



## EXPERT STATEMENT

### Forced Marriage: a European crime EU States must take seriously

**This week, the European Parliament adopted two instruments of great significance for migrant women: the revised Directive on Trafficking in Human Beings (THB), and a new Directive on Violence against Women (VAW) and Domestic Violence.**

These two EU laws are important for us for many reasons as migrant women are disproportionately at risk of multiple forms of male violence. Positive elements in the THB Directive are the strengthening of victims' support spelling out that it must be provided irrespective of victims' legal status. The revised text also includes surrogacy as a new form of exploitation - an important addition for migrant women used as commodities in the globalised industry of cross-border reproductive exploitation, known as surrogacy. The VAW Directive sets minimum criminal standards for several crimes against women and girls, notably Female Genital Mutilation (FGM) that also impacts migrant women disproportionately.

Both instruments have serious and very regrettable gaps too: the THB Directive, while encouraging the states to criminalise all buyers of sexual acts, obliges them to criminalise only "knowing" buyers of "services" from victims of trafficking. In the context of sexual exploitation, this is not only deeply problematic from the women's rights perspective, but practically impossible to implement, as the examples of such countries as Germany have proven.

Notably, the omission of exploitation of prostitution of women, including through pornography, as well as the crime of rape, from the VAW Directive, when both are grave and systemic violations of women's rights, leaves a void in the first binding EU law on VAW, considerably weakening its potential to support women victims of male violence, or hold perpetrators of such violence accountable.

There is, however, one crime addressed in both instruments, creating a coherent legislative framework to protect women and girls against this violation of their human rights. **This crime is forced marriage and it affects our members disproportionately.** Very little attention has been paid to it in Europe and it is about time that EU states take this problem seriously.

The VAW Directive defines forced marriage as "**a form of violence that entails serious violations of fundamental rights and, in particular, the rights of women and girls to physical integrity, freedom, autonomy, physical and mental health, sexual and reproductive health, education and a private life**". This definition is important as it does not only frame forced marriage as violation of fundamental rights within the meaning of several articles of the EU Charter, but it underscores the scope and severity of violence to which victims of forced marriage are subjected - something that has not been fully acknowledged within institutional, judiciary and medical bodies.

As such it gives us a hopeful prospect that this crime against women and girls will receive due attention, including much needed resources, within the aforementioned bodies.

The Directive also states that, “[p]hysical and sexual violence and threats of violence are frequently used forms of coercion to force a woman or girl to marry”. This is an important clarification to the definition of the intentional offence that states must criminalise under Article 4 of the directive, which refers to “**forcing an adult or child to enter into marriage**”. As we know from the experience of migrant women organisations who support victims, in the context of forced marriage, as well as prostitution, pornography and other forms of sexual violence, the notion of “force” is not straight forward and should not be regarded as limited to physical or psychological force. Most often, “forced” involves gradual coercion and psychological pressure; it may involve invoking the notions of “shame” and “honour” placed on a woman by family or community. All this, as a rule, takes place, in the context of unequal power relationships between the potential victim and her abuser(s) who may be one or several individuals or family members.

The Directive also clarifies that “**physical and psychological exploitation and violence, such as sexual exploitation, accompany forced marriage**”. This detail is also important as it sheds light onto the underexposed dimensions of forced marriages, where it intersects with other crimes under EU law, including sexual exploitation of women and children, as well as trafficking in women, as defined in Article 83(1) of TFEU.

It is this intersection that makes the inclusion of forced marriage as a form of exploitation and a purpose of trafficking in the THB Directive, important. It has been the position of our network that there is a **significant overlap between trafficking, sexual exploitation and forced marriages**. Those occur both with the involvement of transnational criminal activities (when a victim is sent to the country of origin/background to force her to enter into marriage, or, she is brought to Europe with such purpose), as well as within the

EU and/or Member States’ borders (when she is subjected to forced marriage without leaving the place of residence). Furthermore, once in a situation of forced marriage, the victim is at risk of (re)trafficking, including for the purpose of exploitation of her prostitution.

Now this is clearly spelt out in a major EU binding law defining forced marriage not only as a violation of women’s fundamental rights and a form of VAWG, but as serious crime of European dimension that the EU states have to address. To do so, the VAW Directive obliges Member States to establish the scope of the problem, collect data, and, based on the collected evidence, to allocate necessary resources in the areas of victim protection and support, prosecution and prevention.

Importantly for the victims of forced marriage, the directive states that “[v]ictims should be offered **specialist support services irrespective of whether they have filed a formal complaint**”, that “**third-country nationals, irrespective of their residence status are not discouraged from reporting [...] and are treated in a non-discriminatory manner**”, as well as, that they may be **granted an autonomous residence permit**. At the same time, the law enforcement is encouraged to collect evidence at earliest stages of investigation and can continue criminal proceedings even when the victim withdraws her complaint. This is also significant for migrant women who may come under pressure to not file, or withdraw, a complaint in fear of retaliation from perpetrators or peer and/or community pressure.

European Commission will soon be producing an additional guidance that, we expect, will deepen the understanding of forced marriage as a crime under EU law and the steps states must take to eradicate it. We look forward to this document.

