certain that there are no legal or other barriers that prevent the wives from accessing and managing the marital property on an equal footing with their husbands. Therefore, MOB's should be informed about the receiving state's marriage property regime before the marriage takes place.

- Female marriage migrants should be provided with information on the procedures

regarding migration and family law before arriving in the host country. Women

100

should be aware of the legislation of their marriage and the procedure they must go through in order to provide them with a sense of agency.

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

7.3. Domestic Violence

Responses to domestic violence differs across MS. The risks involved are clearly women rights violations and legal standards are needed to ensure better protection. Female marriage migrants from third countries are particularly vulnerable to domestic violence and abuse since in many cases they are confronted with stereotypes and legal restrictions that result in legal and economic dependency on the husband. Particularly during the legal term of the relationship, women may find it very hard to leave an abusive husband especially since they lack adequate information of where to find help and support. Only women who can prove that they are victims of domestic violence at the hand of their husband are entitled to help and support and will be allowed to remain in the receiving state on an independent residence permit. Female marriage migrants who wish to return to their country of origin seem to be on their own. Except if women can be identified as victims of

human trafficking, which is rather unlikely in the case of MOBs, the receiving state should pay for their repatriation under the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).⁴⁵⁸ In some countries of origin, for instance in the Philippines, help is provided to women who wish to re-integrate in society. The Istanbul Convention, adopted in 2011 and ratified in 2014 by the Council of Europe, provides a comprehensive framework to prevent violence, to protect victims of gender-based violence, and to prosecute perpetrators.⁴⁵⁹ Unfortunately, this Convention has not been ratified by many of the EU MS, including Germany, the UK and Ireland.

Points of Interest

- Data on physical and sexual abuse among MOBs and female marriage migrants is lacking and needs to be collected in order to be able to determine to what extent domestic violence actually forms a problem in this regard.
- All EU MS are parties to the Convention on the Elimination of All Forms of Discriminations Against Women. Therefore, they should be encouraged to specifically report to CEDAW on the situation of MOBs under their jurisdiction. This is because protection against gender-based violence falls under the definition of discrimination against woman in article 1 of this Convention.
- Being part of the Convention on the Elimination of All Forms of Discriminations Against Women brings other responsibilities to the MS as well. The fact that MOSs are still stuck with stereotypical ideas about men's and women's roles in society, which induces them to look for "traditional" wives outside of the EU, seems indicative of the failure of EU MS to correctly implement article 5 of this Convention.

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

⁴⁵⁹ Council of Europe, 2016

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

 101

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

- It seems that both the women and men lack necessary information in regard to the potential risks of an international relationship or marriage. Men may not be aware of their stereotyped thinking and the fact that the woman may not live up to their expectations. Female marriage migrants may not be aware that they will be completely dependent on their husband because, for the first few years, they will not be entitled to independent residency and they cannot become economically independent because they are not allowed to find remunerated employment.
- When tackling problems of female marriage migrants from third countries, it is important to consider that being informed about the possible risks of international marriages will not prevent women to migrate (via IMBs). Social pressure to get married together with the deprived economic conditions in the countries of origin is often one of the main drivers for the women to look for a partner abroad.
- As the Istanbul Convention is not ratified by many MS and it serves as a good framework to address gender-based violence, it is highly advised that both the Council of Europe and the EU actively promote the importance of the Convention and urge the remaining MS to ratify it.

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

- o The potential female marriage migrant should receive information about the legislation, possible employment possibilities, and the culture in the receiving state before deciding on emigration. Most importantly, the women should be informed about the prohibition of domestic violence in the receiving state.

They should be informed about the possibility to inform the police, the existence of safe houses and helplines, and the possibility of independent residency if they become victims of abuse. This information should be provided by the Immigration and Naturalisation Services in the receiving state and by civil servants working at the embassy where the women apply for their visa.

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

7.4. Children

Different categories of children have to be discerned. Children who are born during the marriage most likely obtain EU citizenship, with all rights attached, if the MOS is a European citizen. Children who are not born out of the relationship but who have been adopted or acknowledged by the MOS will be in a similar position as the children in the first category. After a potential marriage break-up, these children will be allowed to remain in Europe, together with their caretakers as this is considered a human right under the

102

Convention on the Rights of the Child.⁴⁶⁰ However, should the mother want to return to the country of origin and bring the children with her, this may be difficult in cases where custody is shared. If custody is not shared, it is usually the mother who becomes the primary caretaker. However, interviewees who have experience in working with MOBs and female marriage migrants suggest that this is not usually the case in such relationships. Finally, children that were not born out of the relationship but who were brought to Europe by their mother are in a more precarious situation. When the marriage breaks up and the mother's residency is still dependent on sponsorship, she might have to leave the country.

Points of interest

- MS should be encouraged to consider the intersection between the CEDAW and the

UN Convention on the Rights of the Child in cases involving marriage migration, particularly in the context of MOBs.

- Specific measures should be in place targeting the integration of children into the host society, particularly including access to education (and measures facilitating such integration, such as funding for cultural sensitivity training of teachers).
- It is important to conduct further research on who usually becomes the primary caretaker in the context of MOB relationships to identify possible consequences for all family members and to determine if further measures need to be taken.

7.5. Regulation of IMB Services

This report shows that there are many different forms of female marriage migrants that do not fall into the MOB category as defined in this report. In addition, IMBs often distance

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

Points of interest

- There should be agreement among all MS on the definition of IMBs as well as the target group that is to be protected. Clear and recognized definitions are key in the further discussion of regulations, data collections, awareness campaigns, and service provisions.

- IMB websites often do comply with the American IMBRA, so a similar EU regulation is highly advised, in particular considering:

- o Transparency about previous domestic violence or sexual offenses by the man by requesting the absence of a criminal record to assess reliability. It is the responsibility of the websites to evaluate these records and to make sure that in case violence or sex offenders present themselves to their websites, the IMB will notify European law enforcement authorities and agencies.

Additionally, IMBs are responsible that this information is stored confidentially and not shared with third parties.

460 Convention on the Rights of the Child, article 9

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

103

o The possibility to enter via a fiancé visa, for the period of six months, in order for the two concerned individuals to get to know each other and the new country before getting married.

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

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

proof, this can speed their visa request.

- There should be a central database that possible clients can access in order to

identify a trustworthy IMB.

- Tailored awareness campaigns need to be constructed to inform the users of these websites.

- IMBs should be obliged to provide information regarding costs and services in a more transparent way as a means of protecting clients from becoming scam victims.

7.6. Cooperation and Information Sharing

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

Points of interest

- Currently, cooperation between organisations addressing female marriage migrants' protection is advised. However, it should not be limited to a host country level.

Expert interviews show that transnational networks, such as diaspora groups, are involved in addition to the home country in the support and training of female marriage migrants.

- It is advisable that all MSs have similar requirements for marriage and recognition of civil status. It may further be advisable to consider the adoption of legislation establishing a duty on the MS and the IMBs to provide information to the MOB in

respect of the rights and duties of the spouses in general and about the marital

property regime in particular.

7.7. Ideas for Further Research

Future research and data collection on marriage migration and in particular MOB relationships is advised. It is highly recommended that correct and up-to-date data on this subject is made available in order to observe and support female marriage migrants, their husbands and children, as well as users of online marriage and dating services. Various guidelines for further research can be given. First, data must be collected on the prevalence

Policy Department C: Citizens' Rights and Constitutional Affairs

104

of MOB living in the EU in order to gain further insight in this topic. Focusing on women who come from Eastern EU MS that are now EU member states must be included in this. Second, data on the number of successful MOB relationships is lacking. It is crucial to collect this data to determine to what extent it is an issue. However, this might be difficult due to the difficulty of identifying MOB. In addition, the extent to which international couples circumvent strict marriage rules by getting married in countries with fewer regulations, such as Denmark, should be studied. Furthermore, there is a need to study whether the father or the mother usually gain custody in case of divorce. Lastly, it was beyond the scope of this report to perform in-depth qualitative research on the individuals involved in the MOB industry. However, this might yield interesting findings and further insights on the topic and could help identify protective measures that are considered useful

by the target group. Therefore, an extensive follow-up project is proposed in order to
provide further input for EU level governing.

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

105

REFERENCES

- Alexa. (n.d.) "How are Alexa's traffic ranks determined?" Retrieved on 2 June 2016

from [https://support.alexa.com/hc/en-us/articles/200449744-How-are-Alexa-s-traffic-rankings-](https://support.alexa.com/hc/en-us/articles/200449744-How-are-Alexa-s-traffic-rankings-determined-)
determined-
- Aronowitz, A.A. (2009). Human trafficking, human misery: The global trade in human
beings. Greenwood Publishing Group: Santa Barbara.
- Barnden, T. (2012). "Family reunification requirements: Barrier or facilitator to
integration" Journal of Immigration, Asylum and Nationality **Law**, 27(2), p. 174.
- Belleau, M.C. (2003). "Mail-order brides in a global world." Albany **Law** Review, 67, p.
595.
- Block, L. (2016). Policy Frames on Spousal **Migration** in Germany. Springer: New York
City.
- Brocato, V. (2003). "Profitable Proposals: Explaining and Addressing the Mail-Order
Bride Industry Through International Human Rights **Law**." Georgetown University **Law**
Center.
- Buchanan, T. & Whitty, M. (2014). "The online dating romance scam: causes and

consequences of victimhood." Psychology, Crime & Law, 20(3), p. 261.

- Burner, P. (2014). The Marriage Market: The Mail-Order Bride Industry in the United

States! Retrieved on 7 January 2016, from

<http://digitalcommons.chapman.edu/cgi/viewcontent.cgi?article=1037&context=cusrd>

abstracts

- Caldwell, G. (1997). "Crime & Servitude: An Expose of the Traffic in Women for

Prostitution from the Newly Independent States." Global Survivor Network.

- Calvo, J. (2004). "A Decade of Spouse-Based Immigration Laws: Coverture's

Diminishment, but not its Demise." North Illinois University Law Review, 24, p. 197.

- CFO (Commission for Filipinos Overseas). (2013). "Country Migration Report: The

Philippines 2013." Retrieved from:

[http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=2063:countrymigration-](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=2063:countrymigration-report-the-philippines-2013&catid=165:migration-relatedarticles&Itemid=901)

report-the-philippines-2013&catid=165:migration-relatedarticles&

Itemid=901. Last accessed on 10 June 2016.

- CFO (Commission for Filipinos Overseas). (2016). "Number of Filipino Spouses and

Other Partners of Foreign Nationals." Retrieved from:

[http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1342:statistic](http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1342:statistical-profile-of-spouses-and-other-partners-of-foreign-nationals&catid=134:statisticsstockestimate&Itemid=814)

al-profile-of-spouses-and-other-partners-of-foreign-nationals&catid=134:statisticsstockestimate&

Itemid=814. Last accessed on 10 June 2016.

Policy Department C: Citizens' Rights and Constitutional Affairs

106

- Chaffin, E.E. (2005). "Regulation or Proscription?: Comparing American and Philippine

Proposals to Solve Problems Related to the International Marriage Broker Industry,"

Pennsylvania State International Law Review, 23, p. 701-702.

- Charsley, K., Van Hear, N., Benson, M. & Storer-Church, B. "Marriage-related migration

to the UK", International Migration Review, 46(4), 2012, pp. 861-890.

- Chun, C.S.Y. (1996). "The Mail-Order Bride Industry: The Perpetuation of Transnational

Economic Inequalities and Stereotypes." University of Pennsylvania Journal of

International Economic Law, 17(4), p. 1155-1208.

- Clark, M.A. (2004). "Mail-order Brides: Exploited Dreams." US Senate Committee on

Foreign Relations.

- Constable, N. (2003). "Romance on a global stage: Pen pals, virtual ethnography, and"

mail order" marriages", University of California Press: Oakland.

- Coomaraswamy, R. & Kois, L.M. (1999). "Violence Against Women", in Kelly D. Askin

and Doreen M. Koenig eds., Women and International Human Rights Law, Vol. 1,

Transnational Publishers: Ardsley, New York.

- Council of Europe (2003). Group of Specialists on the Impact of the Use of New

Information Technologies on Trafficking in Human Beings for the Purpose of Sexual

Exploitation (EG-S-NT) Final Report. Council of Europe Action against Trafficking in

Human Beings.

- Council of Europe. (2016). "Chart of signatures and ratifications of Treaty 210."

Retrieved on 26 August 2016 from [https://www.coe.int/en/web/conventions/full-list/-](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p_auth=wK9vihtt)

[/conventions/treaty/210/signatures?p_auth=wK9vihtt](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p_auth=wK9vihtt)

- Cunneen, C. & Stubbs, J. (2004). "Cultural criminology and engagement with race, gender and postcolonial identities", *Cultural criminology unleashed*, p. 97-108.
- Dutton, M.A., Orloff, L. E. & Hass, G.A. (2000). "Lifetime prevalence of violence against Latina immigrants: ***Legal*** and policy implications", *International Review of Victimology*, 7(1-3), p. 93-113.

- Elliot, J. (2015). *The role of consent in human trafficking*. Routledge: London.

- Estin, A.L. (1992). "Maintenance, Alimony, and the Rehabilitation of Family Care," *NCL Review*, 71, p. 721.

- European Commission. (2016). "Project Reference Number: 2004-2-052-W HEIRAT III - Female Marriage Migrants – Awareness Raising and Violence Prevention." Retrieved on

25 August 2016 from [http://ec.europa.eu/justice/grants/results/daphnetoolkit/](http://ec.europa.eu/justice/grants/results/daphnetoolkit/en/content/heirat-iii-female-marriage-migrants-awareness-raising-and-violenceprevention)

[en/content/heirat-iii-female-marriage-migrants-awareness-raising-and-violenceprevention](http://ec.europa.eu/justice/grants/results/daphnetoolkit/en/content/heirat-iii-female-marriage-migrants-awareness-raising-and-violenceprevention)

- European Network of Filipino Diaspora (ENFiD). (2016). "European Network of Filipino

Diaspora (ENFiD)." Retrieved on 24 August 2016 from <http://enfid.org/>

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

- Eurostat. (2015). "Trafficking in human beings report." Retrieved on 26 August 2016

from <https://ec.europa.eu/antitrafficking/>

sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-
_2015_edition.pdf

- Federal Bureau of Investigation (FBI). (n.d.). "Internet Fraud." Retrieved on 9 June

2016 from https://www.fbi.gov/scams-safety/fraud/internet_fraud/internet_fraud#iaf

- Fodor, E. (2002). "Gender and the Experience of Poverty in Eastern Europe and Russia after 1989." *Communist and Post-Communist Studies*, 35(4), p. 369-382.

- Guevarra, A.R. (2006). "Managing 'Vulnerabilities' and 'Empowering' Migrant Filipina Workers: The Philippines Overseas Employment Program." *Social Identities: Journal for the Study of Race, Nation and Culture*, 12 (5), p. 523-541.

- Heine-Wiedenmann, D. and Ackermann, L. (1992). *Umfeld und Ausmass des Menschenhandels mit Ausländischen Mädchen und Frauen*. Schriftreihe des Bundesministers für Frauen und Jugend. Verlag W. Kohlhammer: Stuttgart, Berlin, Köln.

- Hughes, D.M. (2000). "The Internet and sex industries: Partners in global sexual exploitation", *Technology and Society Magazine*, IEEE, 19(1), p. 35-42.

- Hughes, D.M. (2001). "Role of Marriage Agencies in Trafficking in Women and Trafficking in Images of Sexual Exploitation." *The Group of Specialists on the Impact of the Use of New Information Technologies on Trafficking in Human Beings for the Purpose of Sexual Exploitation; A Study of the Users (EG-S-NT) Committee for Equality between Women and Men (CDEG)*, Council of Europe report. Retrieved on 7 January

2016, from http://www.uri.edu/artsci/wms/hughes/study_of_users

- Hughes, D.M. (2002). "Trafficking for sexual exploitation: The case of the Russian Federation", International Organization for **Migration**.
 - Hughes, D.M. (2004). "The Role of 'Marriage Agencies' in the Sexual Exploitation and Trafficking of Women from the Former Soviet Union." International Review of Victimology, 11, p. 49-71.
 - Jackson, S.H. (2002). "To honor and obey: trafficking in 'mail-order brides'", George Washington **Law** Review, (70)3, p. 475-569.
 - Jackson, S.H. (2007). "Marriages of Convenience: International Marriage Brokers, Mail-Order Brides, and Domestic Servitude", University of Toledo **Law** Review, 38, p. 895-922.
 - Jedlicka, D. (2011). Affinographs: A Dynamic Method for Assessment of Individuals, Couples, Families, and Households. Springer Science & Business Media: New York.
 - Johnson, E. (2007). Dreaming of a Mail-Order Husband. Duke University Press: Durham.
 - Kelly, L. (2001). "Marriage for Sale: The Mail-Order Bride Industry and the Changing Value of Marriage." The Journal of Gender, Race & Justice, 5, p. 175-195.
- Policy Department C: Citizens' Rights and Constitutional Affairs

- Kelly, P. & Lusi, T. (2006). "**Migration** and the Transnational Habitus: Evidence from

Canada and the Philippines.” Environment and Planning A, 38(5), p. 831-847.

- Kim, J. (2010). “Trafficked: Domestic Violence, Exploitation in Marriage, and the

Foreign-Bride Industry.” The Virginia Journal of International Law Association, 51(2).

- Kuah, K. E. (2008). Chinese Women and the Cyberspace. Amsterdam University Press:

Amsterdam.

- Kusel, V.I. (2014). “Gender Disparity, Domestic Abuse, and the Mail-Order Bride

Industry.” Albany Law Review, 7, p. 166-186.

- Lawton, Z. and Callister, P. (2011). “Mail-order brides: are we seeing this phenomenon

in New Zealand?, ‘Missing Men’ Background Paper.” Institute of Policy Studies.

- Lee, D R. (1998). “Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride

Industry and Proposed Legal Solutions.” Asian Law Journal, 5, p. 139.

- Lind, A. & Brzuzy, S. (2007). Battleground: Women, Gender, and Sexuality. ABC-CLIO:

Santa Barbara.

- Litong, G. (2011). “Anti-Mail Order Bride Legislation and Feminist Legal Theory: An

Inquiry Towards A Rescript Of The Diasporic Filipino Bride Phenomenon In The

Philippines.” Philippine Law Journal, 86, p. 146-174.

- Lloyd, K.A. (2000). “Wives for Sale: The Modern International Mail-Order Bride

Industry.” Northwestern Journal of International Law & Business, 20(2), p. 340-368.

- Love Abroad website (2016). “Loveabroad.org.” Retrieved on 24 August 2016 from

<http://www.loveabroad.org/>

- Lyneham, S. & Richards, K. (2014). “Human trafficking involving marriage and partner

migration to Australia.” Australian Institute of Criminology.

- Markee, T.E. (2000). “A Call for Cultural Understanding in the Creation, Interpretation

and Application of **Law**: Is the United States Meeting the Needs of Russian Immigrant

‘Mail-Order Brides?’”. California Western International **Law** Journal, 31(2), p. 277-296.

- Mazur, L. (2012). “Human Trafficking in the Russian Federation”, Tulane Journal of

International Affairs, 1(2).

- Merriman J.S. (2012). Holy Matrimony Plus Shipping and Handling: A Libertarian

Perspective on the Mail-Order Bride Industry. The Independent Review, 17(1), p. 81-93.

- Miller, S. (2000). “Sex Gangs Sell Prostitutes over the Internet.” The Guardian (UK), 16

July 2000. Retrieved from

<https://www.theguardian.com/technology/2000/jul/16/internetnews.theobserver1>

- Miller, J. R. (2004). Human Trafficking: Mail Order Bride Abuses Hearing Before the

Subcommittee on East Asian and Pacific Affairs and the Senate Committee on Foreign

Relations.

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

109

- Mobydeen, L. (2004). “Something old, something new, something borrowed, something

mail-ordered? The mail-order industry and immigration **law**.” Wayne **Law** Review, 4, p.

939.

- MOGED (Ministry of Gender Equality and Family) & CFO (Commission on Filipinos

Overseas) (2012). Memorandum of Understanding (MOU) on the Cooperation in

Developing Capacities for the Resettlement and Adaptation of Filipino Marriage

Immigrants and Promoting the Empowerment of Immigrant Women.

- Morgan, K. M. (2007). "Here Comes the Mail-Order Bride: Three Methods of Regulation in the United States, the Philippines, and Russia." The George Washington International

Law Review, 39, p. 423.

- Narayan, U. (1995). "Male-Order' Brides: Immigrant Women, Domestic Violence and Immigration Law", Hypatia, 10(1), p. 104-119.

- Newsome, H.B. (2007). "Mail Dominance: A Critical Look at the International Marriage Broker Regulation Act and Its Sufficiency in Curtailing Mail-Order Bride Domestic Abuse." Campbell Law Review, 29(2).

- Orloff, L., Jang, D. & Klein, C. (1995). "With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women", Family Law Quarterly, 29(2), p. 313.

- Orloff, L. & Sarangapani, H. (2007). "Governmental and industry roles and responsibilities with regard to international marriage brokers: equalizing the balance of power between foreign fiances and spouses." Violence Against Women, 13(5), p. 469.

- Paredes-Maceda, C. (1995). "Filipino Women and Intermarriages." Asian Migrant, 8(4), p. 109-113.

- Perez, B. E. (2003). "Woman Warrior Meets Mail-Order Bride: Finding An Asian American Voice in the Women's Movement." Berkeley Women's Law Journal, 18, p. 215.

- Pleasant, E. (2007). "The International Marriage Broker Regulation Act: Protecting

Foreign Women or Punishing American Men?" Campbell Law Review, 29(311), p. 314.

- Poulin, R. (2003). "Globalization and the Sex Trade: Trafficking and the

Commodification of Women and Children." Canadian Woman Studies, 22(3&4), p. 38-

47.

- Raj, A. & Silverman, J. (2002). "Violence against immigrant women: The roles of

culture, context and legal immigrant status on intimate partner violence." Violence

Against Women, 8.

- Richard, A. O. (1999). "International Trafficking in Women to the United States: A

Contemporary Manifestation of Slavery and Organized Crime." DCI Exceptional

Intelligence Analyst Program. Retrieved on 10 June 2016 from

[https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/booksand-](https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/booksand-monographs/trafficking.pdf)

monographs/trafficking.pdf

- Ricordeau, G. (2012). "Devenir une First World Woman : stratégies migratoires et

migrations par le mariage. [Becoming a First World Woman: migratory strategies and

Policy Department C: Citizens' Rights and Constitutional Affairs

110

marriage migrations]" Sociologies [En ligne], Dossiers, Amours Transi(t)s. Transactions

sexuelles au prisme de la migration. Retrieved 26 August 2016 from

<http://sociologies.revues.org/3908#quotation>

- Rushchenko, J. (2016). Docile Housewives or Empowered Entrepreneurs? Gender, Fraud, and Victimisation in the Context of Transnational Marriages in Germany. [Doctoral thesis]. Utrecht, The Netherlands: Utrecht University and Hamburg, Germany: Universität Hamburg.
- Sarker, S. et al. (2013). "The "Mail-Order-Bride" (MOB) Phenomenon in the Cyberworld: An Interpretive Investigation." ACM Transactions on Management Information Systems, 4(3).
- Shaw, M. (2014). International Law, 7th ed. Cambridge University Press, Cambridge.
- Sico, R. (2013). "In the Name of 'Love': Mail Order Brides-The Dangerous Legitimization of Sex, Human and Labor Trafficking." Public Interest Law Reporter, 18(3), p. 199-206.
- Sims, R. (2009). "A Comparison of Laws in the Philippines, the U.S.A., Taiwan, and Belarus to Regulate the Mail-Order Bride Industry." Akron Law Review, 42(2), p. 606-638.
- Smith, L., & Mattar, M. (2004). "Creating International Consensus on Combating Trafficking in Persons: U.S. Policy, the Role of the UN, and Global Responses and Challenges." The Fletcher Forum of World Affairs, 28 (1), p. 155.
- So, C. (2006). "Asian Mail-Order Brides, the Threat of Global Capitalism and the Rescue of the U.S. Nation State." Feminist Studies, Summer 2006.
- Statistisches Bundesamt. (2011). "Justiz auf einen Blick." Retrieved on 26 August 2016 from <http://www.rechtsanwalt-richter.com/anwalt-muenchen/wp-content/uploads/2011/10/BroschuereJustizBlick2011.pdf>
- Stepnitz, A. (2009). Male-Ordered: The mail order bride industry and trafficking in

women for sexual and labour exploitation. The POPPY Project: London.

- Sterckx et al. (2014). Huwelijksmigratie in Nederland: Achtergronden en leefsituatie van huwelijksmigranten, Sociaal en Cultureel Planbureau: Den Haag.
- Stoecker, S. (2005). "Human Trafficking: A New Challenge for Russia and the United States," in Human Traffic and Transnational Crime: Eurasian and American Perspectives. Susan Stoecker and Louise Shelley (eds.). Lahman: Rowman and Littlefield.
- The Russian Federation (2002). Census.
- The Russian Federation. (2013). "Concept of the Foreign Policy of the Russian Federation." Approved by President of the Russian Federation V. Putin on 12 February 2013. Retrieved on 10 June 2016 from

http://archive.mid.ru//brp_4.nsf/0/76389FEC168189ED44257B2E0039B16D

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

111

- Tiurukanova, E.V. (2006). "Human Trafficking in the Russian Federation: Inventory and Analysis of the Current Situation and Responses." UNICEF. Retrieved on 10 June 2016 from [http://www.unicef.org/ceecis/Unicef_EnglishBook\(1\).pdf](http://www.unicef.org/ceecis/Unicef_EnglishBook(1).pdf)
- Tjaden, P. & Thoennes N. (2000). "Prevalence and consequences of male-to-female and female-to-male intimate partner violence as measured by the national violence against women survey." Violence Against Women, 6(2).

- US Department of State. (2003). "Trafficking in Persons Report." Retrieved on 26

August 2016 from <http://www.state.gov/j/tip/rls/tiprpt/2003/>

- US Department of State. (2007). "Trafficking in Persons Report." Retrieved on 26

August 2016 from <http://www.state.gov/documents/organization/82902.pdf>

- US Department of State. (2012). "Trafficking in Persons Report." Retrieved on 26

August 2016 from <http://www.state.gov/documents/organization/192587.pdf>

- US Department of State. (2016). "Trafficking in Persons Report." Retrieved on 26

August 2016 from <http://www.state.gov/documents/organization/258876.pdf>

- Venard, B. (2009). "Organizational Isomorphism and Corruption: An Empirical Research in Russia." Journal of Business Ethics, 89(1), p. 59-76.

- Villapando, V. (2000). "The business of selling mail-order brides" in Making Sense of Women's Lives: An Introduction to Women's Studies, Rowman and Littlefield Publishers: Oxford, p. 178-84.

- Wang, H. (2007). Hidden Spaces of Resistance of the Subordinated: Case Studies from Vietnamese Female Migrant Partners in Taiwan. International **Migration** Review, 41(3), p. 706-727.

- Zug, M. (2012). "Lonely Colonist Seeks Wife: The Forgotten History of America's First Mail Order Brides," Duke Journal of Gender **Law** & Policy, 20, p. 85-125.

- Zug, M. (2014). "Mail Order Feminism." William & Mary Journal of Women and the **Law**,

21(153), p. 168-172.

- Zug, M. (2016). *Buying a Bride: An Engaging History of Mail-Order Matches*. NYU Press:
New York.

Policy Department C: Citizens' Rights and Constitutional Affairs

112

LEGISLATION AND CASE LAW

- Case C-1/05, Yunying Jia v Migrationsverket, ECLI:EU:C:2007:1
- Case C-34/09, Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm),
ECLI:EU:C:2011:124
- Case C-40/11, Yoshikazu Iida v Stadt Ulm, ECLI:EU:C:2012:691
- Case 59/85, State of the Netherlands v Ann Florence Reed, ECLI:EU:C:1986:157
- Case C-60/00, Mary Carpenter v Secretary of State for the Home Department,
ECLI:EU:C:2002:434
- Case C-86/12, Adzo Domenyo Alokpa and Others v Ministre du Travail, de l'Emploi et de
l'Immigration, ECLI:EU:C:2013:645
- Case C-109/01, Secretary of State for the Home Department v Hacene Akrich,
ECLI:EU:C:2003:491
- Case C-127/08, Blaise Baheten Metock and Others v Minister for Justice, Equality and
Law Reform, ECLI:EU:C:2008:449
- Case C-147/08, Jürgen Römer v Freie und Hansestadt Hamburg, ECLI:EU:C:2011:286
- Case C-153/14, Minister van Buitenlandse Zaken v K and A, ECLI:EU:C:2015:453

- Case C-155/07, European Parliament v Council, ECLI:EU:C:2008:605
 - Case C-200/02, Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for
the Home Department, ECLI:EU:C:2004:639
 - Case C-256/11, Murat Dereci and Others v Bundesministerium für Inneres,
ECLI:EU:C:2011:734
 - Case 267/83, Aissatou Diatta v Land Berlin, ECLI:EU:C:1985:67
 - Case C-275/02, Engin Ayaz v Land Baden-Württemberg, ECLI:EU:C:2004:570
 - Case C-291/13, Sotiris Papasavvas v O Fileleftheros Dimosia Etaireia Ltd and Others,
ECLI:EU:C:2014:2209
 - Case 316/85, Centre public d'aide sociale de Courcelles v Marie-Christine Lebon,
ECLI:EU:C:1987:302
 - Case C-324/09, L'Oréal SA and Others v eBay International AG and Others,
ECLI:EU:C:2011:474
 - Case C-376/98, Germany v European Parliament and Council, ECLI:EU:C:2000:544
- International Marriage Brokers and Mail Order Brides. Analysing the need for regulation

113

- Case C-413/99, Baumbast and R v Secretary of State for the Home Department,
ECLI:EU:C:2002:493
- Case C-423/12, Flora May Reyes v Migrationsverket, ECLI:EU:C:2014:16
- Case C-434/09, Shirley McCarthy v Secretary of State for the Home Department,
ECLI:EU:C:2011:277

- Case C-456/12, O. v Minister voor Immigratie, Integratie en Asiel and Minister voor Immigratie, Integratie en Asiel v B, ECLI:EU:C:2014:135
- Case C-457/12, S. v Minister voor Immigratie, Integratie en Asiel and Minister voor Immigratie, Integratie en Asiel v G, ECLI:EU:C:2014:136
- Case C-459/99, Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) v Belgian State, ECLI:EU:C:2002:461
- Case C-578/08, Rhimou Chakroun v Minister van Buitenlandse Zaken, ECLI:EU:C:2010:117
- Case C-579/13, P and S v Commissie Sociale Zekerheid Breda and College van Burgemeester en Wethouders van de gemeente Amstelveen, ECLI:EU:C:2015:369
- Case F-45/07, Wolfgang Mandt v European Parliament, ECLI:EU:F:2010:72
- Case of Kontrova v. Slovakia (Application no. 7510/04), judgment of 31 May 2007
- Case of Opuz v. Turkey (Application no. 33401/02), judgment of **9** June 2009, final 09/09/2009. Other important cases on domestic violence are for example Bevacqua and S v. Bulgaria (Application no. 71127/01) or E.S. and Others v. Slovakia (Application no. 8227/04)
- Chavez-Vilchez and Others v. Raad van bestuur van de Sociale verzekeringsbank.

Retrieved 26 August 2016 from

- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62015CN0133:EN:HTML>
- CEDAW Communication No. 5/2005, Şahide Goekce vs Austria, 6 August 2007
- CEDAW Communication No. 6/2005, Fatma Yilderim vs Austria, 1 October 2007
- CEDAW Communication No. 18/2008, Karen Tayag Vertido vs The Philippines, 22

September 2010

- CEDAW, A.S. v. Hungary, Communication No. 4/2004, CEDAW/C/36/D/4/2004
- Centrale Raad van Beroep, Verzoek aan het Hof van Justitie van de Europese Unie om een prejudiciële beslissing als bedoeld in artikel 267 van het Verdrag betreffende de werking van de Europese Unie (VWEU). Retrieved 26 August 2016 from

http://www.minbuza.nl/binaries/content/assets/ecer/ecer/import/hof_van_justitie/nieuwe_hofzaken_inclusief_verwijzingsuitspraak/2015/c-zakenummers/c-133-15-verwijzingsbeschikking-crb.pdf

we_hofzaken_inclusief_verwijzingsuitspraak/2015/c-zakenummers/c-133-15-verwijzingsbeschikking-crb.pdf

Policy Department C: Citizens' Rights and Constitutional Affairs

114

- Directive 2000/31/EC of 8 June 2000 on certain **legal** aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000
- Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003
- Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004
- Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the **territory** of the Member States, OJ L 158, 30.4.2004

- Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6.8.2004
- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, OJ L 101, 15.4.2011
- Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (OJ L 338/2 of 21.12.2011)
- ECtHR, Wagner and J.M.W.L. v Luxembourg, No. 76240/01
- European Commission (2007). Legal analysis of a Single Market for the Information Society (SMART 2007/0037)
- European Commission (2008). Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, COM(2008) 610 final
- European Commission (2009). Report from the Commission on the European Parliament and Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2009) 313 final
- European Commission (2014). Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014) 210 final

- European Commission (2014). Commission Staff Working Document: Handbook on
addressing the issue of alleged marriages of convenience between EU citizens and non-
EU nationals in the context of EU law on free movement of EU citizens, SWD(2014) 284
final
 - European Commission (2016). Report from the Commission to the European Parliament
and the Council: Report on the progress made in the fight against trafficking in human
beings, COM(2016) 267 final
- International Marriage Brokers and Mail Order Brides. Analysing the need for regulation
-

115

- European Union (2010). Council Regulation (EU) No 1259/2010 of 20 December 2010
implementing enhanced cooperation in the area of the law applicable to divorce and
legal separation, OJ [2010] L 343
- Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im
Bundesgebiet (Aufenthaltsgesetz - AufenthG)
- Irish Immigration Act 2004
- Irish Naturalisation and Immigration Service (INIS), Policy Document on Non-EEA
Family Reunification, Department of Justice and Equality, December 2013
- Joined cases C-64/96 and C-65/96, Land Nordrhein-Westfalen v Kari Uecker and Vera
Jacquet v Land Nordrhein-Westfalen, ECLI:EU:C:1997:285
- Joined Cases C-356/11 and 357/11, O. and S. v Maahanmuuttovirasto;
Maahanmuuttovirasto v L., ECLI:EU:C:2012:776

- Parliamentary Assembly of the Council of Europe (2004). Domestic slavery: servitude, au pairs and mail-order brides. Recommendation 1663 (2004) and the report on the recommendation by the Committee on Equal Opportunities for Women and Men from April 19, 2004
- Recommendation Rec (2002)5 of the Committee of Ministers to Member States on the protection of women against violence
- Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ L 181 of 29.6.2013).
- UK Immigration Rules Part 8: Family members (HC 395)
- Republic of the Philippines, Republic Act No. 6955, 13 June 1990
- Republic of the Philippines, Republic Act No. 9208, 23 July 2012
- Vreemdelingenbesluit 2000

Policy Department C: Citizens' Rights and Constitutional Affairs

116

TREATIES AND UN DOCUMENTS

- Beijing Declaration and Platform for Action, U.N. Fourth World Conference on Women, U.N. Doc. A/CONF.177/20 (1995) & A/CONF.177/20/Add.1 (1995)
- CEDAW Concluding Observations concerning: Albania, Botswana, Cuba, Egypt, Fiji, Israel, Kenya, Malawi, Mexico, Liechtenstein, Papua New Guinea, Russian Federation, Rwanda, South Africa, Sri Lanka, Sweden, Turkey, Uganda, Ukraine, and Uzbekistan

- CEDAW General Recommendation No. 12 (1989), Violence Against Women
- CEDAW General Recommendation No. 19 (1992), Violence Against Women
- CEDAW General Recommendation No. 21 (1994), Equality in Marriage and Family

Relations

- CEDAW General Recommendation No. 25 (2004), Temporary Special Measures
- CEDAW General Recommendation No. 28 on the core obligations of states parties under article 2 of the Convention, 2010
- CEDAW General Recommendation No. 29 (2013) Economic consequences of marriage, family relations and their dissolution
- CESCR (Committee on Economic, Social and Cultural Rights) General Comment No. 16, 13 May 2005
- Convention on the Elimination of All Forms of Discrimination Against Women, GA Resolution 34/180, 18th December 1979, entered into force 3rd September 1981
- Convention on the Rights of the Child, GA Resolution 44/25, 20 November 1989, entered into force on 2 September 1990
- Convention on Celebration and recognition of the Validity of Marriages, The Hague 14 March 1978 (in force for only Australia, Luxembourg and Netherlands)
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, New York 7 November 1962
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, General Assembly Resolution 317 (IV), 2nd December 1949, entered into force 25th July 1951

- Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May

2005, CETS 197

- Council of Europe Convention on preventing and combating violence against women and domestic violence, 12 April, 2011 (Istanbul Convention)
- European Union (2007). Treaty on the Functioning of the European Union (TFEU).

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

117

- Human Rights Committee General Comment No. 28, 29 March 2000
- International Covenant on Economic, Social and Cultural Rights, General Assembly resolution 2200A (XXI), 16th December 1966, entered into force 3 January 1976
- International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), 16th December 1966, entered into force 23rd March 1976
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, General Assembly resolution 55/25, 15th November 2000, entered into force 25th December 2003
- Reports UN Special Rapporteur on Violence Against Women
- UN doc. E/CN4/2000/68, Report of the Special Rapporteur on Violence Against Women, on trafficking in women, women's migration and violence against women, 29 February 2000
- UN doc. E/2002/68/Add.1, Recommended Principles and Guidelines on Human Rights

and Human Trafficking, Office of the High Commissioner for Human Rights, 20 May

2002

- UN General Assembly resolution 217 A (III) 67/97, The Universal Declaration of Human

Rights, A/RES/3/217 A, 10 December 1948

- UN General Assembly, Declaration on the Elimination of Violence against Women,

A/RES/48/104, 20 December 1993

Policy Department C: Citizens' Rights and Constitutional Affairs

118

Annex 1

Websites chosen for Detailed Mapping per Keyword

RUSSIAN BRIDES RUSSISCHE BRÄUTE RUSSISCHE BRUIDEN

Charm Date Russian Cupid Ukraine Date

Russian Cupid Online Dating Ukraine Online dating Ukraine

Love Me Russian Dating Russian Cupid

Dream Marriage Natasha Club Single Russian woman

Russian Brides Single Baltic Lady fdating

Online Dating Ukraine Gold Brides Single baltic lady

Find Bride Ukraina Ladies Online Internet dating

Natasha Club Czech Ladies Russian Cupid

Gold Brides Ukraina Women Czech ladies

UA Dreams Generation Love Gold Brides

Single Baltic Lady Online Internet dating Ukraina ladies

Bridge of Love Army of Brides Army of Brides

Rose Brides Ukraina Brides Ukraina women

Bride.ru; Brides in bikini Brides in bikini

Czech Ladies Tschechische Traumfrauen

Ukraina Women Eurodamen

R Brides Inter Friendship

Interkontakt Oksana Partnervermittlung

Online Internet Dating Ksenia Droben

Partnervermittlung

City of Brides Partnervermittlung Ukraine

Army of Brides True Love Ru

Ukraine Brides

First International

Marriage Network

Single Russian Woman

Dating World

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

119

Websites chosen for Detailed Mapping per Keyword

Fiance

Mujeres Rusas Solteras

Russian Brides Match

Anastasia Date

UA Ladies

UKRAINIAN BRIDES UKRAINISCHE BRÄUTE OEKRAÏENSE BRUIDEN

Charmdate.com Russland Partnervermittlung Online dating Ukraine

Single Baltic Lady Russian Dating Gratis dating Oekraïne

meisjes

Bridge of love Ksenia Droben

Partnervermittlung

Ukrainedate.com

Hot Russian Brides Army of Brides RussianCupid.com

Rosebrides Czech Ladies Ukraina women

Ukraina ladies Single Baltic Lady Czech ladies

Ukraina Women Ukraina Women Secretflirtservice

Generation Love Ukraina Ladies Single Baltic lady

Ukraine Woman Eurodamen Online Internet dating

Dating World Partnervermittlung Ukraine Natasha club

Ukrainianbrides.ru Online Dating Ukraine Single Russian woman

Mujeres Rusas Solteras Single Russian Woman Gold brides

Ukraina Brides Mujeres Rusas Solteras

Natasha Club Ukraina ladies

Ukraine Girls Chebra Army of brides

True Love Ru Ukraina brides

Tschechische Traumfrauen Brides in Bikini

Online internet dating

Mujeres Rusas Solteras

PHILIPPINE BRIDES PHILIPPINISCHE BRÄUTE FILIPIJNSE BRUIDEN

Love Me Dating Walk Asian dating

Policy Department C: Citizens' Rights and Constitutional Affairs

120

Websites chosen for Detailed Mapping per Keyword

Lava Place Asian Women Planet Amor si

Filipino Kisses Asian women planet

Asian Women Planet

THAI BRIDES THAILÄNDISCHE BRÄUTE THAI BRUIDEN

Asian Date Thai Frau Thaicupid

ThaiCupid Thai Love **Line** Asiandate

Love Me Asian Date Thailovelines

iDate Asia AsianHoneymoon

Lava Place

Rose Brides

Thai Kisses

Thai Flirting

Thai Love **Lines**

Source: (verdana, 8)

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

121

ANNEX 2

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

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

2. How do you perceive the Mail-Order Bride phenomenon?

a. Can you comment on recent developments (i.e. numbers, origin,
destination, characteristics of individuals including educational level)?

b. What is the role of the Internet?

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

a. Positive and negative?

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

a. What are particular issues that men encounter?

b. What are particular issues that children encounter?

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

6. Do you think there is a need for further regulation of the Mail-Order Bride

phenomenon?

a. On what level should the MOB phenomenon be regulated?

b. Consider all parties involved.

7. 7. Is there anything important you would like to add, that I might have

missed during this interview regarding this topic?

Interview Guides for Experts (IND):

1. Could you please introduce yourself briefly, and what is your function at

the organisation that you currently work for?

2. When a woman migrates to [respective country], do you distinguish how

the marriage was formed? If yes, what tools do you use for that

purpose?

3. How do you perceive the Mail-Order Bride phenomenon?

a. Can you comment on recent developments (i.e. numbers, origin, destination, characteristics of individuals including educational level)?

b. What is the role of the Internet?

4. Do you have any concrete examples/cases involving Mail-Order Brides

that you came across in your work?

a. Positive and negative?

5. What are any particular issues that Mail-Order Brides encounter related

to their status as Mail-Order Bride?

a. What are particular issues that men encounter?

b. What are particular issues that children encounter?

6. Can you identify best practices in dealing with these issues?
7. Do you think there is a need for further regulation of the Mail-Order Bride phenomenon?
 - a. On what level should the MOB phenomenon be regulated?
 - b. Consider all parties involved.
8. 7. Is there anything important you would like to add that I might have missed during this interview regarding this topic?

Policy Department C: Citizens' Rights and Constitutional Affairs

122

Interview Guide for Brides:

1. Could you please introduce yourself briefly?
2. Why did you decide to look for a husband via the Mail-Order Bride business?
3. How did you first get in touch with your husband?
4. Can you describe how you experienced the migration process?
 - a. Were you informed about possible risks? If not? Were you aware of risks?
 - b. What were the hurdles you encountered? (i.e. visa)
5. What were your expectations of a Western man and have they been met?
 - a. Negative Cases: Did you look for help?
 - b. Positive Cases: What makes it so positive?

6. What were your expectations of living in [country X] and have they been met?

a. Negative Cases: Did you look for help?

b. Positive Cases: What makes it so positive?

7. Do you feel part of [country X's] society?

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

Interview Guide for Bridegrooms:

1. Could you please introduce yourself briefly?

2. Why did you sign up?

3. How did you first get in touch with your wife?

4. Can you describe how you experienced your wife's migration process?

a. Were you informed about possible risks? If not, were you aware of risks?

b. What were the hurdles you encountered (i.e. visa)?

5. What were your expectations of a non-European woman and have they been met?

a. Negative Cases: Did you look for help?

b. Positive Cases: What makes it so positive?

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

Interview Guide for Marriage Agencies:

1. Could you please introduce yourself and the agency you work for?

2. What is the reason for establishing your agency in country X?

3. What services do you provide?

a. Do you inform your female clients about possible risks? If so, what does

this information include?

b. Do you inform your male clients about possible risks? If so, what does this

information include?

c. Does the service include legal aspects regarding migration (i.e. visa)?

4. Do you notice clear types of men and women applying for the services of

your agency? If so, how would you describe these men and women?

5. Do you follow-up the relationships that are established via your agency?

If so, could you provide some examples?

a. Positive examples

b. Negative examples

i. What makes these examples so negative and how can the

protection of all individuals involved (brides, grooms, children) be

improved?

6. Do you think there is a need for further regulation of the match making

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

123

service industry?

a. If yes, how and on what level (national or supranational)?

b. Scam prevention?

7. Would you be willing to cooperate with the authorities to better protect

all individuals involved? If so, what are your suggestions for such

cooperation?

8. Is there anything important you would like to add, that I might have

missed during this interview regarding this topic?

Policy Department C: Citizens' Rights and Constitutional Affairs

124

ANNEX 3

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

125

Policy Department C: Citizens' Rights and Constitutional Affairs

126

Classification

Language: ENGLISH

Publication-Type: Newswire

Subject: MARRIAGE (92%); GENDER EQUALITY (90%); CIVIL RIGHTS (90%); EUROPEAN UNION (90%); FEMINISM & WOMEN'S RIGHTS (90%); EUROPEAN UNION INSTITUTIONS (90%); WOMEN (90%); LEGISLATIVE BODIES (89%); WRITERS (89%); GRADUATE & PROFESSIONAL SCHOOLS (84%); INTERVIEWS (78%); LEGISLATION (78%); PUBLIC RECORDS (78%); SOCIOLOGY (77%); DOMESTIC VIOLENCE (66%)

Industry: MAIL ORDER RETAILING (99%); WRITERS (89%); GRADUATE & PROFESSIONAL SCHOOLS (84%); ONLINE LEGAL RESEARCH (75%)

Geographic: BRUSSELS, BELGIUM (92%); NETHERLANDS (95%); BELGIUM (92%); EUROPEAN UNION MEMBER STATES (91%); EUROPE (90%); UNITED KINGDOM (79%); GERMANY (73%)

Load-Date: November 4, 2016

End of Document