IPV victims’ needs and rights: a brief overview across five EU countries’ justice systems

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Introduction

The role of criminal justice is of the utmost importance and relevance regarding the protection needs and rights of victims of domestic violence (DV) and more specifically of victims of intimate partner violence (IPV).

The European project INASC set as one of its primary goals to develop and consolidate a common understanding of the relevant legal framework in the five participating countries (Austria, Germany, Ireland, Netherlands and Portugal). This European approach to the criminal justice responses regarding specific protection issues will focus on aspects which have a direct impact on experiences of IPV victims as they go through the different stages of the justice system.

The hereby European report is the INASC’s contribution to exploring existing European knowledge on the criminal justice response to DV. It is based on a comparative analysis of the national reports produced by all partner countries and which are to be found at the project’s webpage (www.inasc.org).

At a first stage, the five national reports were scrutinised and the contents analysed by resorting to a comparative matrix which was circulated and discussed among partners. Improvements in both the structure and the contents of the national reports were proposed and the final versions were revised accordingly. The first outcomes of the comparative analysis were discussed by the partnership and the structure of the comparative report was agreed upon during the project’s second transnational meeting.

Overall, the present report will provide a comparative review of the mechanisms, procedures and best practices in implementation within the respective national justice systems of the five partner countries which aim at protecting IPV victims and to ensure that their rights are fully realized.

The European comparative report is structured around nine main chapters. The initial chapter provides a brief literature review on the topics which structure the whole project: the needs and rights of victims and their intersection with the criminal system’s perceptions and responses. The second chapter sets the scene at the EU level by drawing on EU legal and policy developments which may be relevant for understanding the national legal frameworks pertaining to domestic violence. The third chapter provides a comparative perspective of national policy developments and on legal frameworks on domestic violence (and whenever possible on IPV) focusing on the criminal justice system. Chapter four focuses on the national legal dispositions regarding intimate partner violence, implementation challenges and recent developments. The fifth chapter explores the available information on the different stages of criminal cases of IPV in a comparative perspective. The sixth chapter focus on risk assessment procedures and practices and provides an overview of the use of such mechanisms in the five participating countries. Chapter seven on victims’ protection reviews existing mechanisms and procedures which are in place in the different countries, namely as regards restriction measures enforced on the offender and protection measures and practices available to support IPV victims. Specific attention is given to existing cooperation mechanisms involving
the justice system and victim support organisations. The eighth chapter provides a comparative overview on existing evidence from the five countries in respect to the status of the research on victims’ needs and victims’ rights. It is important to refer that the national information on which this section is based upon has also been used by the literature review report, whenever the national outcomes were considered relevant for that purpose. The identification of best practices is the topic of the ninth chapter. This summarised presentation focusses exclusively on justice related practices. The concluding chapter will summarise the major outcomes of the comparative analysis performed highlighting those aspects which allow us to establish a common understanding on the criminal justice response to the protection needs and rights of IPV victims in the five participating countries.
1. A brief literature review

There has been a huge debate about the needs of victims of intimate partner violence, particularly when confronted with the State’s responses in view to their fulfilment. The European research project Refugee Evaluation Modelling (REM) identified “two universal dynamics in the area of Domestic Violence: to inadvertently blame women for the domestic violence or hold them responsible for ending it; and, to assume women were lacking certain skills or abilities that would help them deal with the domestic violence; alternatively, there could be an assumption that all women were emotionally damaged or deficient in some way because of their experiences of domestic violence.” (Baptista et al, 2007: 6). A set of three major needs and outcomes was established: safety, information and empowerment. The pilot project come to the conclusion that when IPV victims go into a shelter they primary needs are staying safe, healing emotionally from the experiences and information and support regarding housing/accommodation.

Boom and Kuijpers (2012) developed a framework of needs based on two main theories concerning human basic needs such as: the Maslow theory that distinguishes 5 basic needs - physiological needs, safety, love, esteem and self-realization; and Staub theory based on 6 basic needs – security, effectiveness and control, positive identity, positive connection (to others), comprehension of reality and independence/ autonomy. Boom and Kuijpers’ framework of needs also took into consideration needs taken from the theory on procedural justice and the theory on restorative justice, namely: “process control; decisive power; proper treatment; a desire to express oneself regardless of its further influence; a decision-making process free from bias or dishonesty (impartial authority); being treated with courtesy and consideration; victims’ rights being respected by the authorities; provision of information about procedures, decisions and progress of the case; opportunity to ask questions; involvement in one’s ‘own’ criminal case; and reparation of harm by the offender.” (Boom and Kuijpers, 2012: 157). The categorisation of needs developed by Boom and Kuijpers was based on 6 main fields; the authors then linked those fields from which (institution) victims wanted to see specific needs to be fulfilled by. Here we opt to include only those fields connected to the police, the judiciary, and other agencies such as DV victims’ support services. The clusters of needs per field are the following:

- Emotional: Initial response, care and support (police and other agencies); further or specific assistance (e.g. counselling) and characteristics of assistance (other agencies); acknowledgement of the person and of the incident (police and the judiciary).

- Criminal proceedings in a broad sense: initial police response; assistance with initial actions, such as reporting the crime (other agencies); legal aid (other agencies); opportunity to provide input in criminal proceedings (e.g. to be heard) (police, the judiciary); being treated as an interested party, being consulted (police and the judiciary); assent and power to make decisions (police and the judiciary); no role in legal procedure (police and the judiciary); procedure characteristics (e.g. quickness)
(police and the judiciary); outcome (e.g. arrest, punishment) (police and the judiciary).

- Information: relating to role as concerned party in the case (police, the judiciary); explanation (about systems, etc.) (police and the judiciary); information about prevention (police and the judiciary); characteristics of the information (timely and in victim’s own language) (other agencies).

- Practical: transport; assistance with personal care; assistance with paperwork / formalities; medical assistance and support; crisis management; work/school-related matters; with respect to language – translation/interpretation services, material in victim’s own language (all the above expected to be fulfil by other agencies); other (e.g. return of possessions, separate waiting rooms) (police and the judiciary).

- Financial: financial aid; assistance in requesting financial aid (other agencies).

- Primary: immediate safety ((police, the judiciary and other agencies); preventing revictimization/protection of self and others (police, the judiciary and other agencies); housing – temporary or permanent (other agencies); work/daily occupations and emergency requirements (food, clothing) (other agencies).

- Immediate safety, employment or education, temporary or permanent housing, repair of relationships with the offender, wish to not arrest or prosecute the perpetrator but instead, for instance, to remove him from their home for a while, information and financial needs were among the needs most expressed by IPV victims (Boom and Kuijpers, 2012).

It is important to refer that the need for immediate safety is somehow connected to the prevention of repeat victimisation.

Foremost, needs must be correlated with (individual) characteristics of IPV victims. Once more, this is a crucial aspect identified by the literature reviewed. That assumption must therefore take into consideration that there is no one-fits-all typology of victims and of needs as “while there is little doubt that domestic violence does, in fact, affect women of all ages, races, ethnicities, religions, educational levels, and socioeconomic classes, it is equally true that all of these groups experience abuse differently” (Goodmark, 2014: 23).

Goodmark points out the need to define coercion around the lived experiences of women subject to violence instead of focusing on the intentions’ perpetrators may have. This would be a sort of requirement within criminal proceedings, thus “establishing a standard that focuses on how a woman experiences abuse, rather than on what her partner does to her, makes the woman central in any legal proceeding and forces the legal system to consider the impact of coercion on this woman in this relationship, rather than some essentialized woman subjected to the same behaviour.” (Goodmark, 2014: 49).

Gloor and Meier (2014) developed a research project aiming at obtain intimate partner violence ‘victims’ views’ regarding their experiences of seeking help and support on different agencies in Swiss. According to their findings, there are three fundamental goals guiding institutional action – police, prosecution and criminal courts, victims’ support
services, lawyers, etc. - towards intimate partner violence: ending violence; protecting and supporting victims; and holding perpetrators accountable and offering support for behaviour change (Gloor and Meier, 2014: 5). These are sensitive goals that encounter echoes on women’ discourses – the need to end violence beyond an immediate crisis, including the non-perpetuation of the cycle of violence to their children; the need to make the perpetrator responsible for his behaviour – although for some women this means official punishment via the legal / criminal system and for others to offer conditions for perpetrators’ self-reflection on his (problematic) behaviour and engagement on changing his violent behaviour (offer ‘help and support’ for perpetrators as well); and the need to be protected and supported by various agencies and professionals, starting from “fully realise, acknowledge and take seriously the circumstances and victimisation experiences women share with them” (Gloor and Meier, 2014: 7) to tailor adequate and empowering support interventions.

In order to cover all needs, women have to contact a whole range of institutions, implying a considerable amount of work within their own engagement with institutions, namely “multiple contacts, sometimes within a short period of time, in other cases over months or years” (Gloor and Meier, 2014: 11). Furthermore, “crisis may last longer than expected and intervention extends beyond crisis” (Gloor and Meier, 2014: 14) making it more difficult for women to cope with the complexity of the entire situation. And even when institutional contacts may come to an end, it does not mean that “the man’s violence against the woman has ended. Instead, the current system of regulations, measures, and implementation effectively ends neither threats against the woman nor violence against the woman.” (Gloor and Meier, 2014: 15).

Victims’ needs are often correlated to the expected profile of victims within societies, and therefore within the legal system, “because that stereotype is what legal system actors expect to see, women who defy that stereotype are at a distinct disadvantage in the legal system.” (Goodmark, 2012: 55).

There is a robust tendency regarding a “general understanding of victims’ needs: victims need emotional support and information and they want to be heard, compensated and acknowledged” (Boom and Kuijpers, 2012: 155-156). Nevertheless, the EC category of needs of victims of crime, focusing concretely on the justice system, considers:

- **Respectful treatment** and **recognition** as victims, both within the justice system and more widely by society;
- **Protection** both from intimidation, retaliation and further harm by the accused or suspected and from harm during criminal investigations and court proceedings, such as by avoiding repeated interviewing of the victim;
- **Support**, including immediate assistance following a crime, longer-term physical and psychological assistance and practical assistance during proceedings to help victims understand, participate and to reduce their distress;
- **Access to justice** to ensure that victims are aware of their rights and understand them both linguistically and legally, are able to provide additional information and to participate in proceedings; and
• compensation and restoration, whether through financial damages paid by the State or by the offender or through mediation or other form of restorative justice that allow victims to face the accused, with a view to reaching a voluntary agreement between them on how to repair the harm to the victim.¹

Domestic violence and intimate partner violence in particular, affects a large proportion of women in Europe. It is perceived by the majority as a violation of human rights and an occurrence that involves at a certain stage the legal system and its actors. However, it is known that “many women do not report their experiences of abuse to the authorities, so that the majority of violence against women continues to be hidden and, as a result, perpetrators are not confronted” (FRA, 2014: 3).

The Council of Europe recognizes that persisting inequalities between women and men, gender bias and stereotypes also result in unequal access of women and men to justice: “women’s limited access to justice is a complex social phenomenon that combines a series of inequalities at the legal, institutional, structural, socio-economic and cultural levels” (GEC, 2013: 7).

Hawkins and Laxton (2014) research on women’s access to justice² concludes that “at present many women experiencing domestic violence, including sexual violence in intimate partner relationships, do not have access to justice and their human rights are being consistently undermined.” (Hawkins and Laxton, 2014: 49). Furthermore, “the current legal response to domestic violence serves some women well. But it serves many women poorly, and some women not at all.” (Goodmark, 2014: 8).

In fact what experts and literature are stating is that the concept of access to justice evolved into a broader concept – from ensuring rights through courts to reforming justice system to facilitate access to them; the concept of access to justice, covering contacts with, entry to and use of legal system, in the sense that “it is about ensuring the sensitivity and responsiveness of such systems to the needs and realities of women” (GEC, 2013: 7 Ibidem).

Professionals’ expectations regarding IPV victims

It is a fact that “for most of the world’s women the laws that exist on paper do not always translate into equality and justice. In many contexts, in rich and poor countries alike, the infrastructure of justice – the police, the courts and the judiciary – is failing women, which manifests itself in poor services and hostile attitudes from the very people whose duty it is to fulfil women’s rights” (UNWomen, 2011: 8).

Hawkins and Laxton reveal that women still face fears when considering contacting the police:

“the fear of not being believed or taken seriously; the fear of recriminations through counter claims from the perpetrator; (...) the fear of having their children taken

² The research collected inputs from 90 organisations and nearly 50 survivors of domestic violence.
away from them if they expose themselves as living in a violent home; the fear of the financial implications if the relationship ends or the perpetrator is put in prison; (...) the fear of having to become involved in daunting criminal justice proceedings; and the fear that the criminal justice system is biased towards perpetrators.” (Hawkins and Laxton, 2014: 9).

Some of those fears are closely connected to women’s perceptions of other women’s experiences in reporting violence to the police or even in previous experiences in reporting themselves. And what is commonly seen as fears are actually the most frequent outcomes convened and expressed by professionals of the justice system. Women victims of IPV just “want an accessible and responsive justice system.” (UNWomen, 2011: 11).

The ability to trust or to being taken seriously cannot rest on the victims’ personal characteristics but rather on the context and circumstances on which the interaction between victims and police officers occurs; in that sense, police officers and other legal practitioners have a determinant role either in the victims’ stance, collaboration and protection during criminal investigations as well as in the criminal justice outcomes. In fact, several studies (Duarte, 2012 citing other studies such as Bowman et. al, 2010; Thomas & Boisseau, 2011; Beleza, 2001) reinforced that “it is not a matter of indifference how ideas, social images and stereotypes about women interact in the daily practices of Courts, and in particular within the production of the judiciary discourse.” (Duarte, 2012: 68).

So the context and circumstances are often dominated by preconceived ideas about the crime - intimate partner violence is, on one hand, as old as the humankind, and, in another hand, occurring mostly in a private set - and about the parties involved (women in particular).

Families are perceived as spaces of affections. As a social system, families play a relevant role on building its members’ identity; in that sense, families embody strongly women and men’s gender identities and roles. But families are also spaces of dominance and power, subject to the (symbolic) violence, contributing to the socialization of the biologic characteristics of women and men (reproduction vs strength). The male dominance is therefore imbedded in the practices, structures and social discourses, legitimating the existence of an unbalanced love among women and men specifically present in the collective representations of love and family experiences.

Love is a (social and personal) concept, impinged of romantic ideas about the relationship and its actors. It is present on the “discourses of romantic love of women who were victims of violence in intimate relationships” reflecting the “cultural constructions of what should be a perfect partner entrap women in these nets of violence” (Neves and Nogueira, 2011: 248).

Research conducted in Portugal, for instance, stresses the need for considering the most common social concept of love as an important variable to look in IPV professionals and institutional perceptions. Neves and Nogueira (2011) refer that “people use cultural concepts to organise their social world and to constitute themselves and others in meaningful ways” (pp. 245). Therefore it is common to find that

“woman’s silence is linked to cultural norms and a strict gender hierarchy. Within these culturally constructed imperatives, institutionalised power structures serve to
define the expression of self-sacrificing love as a natural characteristic of woman. This expression is additionally assumed to extend to the provision of care to others. Men, on the other hand, are presumed to naturally inhabit a position of authority. This essentialist vision restricts women’s self-determination and provides man with the social license to employ physical, psychological, and sexual violence.” (Neves and Nogueira, 2011: 241).

Those feelings of love and submission, care and subservience are founded in women experiencing violence in intimate relationships, particularly in contexts where feelings of absence of power, experiences of inequality, romantic love and self-silencing converge. One cannot simply forget that “men and women are socialized to assume gender roles” (Weissman, 2007: 424); and gender roles impinged strongly on women’s perceptions and experiences of love.

Weissman (2007) points out clearly the need for transcending the individual framework when thinking about women entrapped on violent intimate partnerships. The circumstances are not only individual and related to a gender-based power that keeps women economically dependent on violent partners but also related to limited economic opportunities for women. Weissman refers the “battered women’s coping abilities [that] can be viewed as both “individualised and involv[ing] everyday resistances” and survival strategies in the context of the larger social and economic issues, as well as within the context of their relationships” (Weissman, 2007: 435).

One of the survival strategies is the self-silencing. Self-silencing is described, in psychology, as “set of distorted cognitive schemas” (Neves and Nogueira, 2011: 246) based on women’s attempt to build and sustain relationships of intimacy. Women may “form their concept of the self based on their participation in close, intimate, and genuine relationships with significant people and that whenever the maintenance of those relationships is in some way at risk, women’s self-esteem and their sense of personal identity are seriously compromised.” (Ibidem).

The self-silencing is frequently a “compulsory choice that women have to make as a means to preserve their own safety and identity” (Neves and Nogueira, 2011: 253) and therefore a reflection of the absence of women’s power. It is not unexpected to found that several “studies have repeatedly shown that love and the desire to maintain relationships with their partners lead women subjected to abuse to remain with their partners and to opt out of legal remedies – to refuse to cooperate with prosecutors, to dismiss petitions for protective orders or ignore their terms.” (Goodmark, 2014: 96-97).

Research indicates, for instance, that defining the victim is a normative act. In creating categories like battered woman syndrome, “the legal language of recognition can become the language of constrain”, confining women (...) to narrow victim stereotypes. Basing law and policy on those stereotypes ignores the ways in which women’s intersecting identities construct the experience of abuse.” (Goodmark, 2014: 78).

According to Duarte, there is a kind of a victim’s typology consisting on 4 main profiles:

- the innocent victim, a woman who tries to make her intimate relationship and family prevail no matter what and despite being physically abused – this woman
usually has lower educational instruction and is economically dependent on her partner;

- the victim-who-is-as guilty-as-the-perpetrator, a woman who provokes the violent behaviours of the perpetrator, such as portraying violent behaviour towards her intimate partner or to whom she is unfaithful;

- the imaginary victim, a woman who creates imaginary situations of victimization depending on her mental health state (depressive, emotional deprivation or paranoia);

- and the superwoman, the woman who is successfully employed on the labour market, economic independent and with a professional career. (Duarte, 2012: 68-70).

Psychologist Walker adapted the theory of learned helplessness to women victims of IPV, theorizing that “over time, women subjected to abuse, finding that they cannot anticipate, control, or stop the violence against them, begin to suffer from learned helplessness. (...)Instead of actively seeking to escape violent relationships, women sink into passivity, self-blame, and fatalism born of the randomness of the relationship.” (Goodmark, 2014: 57). Nevertheless, Walker stressed that were not the women’s characteristics that prevented them to respond to violence but the violence itself that rendered women powerless. It was this passive and powerless image of female victims of IPV that gained ground in the judicial system by being used to explain why women continued to live within an intimate violent relationship.

However, Walker’s theory contributed largely to the image of victims of IPV as passive and too fearful to act to stop violence. Somehow the paradigmatic stereotype of passive women also conflicts with their (in)capacity of being a good mother, a protective mother to their children. Allowing children to be part of the scenario of violence is also seen as a consequence of victim’s inability to act as a protective parent. So the apparently passive character of women has somehow permeated the legal system rendering women victims of IPV as a homogeneous group despite all other (individual) characteristics women have. A unique characteristic – such as woman’s incapacity to stand up for her – is easily accepted by all societies as it is based on the romantic idea of women dependency on men.

It is, therefore, not unexpected that “victim stereotypes fail to account for the diversity among women subject to abuse. (...) Race, sexual orientation, immigration status, class, disability status, and location all shape women’s experiences with abuse, reinforcing their disempowerment and dictating their needs.” (Goodmark, 2014: 71). The victim’s portrait is commonly so powerful that it erases all other victim’s characteristics. Some studies, for instance, demonstrate that “migration exacerbates the gender-linked vulnerability of women; it makes them further dependent on, and at times at the mercy of, husbands, sponsors or employers, nuclear or extended families, and their own ethnic/racial communities” (Erez, 2000). There are different layers of individual characteristics (migration is one of them) that interact in favour, or not, of a more active or passive posture regarding victim’s stance in criminal proceedings. In fact, it is not the victim’s characteristics per se that contribute to a more active posture but rather the stereotypic portrait of victims –
particularly the scared, helpless, humble, blameless, weak, and powerless - that have an impact on the way law enforcement agencies interact with victims.

Goodmark, for instance, recalls that an “angry women is simple not a good victim.” (Goodmark, 2014: 77). Professionals expect from women as victims certain behaviour and when the behaviour is not conform to the (social and institutional) expectations, professional interaction is somehow dimmed in a sense that “women subjected to abuse who fail to conform to victim stereotypes face a cruel choice: tell your authentic story and face the consequences of falling to conform, or tailor your story to the prevailing narrative and deny the reality of your experience.” (Goodmark, 2014: 77).

However, there is a tendency to expect that victims of IPV should turn to the police and the legal system for help, protection and support.

One way or another, legal cultures are permeated by social perceptions on the role of the victim within domestic violence contexts and on the possible outcomes of a legal intervention. As Pence and Paymar sustain

“when a woman is repeatedly battered, she experiences severe physical, psychological, and spiritual trauma. When she manifests the effects of these attacks or fights back she is labelled by the batterer, and by the system that colludes with him, as defective. She is described by him as a provocative bitch, a whore, a junkie, a bad mother, a violent drunk, a liar, a man-hater, a thief, and a woman out to get him. She is labelled by the community as an enabler, a reluctant witness, a co-dependent partner, a woman caught in a honeymoon phase, a non-assertive woman suffering from learned helplessness, a mother with poor parenting skills, a drug or alcohol abuser, a violent person, and a self-destructive woman. Like any person or group at the bottom of an abusive hierarchical order, she is thought to be there because something is wrong with her. He defines her this way, and the system backs him up.” (Pence and Paymar, 1993).

The types of women as victims of intimate partner violence, strongly associated with the prevailing social stereotypes, are also reflected in the criminal court action. Stereotypes about women victims of IPV somehow dominate discourses within the legal system, contributing to the construction of the image of a paradigmatic victim of violence. Such an image lays on descriptions of women as “scared, helpless, meek, blameless, weak, and powerless. (...) also been depicted as deferential, submissive to authority, compliant, vulnerable, ashamed, dependent, unassertive, depressed, and defenseless.” (Goodmark, 2014: 63-64). Those stereotypes corroborate the idea of women as deserving / needing protection, and for that reason all women would be interested in cooperate with law enforcement agencies and the legal system. However, defining women in such a passive way renders difficulties likewise in accepting non-passive women as victims of IPV.

On the other hand, the paradigmatic victim is also associated with the willing to ‘stay’ living with the perpetrator. According to Hanna (1998), there are several reasons why victims stay, such as “financial dependence, fear of separation assaults, concern for the children; low self-esteem; a perception that there is no place to go; and hope.” (Hanna, 1998: 1558). However, “this hope masks a deeper sense of powerlessness. Nothing a woman does can stop the violence unless her partner wants and is able to change” (Hanna, 1998: 1559).
Influence of the social sciences on the legal system

The dialogue among the legal system and social sciences continued to evolve and some notions and beliefs gained particular influence in the way the legal system looks at victims. The cycle of violence, developed by Leonore Walker, for instance, was somehow incorporated in the legal response to domestic violence (Goodmark, 2014). In fact, “the cycle of violence was an integral component of battered woman syndrome; expert testimony stressed the centrality of the cycle in explaining why women subject to abuse failed to leave their relationships. The cycle was cited in state law, statute, and practice.” (Goodmark, 2014: 32). The Walker’s concept focused particularly on physical violence, leaving aside the emotional, psychological, economic and other non-physical forms of violence. Once a professional could identify the different phases of the cycle within the relationship of the victim and perpetrator, then the victim would be somewhat better understood by the legal system. Indeed, “the cycle theory provided legal system actors with an easy benchmark for measuring the existence of domestic violence” (Goodmark, 2014: 33).

Another conception that also had an influence on the legal intervention was the power and control wheel developed by Pence in Duluth. Its influence can be mostly found on training courses on domestic violence, helping (legal) professionals to “understand how the tactics of power and control reinforce the deployment of physical and sexual violence to ensnare women in violent relationships” (Goodmark, 2014: 34). Again, the focus on physical violence plays an important part of the definition of domestic / intimate partner violence. Nevertheless, this notion has put an emphasis on behaviours such as power and control.

The power and control wheel illustrates that violence is part of a pattern of behaviours rather than isolated incidents of abuse or cyclical explosions of repressed anger, frustration, or painful feelings. The rationale on this theory is that the perpetrator’s use of physical assaults or sexual abuse is often infrequent, but it reinforces the power of the other tactics on the wheel (e.g., emotional abuse, isolation, threats of taking the children) that are used at random and eventually undermine his partner’s ability to act autonomously.

Later, Stark developed the model of coercive control, based on the assumption that “men deploy a number of tactics designed to establish dominance and privilege, prevent escape, repress conflict, and secure resources. Those tactics include intimidation, surveillance, degradation, shaming, and isolation.” (Goodmark, 2014: 35). Stark argues that violent men tend to “dominate individual women by interweaving repeated physical abuse with three equally important tactics: intimidation, isolation, and control.(…) the primary harm abusive men inflict is political, not physical, and reflects the deprivation of rights and resources that are critical to personhood and citizenship” (Stark, 2007: 5).

Starks highlights substantive differences between IPV and the coercive control attached to IPV and other type of crimes. First, “coercive control is personalised, extends through social space as well as over time, and is gendered (...). Men deploy coercive control to secure privileges that involve the use of time, control over material resources, access to sex, and personal service”; in fact, violent men resort to coercive control as a form of “microregulation of everyday behaviours associated with stereotypical female roles, such as
how women dress, cook, clean, socialize, care for their children, or perform sexually.” (Stark, 2007: 5).

Feminists’ approaches are somehow ambivalent, either proposing equal treatment to all women / victims and men / perpetrators or demanding the consideration of differences among both groups of individuals: “the formal equality approach proposes that individuals who are alike should be treated alike according to their actual characteristics rather than stereotypes. In contrast, substantive equality theory requires that rules take into account the significant differences in the characteristics and circumstances of women and men in order to avoid gender-based outcomes and relies on the idea that neutral rules do not account adequately for the extent to which the realities of women’s lives differ from men’s” (Hanna, 1998: 1510).

Fagan (1996) recall the need for rethinking theories around domestic violence “while cautiously avoiding “decontextualizing” the complexity of domestic violence (Lerman, 1992), we need to examine the interfaces of theories of violence, domestic violence, and social control in the context of the dynamics of domestic violence” (Fagan, 1996: 19-20).

Nevertheless, one must consider that the criminal system is based upon the “law [that] is a matter socially constructed and it is therefore subject to a continuous re-elaboration process of the social dynamics within its practitioners.” (Duarte, 2012: 71)

Goals of legal intervention and support

Goodmark (2014) citing Hart refers that there are six goals for the legal system intervention commonly perceived by research in the domestic violence field - safety, stopping violence, holding perpetrators accountable, challenge the perpetrator’s belief in his right to control his partner, restoration for women subjected to abuse (economical, health, living without fear) and empowerment of women victims of IPV. Goodmark stresses that those goals “make sense from the societal perspective, given that the legal system is charged with maintaining public order and ensuring that citizens comply with its laws” (Goodmark, 2014: 6); however, the author questions if those goals are also the goals of women victims of IPV.

Fagan (1996), citing Ford, emphasises that “victims’ goals are instrumental: obtaining money and property, coercing partners to obtain counselling, or protecting themselves or their children” (Fagan, 1996: 8).

There seems to be a gap between the expectations of victims of intimate partner violence and procedural responses from the judicial system. Hart (1992) concludes that women victims “may want privacy or anonymity in the prosecution process while the criminal justice system values public accountability. They may want speedy disposition while the justice system labours at a snail’s pace. They may want input in decisions about plea negotiations and sentencing while the justice system concludes that this inclusiveness precludes the expeditious handling of criminal cases, unduly interferes with prosecutorial discretion or intrudes upon the rights of defendants. They may
want sentences for perpetrators that are specifically crafted to protect victims while courts may focus on offender rehabilitation and ignore victim safety.” (Hart, 1992: 2).

Stark concludes that even the legal system presents a failure in providing an adequate response, mentioning the following reasons (among others):

“the number of men arrested for partner violence has increased dramatically. But assaults against partners are treated as a second-class misdemeanour. The chance that a perpetrator will go to jail in any given incident is just slightly better than the chance of winning a lottery. (...) Hundreds of thousands of service professionals have been trained to identify and respond to domestic violence. Yet rates of institutional identification have improved only very slightly, and intervention may actually “normalize” the most devastating forms of abuse. Batterer intervention programs are widely offered as an alternative to incarceration. But these programs are little more effective than doing nothing at all. Regardless of intervention, the vast majority of perpetrators continue their abuse.” (Stark, 2007: 7).

The goal of ‘stopping violence’ is often a goal women expect from legal interventions regarding their intimate partner’s behaviour. The legal response can entitle treatment programmes for perpetrators and in that sense this is viewed with some criticism. It is, nevertheless, considered as an “optimistic but unrealistic belief that abusers can unlearn their violence through treatment (...)” which “might be true in individual cases, but it does not hold true universally.” (Hanna, 1998: 1558).

Barriers to victims’ collaboration with the legal system

It is a fact that legal and procedural barriers to equal access to justice for women victims of intimate partner violence lead to victims’ reduced or complete lack of trust in the justice system. Lengthy criminal proceedings, high attrition, and low conviction rates and discriminatory practices constitute serious barriers in efforts to get justice for women victims of intimate partner violence.

Since 2010-2012, the Council of Europe and the United Nations have been highlighting key challenges and obstacles on women’s access to justice. On 2013, the Council of Europe published a feasibility study on equal access of women to justice; the study identified several barriers (GEC, 2013: 4) such as:

- Lack of awareness of procedures;
- Lack of financial resources - “Costs are not only linked to legal fees and judicial taxes, but may be incurred as a result of ensuring transportation to courts, finding accommodation or for instance seeking childcare.” (GEC, 2013: 11) and restrictions on the availability of legal aid;
- Emphasis placed on using out of court settlement procedures to ensure a swift end to the legal dispute, often leaving women at a disadvantage;
• Gender neutral legislation which may lead to systemic inequalities, often unintended;

• Gender bias in courts and among law enforcement officials, in particular regarding specific groups of women (such as, for example, minority, disabled or rural women);

• And fear, shame and cultural and/or religious barriers.

Hart stresses that women victim of IPV as witnesses face common barriers to their participation in legal interventions, namely:

• (fear of) recidivism and retaliation as “battered women may, thus, be much more concerned about preventing future violence” (Hart, 1992: 4). Hart concludes that “battered women are most often killed when attempting to seek legal redress or when leaving an abusive relationship” (Hart, 1992: 3); therefore, the fear of recidivism and retaliation imposes as a barrier to further active participation in the legal intervention and appears as a form of (self)protection;

• Victim-blaming attitudes arising from the legal professionals since those professionals often viewed victims also as responsible for the crimes committed against them: “responsible either because battered women are believed to “provoke” the perpetrator into violence or because they are believed to have the power to avoid the criminal assault through accommodating the perpetrator’s demands” (Hart, 1992: 4).

• Systemic resistance to the prosecution of perpetrators as most of the criminal penalties perpetrators face are suspended -for instance, in Portugal law enforcement agencies received 27318 complaints of domestic violence in 2013 and courts dealt with 1135 DV cases, having condemned 682; most of the court decisions were 2 to 3 years of suspended sentence.³ There is also evident that women feel “discouraged with the criminal process; discouraged because of delays, lack of witness protection, or because of prosecutor indifference or insensitivity” (Hart, 1992: 5).

• Victim reluctance for various reasons (i.e., financial constraints; difficulties in conciliating attendances at court with children’s school hours; religious and ethnicity social perceptions of outcomes).

According to the women who participated in the research conducted by Gloor and Meier (2014), the absence of the perpetrator will to cooperate with the legal system does not have any ‘real’ consequences on the actual end of violence as “there is no additional institutional action that would reinforce the measures and end the violence” (Gloor and Meier, 2014: 9); in fact, it increases the probability of an escalation of the intimate partner violence experienced by the woman alongside with the ‘imposed’ necessity to report those incidents to the police, ending up as being “more a validation for the violent man than a sanction” (Ibidem).

Hanna (1998) argues that “the criminal system must explore sentencing alternatives that condemn intimate violence more generally (...) rather than over-rely on therapeutic sentences, which are currently the trend”. According to this author, “empirical data have not shown that most domestic abusers can be rehabilitated through treatment programs as they are currently designed. Rather, the criminal system’s reliance on batterer treatment programs is driven by politics, not science” (Hanna, 1998: 1508). However, being perpetrator’s programmes as alternatives to punishment of perpetrators as a result of political choices, it reflects “a historically sexist system that treated domestic violence as a private family matter” (Ibidem).

There are also barriers to a full victims’ collaboration coming from the overall features of victims’ lives, such as their living conditions and economic status, their qualification and legal literacy knowledge, their financial resources, among others. For Weissman “the cycle between poverty, stress, and intimate partner violence is difficult to break: poverty creates stress, households have diminished resources available to cope with stress, and stress is a source of violence” (Weissman, 2007: 421).

Barriers are also present in “a number of contextual variables, including race, class, sexual orientation, immigration status, relationship status, disability, geographical location, and previous experiences with the law” (Goodmark, 2014: 4). These barriers, moreover, are based upon dominant gender stereotypes and act to “validate the claims of a narrow subset of women subjected to abuse. Simultaneously, those stereotypes create barriers to accessing support for women who fail to conform – like angry women. Anger is a common response to trauma. Women may be angry that they have been abused, angry with their partners for subjecting them to abuse and for destroying their families, and angry that having fled the abuse, their lives are far from perfect. Seeking assistance may make women subjected to abuse feel safe enough to express that anger. That anger, though, may cause police, prosecutors, and judges to turn against them.” (Goodmark, 2014: 76).

Adding to those types of barriers, it is important to bear in mind that:

“the role and policy ambiguity can affect the performance of agencies with respect to their missions; in this case, it may undermine their effectiveness in pursuing either victim protection or offender sanctioning roles. There is no doubt that linkages between legal institutions and services for domestic violence victims are critical to stopping violence. However, these linkages may best be accomplished through a strategic division of roles among institutions that tap strengths of each organisation. (...) Although legal systems should be open and accessible to battered women, these institutions should not take on the role of managing the coordination of services that involve social service, shelter, and other institutions” (Fagan, 1996: 18).

The EU Directive 2012/29 takes into consideration a rather comprehensive scope of victims' rights throughout criminal proceedings, namely:

– Information (from 1st contact throughout criminal proceedings);
– Interpretation and translation;
– Victim support (general and specialist support);
- Protection / Individual assessment of protection needs (to identify vulnerable victims and special protection measures);
- Participation in criminal proceedings;
- Training of practitioners:
- Coordination.

But as often stated “many victim rights can only be said to improve the position of victims of crime when they are concrete and sufficiently implemented in practice; a right to advice, support or information is not as important as actually receiving that advice, support and information; not in the least because without it, victims would not be aware of their rights.” (Letschert and Rijken, 2013: 233). Disseminate the rights a victim has in a specific country must be an obligation of state institutions. Knowing one’s rights is not an easy task for the common citizen.

It is also important to mention that the criminalisation of IPV reflects, in a sense, “the social organisation of the courts and processual contexts, rather than legal statute” (Fagan, 1996: 12).

Hart (1992) identifies some best practices in the criminal justice arena such as follow-up systems (contacting a victim one day after the incident, implemented either by the police or DV programmes); victim-witness clinics “wherein victims learn about the criminal justice system, their role in it and the likely dispositions upon conviction or a guilty plea. They learn how to craft victim impact statements and how to articulate the specific dangers they believe are posed by their assailants. They learn how to become more effective witnesses.” (Hart, 1992: 7); risk assessment procedures implemented by courts, prosecutors and attorneys; systematic referrals to DV victims’ support services; identification of a contact person between the victim and the prosecutor who can provide information about the criminal process; raising awareness programmes targeting other family members, friends and employers of IPV victims; specialised prosecution units; and timely prosecution.

In most European countries, “there has been a significant increase in the introduction of protection orders. A police ban, expelling the perpetrator from the residence and forbidding him to approach or contact the victim for a set period of time, clearly offers the highest level of immediate safety and protection if police are appropriately trained to recognise when a perpetrator poses a danger.” (EIGE, 2012: 55).

Important to refer that “in pursuing victim protection goals, legal institutions, especially criminal justice system agencies, were asked to refocus their efforts on the protection of victims and the coordination of extralegal and legal services. This perspective differs from the traditional goals of criminal justice institutions to focus on the detention and punishment of crimes” (Fagan, 1996: 17). This is something that “it may require legal actors to pursue goals on domestic violence cases that they do not pursue in other types of crime” (Fagan, 1996: 18).

Moreover, what is being asked to prosecutors is somehow misleading them since “supporting the victim emotionally and holding the batterer criminally responsible are often conflicting goals” (Hanna, 1998: 1553).
In fact, most cases are ending with probation and treatment as “court-mandated treatment programs allow everyone to save face. The prosecutor checks-off ‘conviction’ on his stat sheet; the defence attorney feels like she did some good to her client; the victim has a sense of hope, however false, that the criminal justice system will help her partner change his ways; the offender avoids jail; the judge is not accused of taking these cases too lightly; the treatment programs gets yet another client to support its existence; and we all go home happy… until the next time.” (Hanna, 1998: 1556).

Once more, this is the outcome of “the frustration that results when there is too much pressure to proceed in every case, too few resources to document the serious ones, and little time to do the job right.” (Hanna, 1998: 1556).

Prosecution could facilitate separation of the victim from her violent partner, applying measures such as “incarceration, a period of state-enforced separation, or to the imposition of a state-ordered separation via the issuance of a criminal stay-away order as a condition of probation or parole.” (Goodmark, 2014: 86).

However, if the justice system still have some measures available to women who want to separate from their partners (even if only for short periods of time), for women who stay the justice system has even less to offer: “the law’s reliance upon separation-based remedies reflects a judgement that all women subjected to abuse should want separation from their partners because their relationships are not worth supporting and cannot be made viable.” (Goodmark, 2014: 96).

In fact, recent research in England concludes that “the criminal justice system is regularly failing to hold perpetrators of domestic violence to account for that violence. Furthermore, when sanctions are imposed they are often so limited and the abuse so pervasive that perpetrators are able to continue abusing their victims.” (Hawkins and Laxton, 2014: 49).

**Most common risk assessment procedures**

Intimate partner violence is one of the crimes most reported to the police. There is evidence about the increasing use of risk assessment mechanisms by law enforcement agencies in many EU countries. However, it is less clear how these assessment mechanisms are actually contributing to the protection needs of victims of DV. What are women’s expectations regarding institutional intervention? How do institutions (law enforcement agencies and “allied” protection services) take into account the personal characteristics (e.g. strengths, vulnerabilities) of victims in assessing their needs, risks and their potential vulnerability to secondary or repeated victimisation?

Risk assessment is basically a process of collecting information about the people involved in a violent relationship in order to prevent further acts of violence and to develop strategies of risk management. There are some key points to consider – the history of predicting violence; the outcomes of abusive and violent perpetration against a woman and her children; the nature, frequency, severity and the outreach of violence. Risk assessment must therefore consider dynamic and static risk factors.
It is relevant to bear in mind that despite of risk assessment procedures considers “evaluating the type of risk, its extent, nature and impact”, per se it “does not accurately predict the risk. It refers to the likelihood of further occurrence and/or severity of the impact. It also informs about who may be at risk” (Albuquerque et al, 2013: 26). Nevertheless, risk assessment “is a comprehensive process of gathering information about the history of abuse, its context and the identification of the risk level and any protective factors” (Ibidem: 41).

Commonly, risk assessment procedures and tools are designed to: assess the risk of re-assault; assess the risk of femicide; “inform service responses and criminal justice approaches; help victims understand their own level of risk and/or validate their fears/own assessment; provide a basis from which a case can be monitored by service providers.” (Albuquerque et al, 2013: 41).

Subsequently, there is a need to implement a risk management and to develop a safety planning. Risk management comprehends “the response to the risk identification and assessment to ensure the prevention of risk, involving different strategies and a multi-agency approach” and safety planning “is a strategic process enabling victims/survivors, with the support of professionals and organisations, to make use of the existing and available resources in order to be aware of the risk and increase their safety as well as their children’s” (Albuquerque et al, 2013: 27).

According to Albuquerque et al (2013) there are 3 main approaches to risk assessment:

- Clinical – refers to the professional judgement in determining the risk. The collection of information, and the type of information, relies on the professional decision, somehow viewed as ‘subjective’; it is also based on the information available about the perpetrator.

- Actuarial – based on tools that provide scores or weightings associated to a series of risk factors and contextual situations. When all factors are complete, the individual’s level of risk is then determined. The tool gathers information and the result is somehow limited.

- Structured professional judgement – this approach usually combines the clinical and the actuarial approaches but it also takes into consideration the specific situation and the context; it is person-centred and focuses on specific characteristics of a case. This is the most used approach.

The overall risk assessment methodologies take into consideration: i) risk factors - according to WHO website these are “characteristic or exposure of an individual that increases the likelihood of developing a disease or injury”; and ii) protective factors - “the conditions, attributes or elements that, when present, can mitigate or eliminate the risk or reduce vulnerability conditions.” (Albuquerque et al, 2013: 25).

Important to bear in mind is that risks change over time – risks are not static but affected by contexts, situations, reactions, etc.
Literature also reveals that “risk assessment must not be reduced to the application of questionnaires because of the complexity of the many diverse factors that are present in each situation.” (Albuquerque et al, 2013: 43).

Risk assessment tools have been designed either to assess the risk of re-victimization (victim-focused) or to assess the risk of re-offending (offender-focused). Simultaneously there are different instrument in use, such as:

- **Danger Assessment** (DA) is an instrument that helps to determine the level of danger an abused woman has of being killed by her intimate partner. The tool was originally developed by Jacquelyn Campbell (1986) in the USA with consultation and content validity support from battered women, shelter workers, law enforcement officials, and other clinical experts on battering. There are two parts to the tool: a calendar and a 20-item scoring instrument. The calendar helps to assess severity and frequency of battering during the past year by asking a woman to mark the approximate days when physically abusive incidents occurred, and to rank the severity of the incident on a 1 to 5 (1=slap, pushing, no injuries and/or lasting pain through 5=use of weapon, wounds from weapon) scale. The calendar portion was conceptualized as a way to raise the consciousness of the woman and reduce the denial and minimization of the abuse, especially since using a calendar increases accurate recall in other situations. The 20-item instrument uses a weighted system to score yes/no responses to risk factors associated with intimate partner homicide. Some of the risk factors include past death threats, partner’s employment status, and partner’s access to a gun. The DA tool uses a weighted scoring system to assess the level of danger. The instrument is available to free download in several languages but requires training.

- **SARA – Spousal Assault Risk Assessment** is more a screening tool than an evaluation one. It is based on 20 questions; focus on the criminal history, the psychosocial adjustment, the spousal assault history, and the current/most recent offence. It determines the level of risk of violence, as low, moderate or high, toward partner or ex-partner, risk of violence toward others, including violence against other people (e.g. child, new spouse of ex-partner, parents-in-law) that might occur in the context of spousal assault.

- **DASH – Domestic Abuse, Stalking and Harassment and Honour based Violence, Risk Identification, Assessment and Management Model** is a model that has been developed to create one standardised practical tool to refer cases to the Multi-Agency Risk Assessment Conference (MARAC), to share information and manage risk effectively. Risk identification is based on structured professional judgement. The tool can be downloaded but preferable requires training and practice. The CAADA, Co-ordinated Action Against Domestic Abuse, has available online a Case Management Pack for IDVAs to use in their day-to-day role; it includes: an intake form, CAADA

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4 The main source of information regarding the different instruments was Albuquerque et al, 2013.
5 Information retrieved from http://dangerassessment.org/About.aspx
6 The tool is available at www.biscmi.org/documents/Spousal_Assault_Risk_Assessment.pdf
7 The tool is available at www.dashriskchecklist.co.uk
Risk Identification Checklist, confidentiality and information sharing agreements, case notes form, CAADA Insights service data forms, individualised safety & support plans, case contacts form, criminal case and civil case forms, MARAC referral and research forms, case review forms, case exit form and CAADA Insights exit forms.  

- **Respect** focus on the perpetrator, providing services that deal with perpetrators with a tool of risk assessment. Respect has remodelled the CAADA DASH tool for use of domestic violence prevention programmes so that the risk identification checklist (RIC) can be used easily when working with perpetrators of domestic violence and the information gathered can then be brought together with the information from the victim risk identification checklist so that one, overall, risk assessment can be done. Respect has also developed a few additional questions specifically for those working with perpetrators providing some additional indicators of increased risk, or, highlighting where there may be more than one person at risk. Importantly, the RIC is only intended to be used to gather information about the risk factors relating to couples / intimate partners where the suspected perpetrator is male and their suspected, known or potential victim is female. It is divided into 3 checklists – the 1st containing 24 questions directed to perpetrators (in fact, the questions correspond to the questions for the victim in the CAADA RIC, re-phrased for asking the perpetrator), the 2nd is used for recording additional information from or about perpetrators and is composed of 6 questions, and the 3rd is a third person version of the main RIC.

The majority of risk assessment tools used in criminal justice settings contain two types of risk factors: static and dynamic. Static risk factors are risk factors that are fixed and unchangeable, such as demographic factors (e.g., age, gender), childhood history and criminal history. Dynamic risk factors “fluctuate over time and reflect internal states or temporary circumstances of the individual, such as beliefs and cognitions, everyday associates, and feelings of hostility” (Guo and Harstall, 2008: 7). Dynamic risk factors are factors that can change and these changes may be associated with changes in risk level (Hanson and Morton-Bourgon, 2009). Dynamic risk factors are also known as “criminogenic needs”.

To conclude this brief literature review, in spite of the debate among researchers around the stereotypical image of women victims of intimate partner violence, there is an attempt to universalize the experience of being abuse. Goodmark argues that there is no unitary women’s experience on IPV, no über-woman that fills the social image of the IPV victim. In fact, “women stand at the intersection of the various identities that construct them: race, sexual orientation, socioeconomic class, disability, and other defining characteristics” (Goodmark, 2014: 5).

What is coming clearly from this literature review is that we must question our views both of the uniqueness profile / typology of victims of IPV and of clusters of needs of women victims of IPV.

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2. Setting the scene at EU level: main legal and policy developments

“Until recently, a number of acts of violence against women – especially in the family and in intimate relationships – were not considered criminal acts. However, this situation has changed in recent years. Member States have increased the criminalization of different forms of violence against women while, in parallel, there has been growing recognition of violence against women as a human rights violation.” (FRA, 2014: 10)

In most European countries and in other western societies the debate on domestic violence has been closely linked to the debate on gender equality. In spite of the presence of different conceptual approaches to the phenomenon, gender equality and human rights have become the two major framings for addressing violence against women.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979 by the UN General Assembly, defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. Until the present date a total of 189 countries have ratified the Convention and committed themselves to undertake “all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;”

The Beijing Platform for Action (1995) - which emerged from the 4th UN Conference on Women – defines violence against women as “a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women and by men and to the prevention of women’s full advancement”. The Beijing Platform for Action has been endorsed by all EU member states.

In 2002, the first World Report on Violence and Health includes one section dealing specifically with the issue of intimate partner violence. The results show the extent of this type of violence against women, its consequences and puts forward specific recommendations for addressing the many obstacles that persist in eradicating gender-based violence, and particularly violence in the home.

In 2010, the Advisory Committee on Equal Opportunities for Women and Men issues an Opinion on an EU Strategy on Violence Against Women and Girls. According to the document VAWG includes, among others, violence occurring in the family or domestic unit “including, inter alia, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages” (Advisory Committee on Equal Opportunities for Women

and Men, 2010: 4) The document stresses the need for a consistent definition that should take into account EU member states’ international obligations, namely the ones mentioned above, such as the Beijing Platform or the CEDAW.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)\(^ {13}\) reiterates the validity of the definition proposed by the Beijing Platform for Action and reinforces the structural nature of violence against women as a result of gender imbalances in society and stresses the human rights violation dimension it involves for women and girls in different societal contexts. The Convention entered into force on 1 August 2014, following its 10th ratification.

The Istanbul Convention calls upon signatory states\(^ {14}\) to criminalise, inter alia, physical violence, psychological violence, stalking, sexual violence and sexual harassment. Moreover, Article 49 defines as general obligations of its Parties to ensure effective investigation and prosecution of offences while taking into consideration the rights of the victims:

1. *Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.*

2. *Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.* (Council of Europe, 2011: 21)

The Istanbul Convention is the first comprehensive and legally binding instrument creating a comprehensive legal framework to protect women against all forms of violence in Europe and internationally (EIGE, 2015).

Another important legislative package was adopted soon after the Convention aiming at enhancing the rights of victims of crimes. This legislative package adopted in May 2011 by the European Commission includes the EU Victim’s Directive\(^ {15}\) which establishes minimum standards on the rights, protection and support of victims of crime.

Directive 2012/29/EU recognises the necessity to pay particular attention to the specific protection needs of victims of gender-based violence, victims of sexual violence and victims of violence in a close relationship “whose relationship to and dependence on the offender make them particularly vulnerable” (Directive 2012/29/EU: 71). The EU Directive’s goals may impact positively on IPV victims, including ensuring access to support services, and preventing secondary victimization as regards their treatment by the criminal justice system. According to

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\(^{14}\) In February 2015, 21 States have signed and 16 states have ratified the Convention.

Article 27, Member States must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 16 November 2015.

Finally, the Progress Implementation Report on the first Council of Europe Gender Equality Strategy\textsuperscript{16} – released in early 2015 – highlights progress achieved regarding developments following the entry into force of the Istanbul Convention and activities developed towards guaranteeing equal access of women to justice. Among the latter, the report emphasizes:

- the findings of the feasibility study on women’s access to justice in the Council of Europe member States, enabling relevant stakeholders to discuss and understand the persisting barriers of women’s access to justice;
- a publication gathering a set of national contributions on Key Challenges and Good Practices on Access to Justice for Women Victims of Violence at National Level
- A factsheet on Guaranteeing Equal Access of Women to Justice, detailing the main issues addressed by the Council of Europe in this area and providing benchmarks to assess progress (Gender Equality Commission, 2015).

Overall, the development of legislation and policies in EU member States has been responsive to the European Union’s strong stand on violence against women, and directly influenced by the dual frameworks of women’s fundamental rights and of gender equality.

However, that trajectory has shown wide variation as regards the framing of the issue, and the measures implemented. In the specific field of criminal law, some studies have highlighted the existence of different approaches among member States (EIGE, 2012) and the need to harmonise legal measures in the field of criminal law by establishing minimum standards (Hagemann-White \textit{et al}, 2010).

Among the latter – and for the purpose of the current comparative analysis – we would emphasize the following minimum standards which the study by Hagemann-White \textit{et al} (2010) proposes Member States should comply to:

- criminalise IPV as course of conduct instead of single incidents;
- monitor attrition within the Criminal Justice system, identify the points and causes and act to prevent attrition due to ineffective action by the responsible services or courts or failure of due diligence;
- develop and implement guidelines for police and prosecutors to enhance the adequate investigation and prosecution of cases of VAW
- provide victims the opportunity to be interviewed by female police officers and examined by female forensic examiner;
- provide access to free legal aid for victims;
- ensure victims shall not be required to confront the perpetrator, nor shall victim and perpetrator be required to attend mediation or conciliation procedures as an alternative to criminal prosecution;

• provide for compensation from the perpetrator, and establish a procedure for timely resolution and enforcement. Provision should also be made for a state compensation scheme;
• ensure the availability, free of charge, of immediate protection measures that allow removing the perpetrator from the premises and ensure that the duration of such immediate protection through removal can be extended until longer-term measures can be issued, without gaps in protection;
• ensure that all victims of VAW have recourse to appropriate, and where necessary, longer-term protection orders and that the courts deliver these in a timely manner;
• Protection orders should permit the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas;
• ensure family law orders such as child access or contact do not contradict the protection orders and, when they do, introduce a presumption that the conditions of the protection order will take precedence over those of the child contact orders until and unless the court decides that there is no longer any need for the protection order;
• breach of protection orders should be considered a criminal offence and/or as contempt of court
• in cases of VAW, notably victims of IPV, Member States should provide victims whose resident status depends on marital status with the right to apply for an independent residence permit irrespective of the duration of the marriage;
• ensure that a sufficient number and geographical spread of support services are available to women, free of charge;
• VAW to be a core component in all qualifying professional training for police, prosecutors, and judges;
• set standards for the qualifications of judges dealing with violence;
• evaluate and assess the impact of current legislation, rules and procedures regarding violence against women, including the reasons for low reporting.

The following chapter will directly address current national policies and legal dispositions which directly pertain to IPV victims’ needs and rights, some of which may respond, totally or partially, to the above mentioned minimum standards proposed by the Daphne feasibility study.17

3. From policy discourse to policy implementation

“In the last five years, there has been a clear EU consensus to adopt and implement National Action Plans (NAP) to end violence against women (...) The majority of national plans and strategies address domestic violence, but also other forms such as physical violence, sexual violence, psychological violence, stalking, female genital mutilation, femicide and sexual harassment at the workplace.” (EIGE, 2005: 47)

For the purpose of INASC, we will try to keep our focus on intimate partner violence, i.e. on the intimate relationship as a specifically and gendered context of violence and coercive control of a partner or ex-partner which affects women disproportionately. However, very often member States use concepts which may overlap with wider concepts, such as ‘domestic violence’, ‘violence against women’ or ‘gender-based violence’ in national policy documents.

In some countries, however, a trend towards a gender-neutral approach on current policy and discourse on domestic violence seems to have emerged in latest years as reported in the Dutch report (Drost et al, 2014). The 4th Review of the Implementation of the Beijing Platform for Action in the EU Member States (EIGE, 2015) confirms the absence of a gender perspective in strategic approaches to domestic violence – the National Action Plans on preventing violence against women – in many EU member states. According to the report, the definitions of violence in the majority of these plans still adopt a gender-neutral approach.

On the opposite sense, the Irish National Strategy on Domestic, Sexual and Gender Based Violence and the Portuguese National Plan to Prevent and Combat Domestic and Gender-based Violence adopt clear gendered approaches to tackling domestic violence (Safe Ireland, 2014; Silva et al, 2014).

With different timings, the topic of IPV has become a highly political one (Görgen et al, 2014) in all five countries rising increasing public attention (Drost et al, 2014). Moreover, IPV is the most common form of violence against women across Europe, originating a diversity of responses at the policy and legal levels (Hagemann-White et al, 2010).

The analysis of the national reports produced for the participating countries shows that, in different degrees, international and European conventions and directives have been taken up by the domestic debate.

“The public debate has been aroused and the concern of women’s rights organisations has been strengthened during the last two years with reference to the Istanbul Convention and considerations by the German government to ratify it (which has not happened by now).” (Görgen et al, 2014: 5).

“The position and treatment of victims during criminal proceedings has been an ongoing issue partially due to the stimulus of different European Victim Directives. Nowadays, human rights are also petitioned for strengthening the position of crime victims during criminal proceedings (Kwakman, 2012, Lünnemann & Mein, 2014).” (Drost et al, 2014: 8).
In some cases, national policy and legislation explicitly address—or intend to address—the challenges introduced by those international policy developments.

“Although Austria was among the first countries that have established legislative measures to address IPV, the first National Action Plan (NAP) for the protection of women against violence as a policy measure was issued only in August 2014. In this field Austria has been the last one among the EU-28 while a few other countries have been using NAPs even since the 1990ies. The NAP that covers the period from 2014-2016 has been resolved on the occasion of the Istanbul Convention’s entry into force. Nevertheless, the preamble stresses that Austria has already implemented most measures that are demanded by the Convention.” (Amesberger & Haller, 2014: 3).

“The Irish Government has also announced that work is being carried out to change legislation to enable Ireland to sign and ratify the Istanbul Convention, which would strengthen the rights of victims of domestic violence in this country, and would also necessitate commitment to change policy and practice responses from the Irish Government.” (Safe Ireland, 2014: 4).

“The NAP that is by now in place - V National Plan to Prevent and Combat Domestic and Gender-based Violence (2014-2017) incorporates a gender-based perspective into the overall policies on domestic violence, “expanding its [V NAP] implementation scope, until then limited to domestic violence, to other forms of gender-based violence”, namely female genital mutilation and sexual assault; this perspective is aligned with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, ratified by Portugal in February 2013.” (Silva et al, 2014).

“The National Action Plan II to combat violence against women dates back to 2007 (BMFSFJ 2007) (...). The main emphasis has been put on prevention of violence against women with disabilities and migration background as well as children. Another comprehensive approach is to make the access to help and support easier for all victims of violence.” (Görgen et al, 2014).

The National Action Plans on preventing violence against women (NAPs) are in place in the five participating countries. In fact, the Beijing +20 report (EIGE, 2015) acknowledges progress in this area with a greater commitment of Member States to prevent and combat gender-based violence against women. Progress has been achieved in preparing and/or performing the ratification of the Istanbul Convention and National Action Plans are in place in almost all Member States. Nevertheless, the report emphasizes that progress in this specific field seems to be hampered “by the lack of implementation timeframes, assigned responsibilities or limited budgets, and the absence of a gender perspective and cross-sector consultation processes.” (EIGE, 2015: 47).

19 Update: as of November 2015, the Irish Government has signed the Istanbul Convention.
At the national level it is possible to observe in all five countries a clear responsibility of the national/federal states in ensuring policy implementation – namely through funding – and evaluation in the field of violence against women, notably domestic violence.

“a mixed level working group (Bund-Länder-Arbeitsgruppe) consisting of representatives of the federal states as well as the national government is responsible for its (the NAP) implementation and evaluation.” (Görgen et al, 2014: 6)

“The Commission for Citizenship and Gender Equality is the governmental institution responsible for the implementation of policies on combating DV (in Portugal).” (Silva et al, 2014: 4).

“Several Ministries are addressed in the NAP: Internal Affairs, Justice, Health, Family and Youth, Work, Social Affairs and Consumer Protection, Europe, Integration and Foreign Affairs, as well as Education and Women’s Affairs.” (Amesberger & Haller, 2014: 3).

“On January 1st 2014 responsibility for domestic, sexual and child abuse services was transferred from the HSE to the newly established Child and Family Agency (Tusla). (...) The Child and Family Agency is now the dedicated State agency responsible for improving wellbeing and outcomes for children. (...) The Agency is responsible for the majority of funding to specialist domestic violence services, as well as rape crisis centres and other family support services.” (Safe Ireland, 2014: 4).

The development of multi-agency approaches in the delivery of services is also a common element in the description of the national policy contexts in the five countries, as an ideal strategic approach to DV presenting different levels of achievement. The involvement of different stakeholders (e.g. NGOs, local authorities, formal networks) within these multi-level intervention strategies varies significantly.

“The managing role for the work done to tackle domestic violence is in the hands of the municipal authorities. Since 2007, this has been defined in the Social Support Act (wet op de maatschappelijke ondersteuning (wmo)). The tasks of the municipal authorities are to coordinate, facilitate and monitor the multi-agency approach. (www.huiselijkgeweld.nl). The government has developed a ‘model approach on DV’, specifically for the municipal authorities (modelaanpak huiselijk geweld).” (Drost et al, 2014: 12).

“Cosc’s National Strategy on Domestic, Sexual and Gender Based Violence 2010 -2014, emphasized the value of a multi-agency response to domestic violence and stressed that a key to this approach was information sharing between agencies, setting up mechanisms for monitoring and evaluating programs and policies. However, an ongoing review of the Strategy has shown that interagency work and programs for use have not been developed to their maximum potential.” (Safe Ireland, 2014: 13).

“Nationwide a huge and differentiated network of lobby initiatives and service support organisations has developed over the last four decades; many of them evolved from local civil society initiatives to professional organisations mainly funded by the local or federal states.” (Görgen et al, 2014: 5).
“A core element of the protection of (mainly) women are the so-called intervention centres (...) They are non-governmental organisations, but are financed on a legal basis by federal ministries. Their main tasks are, on the one hand, to take care of victims of violence, to develop crisis plans as well as safety programmes with them, and, on the other hand, to network and to cooperate with all the authorities and private facilities involved in violence protection.” (Amesberger & Haller, 2014: 3).

“In Portugal, there was a need for establishing specialised local networks involving different types of organisations (from the police to courts, public prosecutors, social services, victim’s support services, local municipalities, etc.) particularly in the biggest regions in Portugal. The establishment of those networks was driven by difficulties in providing (all) victim’s needs of support and assistance rather than by legal regulations.” (Silva et al, 2014: 21).

The brief comparative overview of the national policy contexts of Austria, Germany, Ireland, the Netherlands and Portugal clearly show that states have incorporated international orientations into domestic policy design and implementation at different levels, even though actual delivery of the intended purposes of those policy approaches is a road that needs to be travelled.

4. Removing IPV's “private veil” from legal approaches: towards criminalisation

“All EU Member States have a duty to recognise domestic violence as a public crime and to investigate and prosecute it. This principle is differently implemented and in three Member States (IT, HU, RO) it remains a private complaint which needs to be brought by the victim. This is against state obligations to protect the right to life (28) and the right to private life (29) under the European Convention of Human Rights (EIGE, 2012b).” (EIGE, 2015: 46).

A first relevant outcome of the comparative analysis of national law and regulations in the five countries shows that there has been a common trend towards the increased criminalisation of different forms of violent acts pertaining to IPV/DV. Moreover, in all these countries’ legislative frameworks, IPV is no longer perceived “as a private conflict” and IPV cases can be investigated and brought to court without the obligation of the victim to file a complaint.

In Austria and Portugal criminal prosecution of IPV/DV is initiated with the notification of the crime – which is not dependent on the victim’s consent – and both the criminal police and the public prosecution office are obliged to investigate each suspected case. In both countries, the withdrawal of the complaint is not possible.

In Germany and in the Netherlands cases of IPV can also be brought to court without the victim being obliged to make a complaint. Some specific offences, however, will only be prosecuted if the victim files a complaint (e.g. stalking in the Netherlands and simple body assault in Germany).
In Ireland, victim complaints can be pursued through the criminal justice system. While it is technically possible for a domestic violence related criminal case to be sustained without the evidence of the complainant/victim, this happens very rarely.

However, and in spite of the political and legal acknowledgement of the public nature of the crime, only the Portuguese legal framework officially recognises DV crimes as public crimes to which correspond a specific criminal offence in the Criminal Code:

“according to Article 152 of the Criminal Code domestic violence is a typified crime (since 2007) punishable by 1 to 5 years of imprisonment. The crime consists “in the infliction, whether repeatedly or not, of physical and psychological maltreatment, including corporal punishment, restriction of freedom and sexual offences to a partner, ex–partner, person of the same sex or different sex that have maintained or have a relationship analogous to that of partners, or to a person who is vulnerable due to age, deficiency, sickness, pregnancy or economic dependency living with the perpetrator.”

For intimate partner violence the other partner countries rely on existing criminal statutes.

“The German Criminal Code (Strafgesetzbuch) does not include specific regulations on intimate partner violence. However, victims of IPV are protected by general criminal law statutes regarding offences such as assault, coercion, rape, and murder / manslaughter.” (Görgen et al, 2014: 6).

“Because there is no specific offence of ‘domestic violence’ in Irish law, various forms of conduct which characterise domestic violence such as assault, false imprisonment, harassment, coercion, and rape are charged and prosecuted under criminal law. There are a range of offences under Irish law which may be used to prosecute depending on the facts.” (Safe Ireland, 2014: 7).

In the Netherlands, however, IPV is considered an aggravated circumstance within the context of national criminal law.

“In the Netherlands there is no criminal act of ‘domestic violence’ as such. Domestic violence is covered by general provisions of criminal law, like common assault, causing grievous bodily harm, manslaughter, murder, rape, sexual assault and stalking. However, intimate partner violence is an aggravated circumstance within the context of common assault or grievous bodily harm (art. 304 Criminal Act). The punishment can be raised by one third of the maximum penalty in cases where the victim is the wife, husband, parent or child of the perpetrator.” (Drost et al, 2014: 5).

A common feature of the legal framework of the five countries under analysis is the adoption of dedicated DV/IPV laws which are particularly relevant from the perspective of victims’ protection rights. The figure below shows, on a time line perspective, the introduction of

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21 Before 2007 the crime was designated “maltreatment between spouses”.
major legal changes within national legal frameworks. In all countries, these legal acts were important milestones in defining remedies to protect victims of intimate partner violence.

**Figure 1. Introduction of dedicated IPV/DV laws in national legal frameworks**

Ireland was the first of the partner countries to implement a legal act providing for civil remedy to protect victims from domestic violence. The Domestic Violence Act 1996 includes a number of remedies to assist victims of DV and provides additional powers of arrest for the Gardaí.\(^23\) The 1996 Act for the first time made provision for cohabitees in a relationship outside of marriage and their children.\(^24\)

In Austria, the Federal Act on Protection against Domestic Violence (*Bundesgesetz zum Schutz vor Gewalt in der Familie*) introduced a change of paradigm: “domestic violence being no longer perceived as a private ‘conflict,’ but constituting a ground for receiving protection from state agencies, thus confirming the rightful claim to live free from violence also inside one’s home.” (Amesberger & Haller, 2014: 17) The 1997 Act constitutes the legal basis for the eviciton of a perpetrator and it foresees short and long term protection mechanisms for DV victims.

Law 61/91\(^25\) represented a milestone in the provision of legal mechanisms to protect women. In 1991 Portugal adopted the first important law on the protection of women victims of domestic violence.

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\(^{23}\) An Garda Síochána, i.e. the Irish police force.

\(^{24}\) This legislation will be consolidated and replaced with similarly framed new statute, which will expand access to certain protective orders: General Scheme of a Reformed and Consolidated Domestic Violence Bill 2015, available online through this weblink: [http://www.justice.ie/en/JELR/Corrected%20GENERAL%20SCHEME%20OF%20A%20REFORMED%20AND%20CONSOLIDATED%20DOMESTIC%20VIOLENCE%20BILL.pdf](http://www.justice.ie/en/JELR/Corrected%20GENERAL%20SCHEME%20OF%20A%20REFORMED%20AND%20CONSOLIDATED%20DOMESTIC%20VIOLENCE%20BILL.pdf).

This legislation will pass through a process of pre-legislative scrutiny in an Oireachtas (Parliamentary body) Committee, then will be published in Bill form, and finally following debate and amendment in both Houses of Parliament (Dail and Seanad) be enacted and commenced (come into effect). As of November 2015, it is still in its early stages and may not be enacted before the general election which will take place latest April 2016.

domestic violence. However, only eight years after the approval of the Law the Portuguese Parliament issued a resolution demanding its regulation and thus its entry into force. The law aimed at strengthening legal protection mechanisms and at supporting the establishment of support services.

The Act for Protection against Violence (Gewaltschutzgesetz) introduced in Germany in 2002, largely followed the Austrian Federal Act referred to above. It offers protection and compensation measures for IPV victims and represented a “watershed change” for the protection of victims: “the most important change compared to the previous situation is the legal security and acceptance of the principle “whoever commits violent acts must leave”

Accordingly, women (and men) who experience intimate partner violence no longer have to leave a common household or seek refuge in a (women’s) shelter” (Görgen et al, 2014: 7).

Finally, in the Netherlands a Directive on domestic violence and honour-related violence (Aanwijzing huiselijk geweld en eergerelateerd geweld) was introduced in 2003 and later replaced by a new Directive in 2010. Similarly to the other countries, the Directive establishes protection mechanisms for the victims as well as guidelines regarding local cooperation procedures among different stakeholders.

It is important to refer that in some countries the legal regulations contained in these framework laws mostly pertain to civil law. Such is the case of civil restraining orders (AT), barring orders, protection and safety orders (IE), and civil protection orders (DE). In Portugal, where domestic violence has a specific regulation in the Criminal Code, those protection measures are addressed as criminal restraining or banning orders aiming at controlling the perpetrator and, therefore, protecting the victim. The Netherlands is the only country where restraining orders imposed by the police may be commissioned by the city mayor (Drost et al, 2004).

Some national reports explicitly refer to available assessments regarding the implementation of such dedicated IPV/DV legal dispositions. Important achievements have been obtained by the introduction of those changes in the available protection mechanisms available to victims. These include a shift in public and professional awareness on violent acts in the family no longer regarded as “family issues” (AT, DE), stronger empowerment of IPV victims (AT, DE), improved access to support alternatives in their usual place of residence (DE).

However, difficulties in implementation have also been reported. They mainly relate to time limitations in the application of protection orders and respective consequences (DE, IE); conflict between protection needs and contact rights of the offender (e.g. housing rights and contact with children) (DE, IE); loose enforcement of protection mechanisms (DE); persisting cultural perceptions of IPV as a private matter (PT); reluctance from courts to take decisive moves towards penalization and protection (AT, DE). The following quotes illustrate the trends referred to above.

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26 Yet, it is important to refer that in these countries the most important regulations are to be found in the police law, namely as regards immediate/first intervention responses. More details are given in table 1, section 6.

27 Which is both a right of the parents and a right of the child.
“Proceedings instituted because of DV are quickly abated, not only because victims of violence refuse to give evidence, but also because the crime is not regarded as punishable. This underlines that violence in the private sphere is still often perceived as a privileged offence (Haller 2005, pp. 381f).” (Amesberger & Haller, 2014: 7).

In fact, and despite all efforts regarding raising awareness and training of law enforcement agencies and justice professionals, intimate partner violence is still regarded as “one of the crimes which presents more complexity to police officers”, namely due to the private nature of the crime and to the lack of personal and institutional skills to deal with a phenomenon which became a public crime (Durão, 2013: 284) (Silva et al, 2014: 25).

“The greatest problems arise if the offender and the victim have joint children. Here it comes to conflicts between protection needs of the victim and the visiting or contact rights of the offender. Evaluation shows that courts regard the contact right predominantly as a more important legal interest than the need of protection. (...) Violations of protection orders are criminal acts. In practice inquiry and criminal prosecution of those cases take too much time and again the proof for the violation depends mainly on the side of the victim as the most important witness. In fact the majority of these cases are being dismissed, which means that there is no effective tool to force the offender to follow the orders.” (Görgen et al, 2014: 9-10).

The comparative overview of the main legal frameworks in the five countries highlights the presence in all countries of a dedicated law regulating protective measures, court restraining orders and, in some cases, also penalisation measures. The different justice systems have recognized the public nature of IPV. Criminalisation of the diverse forms of violent acts involved in this type of crime are apparent in all five countries, either through the use of existing criminal statutes (AT, DE, IE and NL) or by creating a specific category of crime (PT). The way(s) these Member States deal with IPV, however, vary in many ways affecting victims’ experiences throughout the different stages of their trajectory within the justice system.
5. From notification to court – learning from investigation mechanisms in comparative perspective

“The principle of due diligence is a minimum standard which unequivocally underlines the obligation of states to provide effective and timely protection where the risk to the victim is known or could have been known and the obligation to conduct prompt and thorough investigations of cases without undue delay.” (Hagemann-White et al, 2010: 182).

In the five countries, the police and the public prosecution offices are, in varying degrees, the institutions bearing the main responsibility for investigation procedures in cases of IPV. In some countries, the public prosecution office has the coordinating role of the investigation (AT, DE, PT and NL), whereas in Ireland that role is taken up by the police.

“The Public Prosecution Service (Openbaar Ministerie) is the coordinator of the investigation and prosecution of domestic violence.” (Drost et al, 2014: 13).

“In Ireland, neither the Director of Public Prosecutions nor the Courts Service has any role in the investigation stages of a case of any kind (not just domestic violence cases)” (Safe Ireland, 2014: 12), except that sometimes the DPP’s office may be asked for legal advice by the Gardai during their investigations.

Several existing minimum standards across the five countries regarding investigative procedures concern aspects like the existence of specific guidelines for approaching/handling IPV/DV cases addressed at law enforcement agents, the introduction of additional or special procedures during the different stages of the investigation process and the existence of additional measures available during court hearings. However, many of the reports highlight constraints in the actual implementation of those facilitating mechanisms.

In Austria IPV cases are investigated both by the security and the criminal police. Specific guidelines for police intervention (Kriminalistischer Leitfaden) are available to all police officers through the police intranet and should in the first line support less experienced officers. These guidelines include checklists for DV and for stalking among other useful information. The DV checklist addresses topics like data and evidence collection, reporting and referral, possible measures and interventions to prohibit or end violence.

In Germany similar guidelines targeting police forces are available in all Laender. These guidelines not only provide practical details on procedures regarding investigation and information on how to deal with IPV victims / DV victims, but in most Laender there is a specific concern to draw attention to the severity of the crime – which both the victim and the perpetrator should be clearly aware of – and its public (non-private) nature. Information/education material for the police on IPV related procedures is also available in several Laender.
In Ireland – where the police is the sole entity responsible for the investigation stage – specific procedures are also available in the Garda Síochána’s policy on domestic violence.\textsuperscript{28} This document sets specific guidelines for dealing with DV incidents taking into account the “special care and attention” they require. These guidelines include practical aspects related to the way the Garda members should handle reports of DV crimes during the different investigation stages (e.g. how to present himself or herself, how to address the victim, how to collect and retain evidence). The Domestic Violence Policy also addresses specific cultural challenges arising from the interaction between the Garda Síochána and specific groups of DV victims.

In the Netherlands, the Directive on domestic violence and honour-related violence (see above) establishes rules concerning the investigation of DV reports and also establishes criteria for the establishment of local cooperation between the police, the public prosecution, probation services and the local authorities. The coordination of the investigation is, as referred to above, under the responsibility of the Public Prosecution Service. Every PP office has a domestic violence liaison officer, often supported by other staff.

In Portugal, IPV cases are investigated by the two main law enforcement agencies – PSP and GNR – which have specialized units and team for handling DV crimes. The public prosecution office is responsible to formally open investigation procedures who usually entrusts the police forces to investigate the incidents reported. The Directorate-General of Home Affairs has also prepared a police handbook containing specific guidelines for the police forces which will soon be released. Similarly to other countries, the handbook includes detailed information on how to handle DV cases during the different stages of the investigation (e.g. how to carry an interview, the importance of establishing a relationship of trust among police officers and victims / witnesses, the identification of challenges arising during investigation procedures).

Contrary to the presence in all countries of common guidelines aiming at supporting the intervention of police forces during investigation procedures, only two countries report the presence of specific instruments for reporting and/or collecting evidence on IPV/DV reported cases.

“This form (Auto de Notícia Padrão) came into force in January 2006 and since then all police forces use it for registering domestic violence incidents. It includes the characterisation of the complainant; the victim; the perpetrator and the context of the aggression, allowing distinguishing the type(s) of violence concerned and the type of victimization.” (Silva et al, 2014: 11).

“When drawing up the official report, the police have to use a checklist (Checklist process-verbaal van aangifte huiselijk geweld).” (Drost et al, 2014: 16).

Nevertheless, it is possible to observe similar patterns in the type of information collected by law enforcement agents on IPV cases during the investigation procedures across the five countries. In all countries, there is evidence of the recording of information by the police from the very first contact on issues like: places, times and dates of incidents, evidence of injuries, evidence of injuries,

\textsuperscript{28} Available online at http://www.garda.ie/Documents/User/Domestic%20Violence%20policy%2023.11.10.pdf
destruction of property, contact details of victim, offender and of any witnesses, physical and emotional condition of victim, information on the presence of children, among others.

Following this initial collection of information on the reported situation further inquiries are made throughout the process in order to fully assess the situation. It has been possible to identify similar patterns of investigation procedures undertaken across the five countries. Those similarities – but also some specific aspects – will be presented in the next sections, following the trajectory that goes from the notification stage till the case is dismissed or alternatively is brought to court.

Initial Stages of Investigation

The initial stages of the investigation are described with different levels of detail in the national reports. Nevertheless, there are some common features pertaining to the role and the practices of the police during these initial stages.

In all countries, the police are required to investigate whenever there is a report of a crime, either by the victim herself or by others.

The Dutch report, for example, points out that IPV cases are investigated without an obligation for the victim to make a complaint, although the police strongly recommend the victim to report the crime. Once the victim “has reported the violence to the police, it is not possible to withdraw the complaint.” (Drost et al, 2014: 17).

In Portugal, every complaint or incident of DV which comes to the attention of the police has to be recorded and police officers are obliged to fill in a standardised notification form, even if the victim says she does not want to present a complaint.

Likewise in Germany, “the police are advised to file a complaint in all IPV cases, even if the victim does not want to press charges.” (Görgen et al, 2014: 11).

Recent evidence from the Irish Garda Inspectorate29 in Ireland shows that the lack of a complaint made by the victim may seriously affect the investigation of a DV case – and more importantly the protection of DV victims: “If a victim is unwilling to make a statement of complaint, there is no effective police intervention to improve the victim’s safety or to provide an alternative way forward. (...) The current policy states that the investigating gardaí will call back to see a victim of DV within one month to provide an update on the investigation or to offer support in cases where there is no investigation. During focus groups, the Inspectorate identified that follow-up visits do not always happen... (Safe Ireland, 2014: 32).

The police also plays a crucial role during the very first intervention stages, namely at the scene of the assault. Evidence from all countries on the role played by the police at this critical moment include common aspects like: timely responses to a call for intervention, stopping ongoing criminal acts, collecting and securing evidence, assessing the situation and taking measures to avoid further safety endangerment.

29 Available online at: http://www.gsinsp.ie/index.php?option=com_docman&task=cat_view&gid=33&Itemid=152
“Everyone can report a crime and the police have to investigate. Very often the victim herself or a family member calls the police. When the police get notice of IPV/DV, they have to react without delay as this offense is classified as high priority.” (Amesberger & Haller, 2014: 8).

“When the police are informed of a situation of (threatened) domestic violence, the officers will go to the crime scene and will inspect the (area surrounding the) house and take notes about the situation.” (Drost et al, 2014: 15).

“The victim and assailant shall be separated so as that interviews can be conducted with each, without interference from the other. This will also deter verbal intimidation being used. The investigating member will collect all evidence that is available at the scene of the assault that may be used during prosecution.” (Safe Ireland, 2014: 12).

“In cases of imminent danger, the police can enter a private dwelling even if one or more of the inhabitants refuse them entrance (e.g. when called by a neighbour). They are supposed to secure the situation and separate victim and perpetrator to avoid further danger.” (Görgen et al, 2014: 11).

Police entry into the home and the conditions under which this may occur within a DV related incident is mentioned in several national reports and common practices emerge in different countries.

Similarly to Germany, in Portugal, Ireland and Austria entry into the home may occur without authorisation of either the victim or the perpetrator whenever there is evidence of an attack or there are calls for help from individuals inside the premises. On the ground, the assessment of this “exceptional situation” may raise complex decisions, particularly given the presence of national legal dispositions on the right to the inviolability of the dwelling.

“Article 40.5 of the Irish constitution protects the inviolability of a dwelling and only in exceptional circumstances, such as the life of a victim at risk can this right be breached, even by the Gardai.” (Safe Ireland, 2014: 12).

The Austrian team reports a specific procedure taken by the police prior to entering the crime scene which was not found in any of the other partner countries:

Before entering the crime scene the police have – also for their own safety – to query the so-called EKIS (Elektronisches Kriminalpolizeiliches Informationssystem), a databank where all person-related information relevant for the police is collected (DV register, criminal recordings, entries in the police records, weapons register etc.) (Amesberger & Haller, 2014: 8).

Still at the crime scene, police officers usually proceed with questioning the victim and the offender and possible witnesses. In some countries, there is evidence on the existence of specific proceedings which the police forces should pay particular attention to during this initial questioning.

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30 However, if there is evidence of an attack or cries for help can be heard, entry may be made – see paragraph 2.10 Garda Policy on Domestic Violence.
“In recent years, most police guidelines have pointed out that questioning the victim immediately after the attack increases her/his willingness to give evidence, while expecting victims/perpetrators to fill in and return a complicated form increases nonresponse (WiBIG 2004, 139). (...) If possible, the victim should be questioned directly after the incident in order to receive detailed information that can be grounds for prosecution and first protective measures. Immediate questioning is also considered necessary to avoid any perpetrator attempts to influence the victim in the meantime (c.f. Karadag & Winkler 2007, Niedersächsisches Innenministerium 2002).” (Görgen et al, 2014: 11).

“Usually, the first interrogation of victim and offender takes place on-site. Police officers are supposed to interrogate the couple separately. The victim has the right to be questioned by an officer of the same sex.” (Amesberger & Haller, 2014: 10).

“If there are any witnesses, they will be questioned shortly at the scene by police officers and if needed witnesses can be questioned further at a later stage.” (Drost et al, 2014: 15).

The presence of children at the incident site usually entails the adoption of specific measures and cautions:

“If children are present at the scene of the incident, police are advised to avoid using force against a parent in their presence. However, the police are supposed to protect children from further danger and make sure they are looked after, especially when a parent is banned or taken into custody. When in doubt, they should contact child services and check if the children need to be taken into care.” (Görgen et al, 2014: 13).

In Austria and Portugal, too, the police are obliged to provide such protection and to contact child care services.

In Ireland, Gardai are supposed to take note of the physical and emotional condition of any children present, to inform the local child protection services if there is any risk to their health, safety or welfare and/or of any suspicion of past physical (including sexual) or mental abuse, and also to use their powers to remove children to a place of safety, if there is an immediate and serious risk to the health or welfare of a child (Garda Policy on Domestic Violence, paragraphs 2.6 and 6.0).

Building up the case ...

As mentioned above in most countries (AT, DE, NL and PT) it is the public prosecution office which coordinates the investigation proceedings in close cooperation with the criminal police which is responsible for the operationalisation of the different procedures necessary to build up the case.

“As a general rule, the public prosecutor instructs the criminal police with the collection of evidence for example by means of questioning the offender, victim and witnesses, but – if the case has already gone to the court – s/he can also ask the judge to do so.” (Amesberger & Haller, 2014: 10).
“Normally the public prosecutor delegates competencies to the police to pursue the investigation, sometimes giving clear guidelines and deadlines. Frequently this implies further inquiring of the victim, witnesses and suspect, usually in this order. This usually corresponds to the second line of police intervention, which is known as criminal investigation. It is carried out by specialised police officers on domestic violence.” (Silva et al, 2014: 11).

In those countries where the role of the police is more prominent in terms of coordination, the practical procedures put in place to further investigate the case are similar to the ones implemented in the other countries. These common procedures include: ensuring that further questioning of the victim and the perpetrator is held separately, providing information about victims’ rights and available support services, providing translation/interpretation opportunities for victims not speaking the official language, providing access to medical examination and follow-up contacts for monitoring the situation.

“The separate questioning of the suspect and/or victim and/or witness will focus on the dates, times and locations where and when the criminal offences supposedly took place. This is also for the purpose of requiring insight into the systematic pattern of violence (stelselmatigheid).” (Drost et al, 2014: 17).

“Shortly after the incident, victim, perpetrator and other available witnesses will usually be summoned to the police station to provide evidence. (…)If a migrant victim doesn’t speak German, police officers are advised to find a trusted person to translate; this person should not be the perpetrator or a family member.” (Görgen et al, 2014:11-12).

“One of the duties of the police is to give victims of domestic violence information regarding victims’ support services in the surrounding areas of the victim’s home.” (Silva et al, 2014: 22).

“Specialised police officers contact victim and offender 2-3 after the first intervention. Neither perpetrator nor the victim is obliged to speak with the police, but the willingness to do so seems to be high. The aims of these talks are numerous. For offenders they include norm clarification, the collection of further information about the general situation and the illustration of the consequences in case of repeated violence. Also in the talk with the victim the overall situation is addressed, as well as s/he is questioned about the history of domestic violence and protection measures are explained to her/him.” (Amesberger & Haller, 2014: 13).

During the investigation stage the police may impose constraining measures and/or protection measures aiming at preventing further violence against the victim and at ensuring adequate conditions for proceeding with the investigative procedures. These are referred to in all the national reports and will be discussed in the chapter on protection measures.

One relevant issue arising from several national reports regards the stance of IPV victims during the investigation stage. In most countries (AT, DE, NL and PT), victims have the right to refuse giving evidence and testifying against a close relative. Given the nature of IPV, all victims are entitled to this right which once invoked has obvious consequences on the course of the investigation proceedings and, very often, on the outcome of the case itself. No such formal right exists in Ireland, but in practice, a case would be highly unlikely to proceed if the victim refused to give evidence.
“The procedural law allows the victim to refuse to testify against a close relative” (Amesberger & Haller, 2014: 5).

“At any time during the investigation, the victim can decide to invoke the right to refuse to give evidence and/or withdraw the charges. If she decides to do so, her previous statements to the police may not be used in a court of law. Only statements that are given to the police spontaneously, i.e. without being asked or formally advised (Spontanäußerungen) are admissible in court, even if the witness later decides to refuse to give evidence (WiBIG, 2004, 152).” (Görgen et al, 2014: 13).

“In general, the victim as a witness is obliged to speak the truth when she is obliged to make a statement under oath (at court). But as a family member she has the right to refuse to give evidence. When the police are doing the investigation, the victim can refuse to give evidence.” (Drost et al, 2014: 17).

“There is a legal obligation that requires law enforcement agencies to inform victims, perpetrators and other witnesses from the family that they can refuse to give testimony. In the majority of domestic violence cases, the main mean of evidence is testimonial; so if a victim decides not to give testimony, the most probable outcome would be the closure of the inquiry due to lack of sufficient evidences.” (Silva et al, 2014:13).

In Germany and Portugal the police or the public prosecution office may request that the victim is heard by a judge, in which case the statement will remain valid testimony even if later on the victim decides to make demands of her right not to testify against the perpetrator and withdraws charges.

“To avoid invalidation of the evidence, the victim can be questioned by a judge instead of the police if the police/prosecutor request this. This course of action is opportune because even if the victim refuses to give evidence at a later time, the statement given to a judge can still be used as evidence in court.” (Görgen et al, 2014: 13).

“Declarations for future record31 consist of a mechanism granted by a judge based on a request made by the public prosecutor or the victim. Within the interview, the victim can be accompanied by a professional from a victim’s support service. The interview is carried out by a judge but the public prosecutor and lawyers can also afterwards question the victim. The declarations resulting from this mechanism are to be used, whenever necessary, within the trial.” (Silva et al, 2014:13).

In Austria a similar procedure is also available:

“Relevant for victim protection during court proceedings is the contradictory interrogation of a victim/ witness.”32(Amesberger & Haller, 2014:21).

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31 Defined by article 33 of Law 122/2009 of 16 September.
32 Art. 165 Code of Criminal Proceedings.
However, in Portugal it was possible to identify specific constraints in the implementation of such procedures which end up by undermining their effectiveness to support the victims to cooperate during the investigation stage and for building up a solid and consistent case.

“The declarations for future record where an important legal opportunity introduced in the Portuguese law in order to ensure that evidence provided by the victim can still be used at a later stage even if the woman decides to remain silent, namely during the trial. However, according to the opinion of several public prosecutors, even when such declarations are available, the judge has the right –and in most cases uses it – to ask the victim to provide evidence at the trial instead of using the existing records. This represents a major drawback for victims who have to be questioned twice, although they were told that the initial declarations aimed at avoiding the need for her to testify directly at court. As a consequence, several prosecutors have stopped using such legal mechanism.” (Silva et al, 2014:13).

In Germany, the rational for this type of hearings by examination judges is not the same as in Portugal. It is always clear that victims are expected to testify at court hearings. However, restrictions arise from the fact that this instrument is not used that often because of real or supposed limited resources.

One important mechanism reported by the German team also relevant for the outcome of the investigation regards the existence of specific projects for securing and storing evidence by forensic specialists. Moreover, often victims do not turn to the police immediately after being injured, they do not press charges immediately and in some cases (e.g. sexual violence) important evidence may be lost if a medical examination by qualified personnel is not carried out quickly.

“In order to improve this situation more and more medical institutions in Germany now offer examination, documentation and preservation of evidence for victims of violence in general, but especially for victims of interpersonal violence and sexual violence, irrespective whether criminal charges had been brought. Clinics for securing evidence (Schutz- bzw. Opferambulanzen) are being opened; some are part of, others work independently from forensic institutes. In these clinics victims are also referred to counselling and support organisations for victims of violence.” (Görgen et al, 2014: 13).

Once the investigation stage is concluded the public prosecutor (or the police) decides whether there is enough evidence to proceed with an accusation and move the case forward to be tried in court or whether it should be dismissed and filed. However, it is possible to observe national differences during this final stage of the investigation among the different countries, which are mostly related to the different roles and responsibilities of national justice system relevant stakeholders.

“When the police have found evidence of a criminal act, they submit the file to the public prosecutor who decides whether the case will be brought to a multi-agency consultation within a few days/weeks in a so called Safety House (see further on), prosecuted or dismissed (for example if there is not sufficient evidence to proceed) (www.huiselijkgeweld.nl; www.openbaarministerie.nl).” (Drost et al, 2014: 12-13).
“When the police consider the investigation complete, all the information is forwarded to the public prosecutor. Sometimes the public prosecutor decides to proceed to further questioning of the victim, perpetrator or witness. After that stage, the public prosecutor either closes the inquiry due to lack of evidence; promotes the provisional suspension of the process (that has to be confirmed by a judge); or accuses the perpetrator / defendant. In the latter case, the file is followed by a court hearing with a judge.” (Silva et al, 2014: 14).

“(the public prosecutor) decides about taking up, continuing or closing of investigations and may order further investigations by the criminal police as a basis for decisions about additional measures (e.g. custody or charges). (…)When the investigations are finished the public prosecutor either closes the case or presses charges.” (Amesberger & Haller, 2014: 10).

“Garda Domestic Violence Policy states that where there are reasonable grounds for arrest and a power of arrest exists, an arrest should be made, and the victim should not be asked whether the perpetrator should be arrested. Arrestable offences generally are those carrying a penalty of five years imprisonment or more. (…) If there are reasonable grounds to fear that the victim may be subjected to harassment and/or intimidation by the perpetrator, Garda policy is to object to the grant of bail by the Court. If conditions of bail are imposed, Gardai should encourage the victim to report any breach of bail conditions by the perpetrator.” (Safe Ireland, 2014: 12).

In one country – Portugal – there is a “third way out” of the investigation phase which results in a decision by the Public Prosecutor’s Office (confirmed by a judge) to uphold a possible accusation or dismissal of the case, subject to the compliance by the offender of a set of obligations (e.g. attend a DV training programme, pay an indemnity, and attend a drugs/alcohol rehabilitation programme). In cases of domestic violence, this specific legal decision may only be imposed under certain conditions, namely taking into consideration the absence of previous criminal record by the offender and the severity of the case.

“The provisional suspension of the process is a legal measure which can be applied during the investigation phase of the process (i.e. when the file is still under the responsibility of the public prosecutor) and when there is evidence that a domestic violence crime occurred. It is a measure that depends on a request made by the victim, accepted by the public prosecutor and agreed by the perpetrator.” (Silva et al, 2014: 14).

In case there is a breach of any of the orders imposed, the Public Prosecutor will forward with the accusation and the case continues on to court.

The Austrian “third way” differs from the Portuguese one. In case of non-severe crimes the Public Prosecutor may impose diversion measures and thus stop prosecution (which can be resumed under certain conditions). Diversion measures are the payment of a fine, community services, probation time (without or with probation), and victim-offender mediation. In cases of domestic violence usually the two latter measures, esp. VOM, are used. Other than in Portugal the victim does not have the right to request diversion but can refuse to participate in

33 Nevertheless, we found some files where this measure was proposed by the public prosecutor to the victim and then to the perpetrator.
VOM. Diversion can also be used by the court but what happens much less frequently (Amesberger & Haller, 2014: 6f).

Finally, in Ireland there are some national specificities which are explained in detail in the national report but which we would like to emphasize at the end of this section, namely as regards the particular relationships established between the police – the Gardai – the Public Prosecution Office and the Courts.

“Most non-sexual minor assaults (Sections 2 and 3 NFOAPA 1997), and less serious offences of threats to kill, harassment, and false imprisonment, will be tried in the District (lowest) Court. If the offence is serious enough it is likely to be tried at the middle Court level (Circuit Court), and murder/attempted murder charges will be tried in the highest level Court (Central Criminal Court). All sexual offences, no matter how minor, must go to the Director of Public Prosecutions for a decision on prosecution, and offences of rape and/or aggravated sexual assault must be tried in the Central Criminal Court. If the assault or other offence is serious enough to be tried in a higher court, the file will be sent to the DPP’s office for a decision on whether the prosecution will go ahead. If a non-sexual assault, threat to kill, harassment, or false imprisonment offence is deemed to be less serious on the facts of the case, the Gardai may prosecute it in the District Court. Private prosecutions are possible, but very limited in Ireland.” (Safe Ireland, 2014: 9).

6. Overview on risk assessment procedures and practices

“Over the past two decades, there has been a dramatic transformation in the response to intimate partner violence (IPV) by the general public and across the criminal justice, social service, and health care systems (Campbell, 2005; Kline, Campbell, Soler, & Ghez, 1997). The increased use of these systems and increased public scrutiny has led to a demand for valid strategies to determine which IPV cases need the most immediate attention and extensive interventions because the demand for domestic violence services far exceeds supply (Crowell & Burgess, 1996). Further, strategies need to be tailored to the level of dangerousness in the violent relationship in order to reduce further disrupting the lives of IPV survivors and their children or unnecessarily restricting the freedom of IPV offenders.” (Campbell et al., 2009: 653).

The development of risk assessment procedures and instruments has been fostered by an increasing awareness on the wide range of outcomes arising from IPV cases. IPV cases may vary in many ways, namely their severity, their risk of repeated or continued violence, the danger of escalation, and the potential for homicide. Since the 1990s many risk assessment tools have been developed, piloted and used by different agencies across European countries and particularly in North America. These risk assessment were built taking into account the existing knowledge of risk factors for DV and IPV.

Risk assessment tools which are used by the criminal justice system are often based on a set of psychological and psychosocial risk factors usually associated with recidivism (Roehl and
Guertin, 2000). Two types of risk factors are usually included in most of the risk assessment tools currently in use by the criminal justice system: static and dynamic risk factors. The former include unchangeable factors (e.g. age, gender), whereas the latter are those which can change over time and which are often associated with changes in the risk level (e.g. victim’s concern about future violence, escalation of violence).

The use of such tools and methods is not exempt of controversy.

“However, there are some doubts whether these time-consuming assessments really lead to a better protection of victims (Logar 2014, pp. 18f). The problem of risk assessment is not a lack of information, but a non-systematic collection of data and its analysis. More important than the type of the chosen tool is, according to Logar (2014, pp. 19f), the need to use it systematically and that the assessors have a profound knowledge about domestic violence; a mechanical usage of checklists might lead to ‘downgrading’ violence and to ignoring the victim’s individual situation. As each case is special, a detailed analysis of the actual situation and the dynamics of violence is necessary to prevent further violence (Kröss 2009, p. 12). (Amesberger & Haller, 2014: 11).

Risk assessment tools are known to all the criminal justice systems of the countries under analysis. In Austria risk assessment procedures and tools are used at three different levels: by the police, the public prosecutor and court and by the violence protection centres. The police use a standardized risk assessment tool (including questions about victim and perpetrator, the situational context, risk factors) for their decision on the implementation of a barring order. The public prosecution and the courts do not use any standardized risk assessment tool but training on risk assessment is available and in some regions their involvement in multi-agency conferences (MACCs) provides a good basis for developing such risk assessment procedures. Finally, risk assessment is a standard procedure in victim protection centres, even though the lack of resources only allows such procedures to be used with a minority of IPV victims.

“in some provinces the local public prosecutors and judges are involved in multi-agency case conferences (MACCs) organised by the violence protection centres, what has improved the co-operation and the acceptance of risk assessments.

Additionally, to further enhance the co-operation between victim support services and the judicial system and to improve the implementation of victims’ rights, interdisciplinary ‘round tables’ have been established. Since 2009 the presidents of criminal courts of first instance are obliged to convene such round tables at least once a year. The ministerial decree requires the invitation of judges, public prosecutors, victim support services, attorneys, the local police and the children and youth advocacy among others.” (Amesberger & Haller, 2014: 14).

In Germany standardized risk assessment instruments developed and tested internationally are widely known and available. However, none of them are in common use by the German police until now. Some police forces have developed their own instruments in order to

34 The strengths and limitations of risk assessment tools are also addressed among others in Northcott (2012, 14f.)
35 Erlass vom BM für Justiz (Decree by the Ministry of Justice), January 13, 2009.
distinguish between cases of different levels of risk. However, none of these instruments have a sound scientific basis or have subjected to rigorous evaluation. First model projects on high risk management are implemented at present.

“Increasingly, the police are starting to think about the possible benefits of using standardized instruments. In this spirit, police in the federal state of Rhineland-Palatinate has started a model project on high risk management in cases of intimate partner violence on October 1, 2014. They recently announced that instead of “gut feeling”, several instruments are going to be tried and tested by police officers at the crime scene during a one year period in selected police departments all over Rhineland-Palatinate (see Beister 2014).” (Görgen et al, 2014: 16).

In Ireland there is growing awareness of the importance of risk assessment procedures for promoting the protection of women from continued violence and for predicting serious or fatal assaults. Several risk assessment tools have been empirically tested and are in use by different services: the justice systems, domestic violence services, social work service, health services and probation services. However, only the Probation Service is using a prescribed risk assessment for domestic violence to date. Neither the Courts Service nor the Office of the Director of Public Prosecutions use risk assessment tools in the case of domestic violence. The Gardai and HSE Social workers are advised to be vigilant of risk factors; however they are not systematically trained in the use of any specific risk assessment tool for domestic violence.

“This report clearly demonstrates that there is no established standard for risk assessment across justice professionals responding to domestic violence perpetrators and victims in Ireland. There is clear need for development of evidence based practice tools which can be used by the different types of justice professionals. In addition to this an implementation plan for training and monitoring the use of these risk assessment tools needs to be developed. The achievement of this will go a long way towards increasing safety and protection for victims of DV/IPV as well as meeting Ireland’s obligations under the EU Victims Directive.” (Safe Ireland, 2014: 31).

In the Netherlands two main risk assessment tools are reported:

- The Risk Assessment Domestic Violence (Risicotaxatie Instrument Huiselijk Geweld or RIHG) used by senior police officers in order to decide on the need for issuing a restraining order; this tool is loosely based on a compilation of existing risk assessment forms;
- The B-Safer (Brief Spousal Assault for Evaluation of Risk) was developed in Canada and is used specifically in cases intimate partner violence by probation offices. Its main goal is to assess the risk of repeated (ex) partner violence.

None of these tools have yet been evaluated as regards their validity, reliability and effectiveness. Nevertheless, some studies have shown the actual impacts of the use of risk assessment procedures in the Netherlands as regards victims’ protection.

“Over the years there has been a steady increase in the number of temporary restraining orders that are issued annually. This increase has been growing gradually and only indicates more competent use of the law by police officers. In 2009 there were 2715 risk assessments registered and 2150 restraining orders imposed. In 2012 the police force registered 4553 risk
assessments and imposed 3529 actual temporary restraining orders for cases of domestic violence. (...)The percentages temporary restraining orders issued out of the Risk Assessments registered has been quite constant, between 77% and 81% over the four years mentioned here.” (Drost et al, 2014: 22).

In Portugal all police agencies use a common risk assessment tool which has been developed based on existing international instruments and which was tested and validated. This new form underwent a piloting period before being rolled out at a national level.

“Recently, the Directorate-General of Home Affairs, the PSP and the GNR, with the scientific support of the Minho University of Psychology, developed, tested and validated a form for risk assessment on domestic violence.” (Silva et al, 2014: 16).

In Portugal, public prosecutors and courts do not use any kind of risk assessment procedures, relying on the standardized tools used by the police. Nevertheless, the way in which public prosecutors and judges use the outcomes of this risk assessment tools vary widely from individual to individual. Other agencies – namely victim support services – also carry out risk assessment procedures based on structured tools. However, these are not empirically tested and validated tools.

Across the five countries, it was possible to identify the existence of obstacles and difficulties arising from the implementation of existing risk assessment procedures. These include:

- Absence of regular and widespread implementation of risk assessment procedures (DE, IE);³⁶
- The use of non-validated tools (DE, NL);³⁷
- The lack of systematic evaluation of outcomes (DE, NL);
- Insufficient training for those implementing procedures (IE);
- Coexistence of diverse tools and procedures leading to different outcomes (PT);
- Inconsistence use of established standards for risk assessment by different justice professionals (IE, PT);
- Reliance on individual experience and perceptions for deciding upon the use of risk assessment procedures and outcomes among some stakeholders (AT, IE, PT);
- Funding constraints preventing a consistent use of risk assessment procedures (IE).

Overall, the comparative analysis of the existing procedures and practices regarding IPV risk assessment procedures in use by the criminal justice system has shown that in all countries such practices exist to a different extent based on instruments which have been developed on the basis of internationally standardized tools but which are still falling short in terms of validation, evaluation and other crucial implementation prerequisites. The available instruments are being implemented by the police forces in almost all countries, in spite of the existing national specificities encountered. Less consistent seems to be the role of public

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³⁶ There is recent evidence that in Ireland Risk Assessment procedures are now being developed by Gardaí.
³⁷ In Germany the use of non-validated tools is not widespread; it only exists in some police departments.
prosecutors and judges in relation to the implementation of risk assessment procedures or even the use of the outcomes of such exercise. In many countries there is a direct link between risk assessment outcomes and the provision of protection measures (e.g. Austria and the Netherlands); in others, however, such link is not that clear (e.g. Ireland and Portugal). Finally, there is also evidence across the different countries that risk assessment practices are common among victims’ support organisations. There are, nevertheless, much variety in the types and forms of procedures used, the ways in which the outcomes are (or not) being used by criminal justice system professionals as well as in the degree of preparation of professionals working in such organization as regards an adequate use of risk assessment instruments and results.

7. Protecting IPV victims: from specific legal impositions to interagency cooperation

“Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.” (Directive 2012/29/EU, article 22).

The Victims’ Directive explicitly recognizes the seriousness of violence in close relationships which may cause systematic psychological and physical trauma with severe consequences and considers that IPV victims may be in need of special protection measures. Paragraph 3 of article 22 states that particular attention shall be paid to victims of violence in a close relationship (among other categories of victims).

As discussed in the previous section IPV victims are often at a particular risk of secondary and repeat victimisation by the offender during criminal proceedings. Thus, individual risk assessments are crucial to identify such a risk, to determine whether a victim has specific protection needs and to determine what special protection measures should be applied.

The Directive identifies a set of measures which shall be available both during criminal investigations and during court proceedings. The former include ensuring specific interviewing conditions (e.g. characteristics of the premises, qualification and characteristics of staff). The latter include measures to ensure privacy and safety during this stage of the process (e.g. use of communication technology to avoid visual contact between victim and offender and/or the presence of the victim in the court room).

The EU-wide trend to strengthen victims’ rights and ensure adequate protection during criminal proceedings seems to be reflected by the existence of different protection measures and other protection procedures across the five member states. These measures which aim to
avoid secondary and repeat victimisation may play a crucial role in reducing the victim’s feelings of fear and uncertainty and as a consequence ensure better cooperation during criminal procedures.

The comparative analysis of the available protection measures and procedures existing in the Austria, Germany, Ireland, Portugal and the Netherlands shows the presence of two main areas regarding the protection of IPV victims: the implementation of restraining measures imposed on the offenders which limit his scope of action and therefore protect the victim from further harm; the availability of mechanisms, services and provisions directly addressing the protection needs of the victims.

Table 1 below provides a summarised comparison between the available restriction measures which are in place in the five countries. Further details on the presented measures may be found in the individual country reports.
<table>
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<th>Criminal Protection measures</th>
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<th>Point of enforcement</th>
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<th>Legislation</th>
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<td><strong>AUSTRIA</strong></td>
<td>Go order/barring order</td>
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<td>Police forces</td>
<td>Immediate/First intervention</td>
<td>The perpetrator is barred from entering home for 2 weeks and controlled by the police during the first 3 days; when the victim applies for a restraining order, it is automatically extended to 4 weeks.</td>
<td>Federal Act on Protection Against Domestic Violence (1997)</td>
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<td>Powers of arrest</td>
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<td>Police forces</td>
<td>Immediate/First intervention</td>
<td>Arresting offender without warrant when he is aggressive or does not accept the barring order.</td>
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<td></td>
<td>Cautioning the offender</td>
<td></td>
<td>Police forces</td>
<td>Immediate/First intervention</td>
<td>Offender is informed about the severity of the offense and possible consequences</td>
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<td></td>
<td>Civil restraining order</td>
<td>Civil court</td>
<td></td>
<td>Should be approved at the latest 4 weeks after the first intervention</td>
<td>The perpetrator is refused coming back home as well as staying in the premises’ vicinity for max 6 months/perpetrator forbidden to stay at certain places or contact victim for max. 12 months</td>
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<tr>
<td><strong>GERMANY</strong></td>
<td>Powers of arrest</td>
<td></td>
<td>Police forces</td>
<td>Immediate/first intervention</td>
<td>Arresting offender without warrant when there is reasonable cause to believe that the person is being assaulted or does not accept the barring order.</td>
<td>Laender police laws (all Laender have similar laws regarding barring orders and protection measures)</td>
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<tr>
<td></td>
<td>Cautioning the offender</td>
<td></td>
<td>Police forces</td>
<td>Immediate/first intervention</td>
<td>Offender is informed about the severity of the offense and possible consequences</td>
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<td>Emergency barring</td>
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<td>Order</td>
<td>Intervention</td>
<td>Description</td>
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<tr>
<td>Civil protection order (civil law)</td>
<td>Family court</td>
<td>Following 10/14 day period barring order</td>
<td>Offender banned from (victim’s or joint) home/other places victim regularly visits / forbidden to contact victim (generally limited to 6 months, can be extended)</td>
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<td>Allocation of the home (max. 12 months if the victim has no legal claim to the property)</td>
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<tr>
<td>Powers of arrest</td>
<td>Police forces</td>
<td>Immediate/first intervention</td>
<td>Arresting offender without warrant when there is reasonable cause to believe that the person is being or has been, subjected to behaviour amounting to an arrestable offence, or that a safety or barring order has been breached</td>
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<td>Barring order</td>
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<td></td>
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<td></td>
<td>Note that draft new legislation will make access to these orders less restrictive for some victims</td>
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<tr>
<td>Interim barring order</td>
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<td>While waiting for court decision on barring order</td>
<td>Addresses the delay between the application for barring order and the granting when there is immediate risk of significant harm</td>
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<td>Note that draft new legislation will expand</td>
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<tr>
<td>Order Type</td>
<td>Authority</td>
<td>Process</td>
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<tr>
<td>Protection order</td>
<td>Court</td>
<td>Provisional order pending the determination of safety order</td>
<td>Offender may not use violence or threaten to use it and if not residing with victim he may not watch or beset the place</td>
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<tr>
<td>Safety order</td>
<td>Court</td>
<td>After court decision</td>
<td>Offender may not use violence or threaten to use it and if not residing with victim he may not watch or beset the place</td>
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<tr>
<td>Detaining order</td>
<td>Police</td>
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<td>Eviction order</td>
<td>Court</td>
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<td>Restraining orders</td>
<td>Court</td>
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<th>After court decision</th>
<th>Prohibiting the perpetrator from having any contact with the victim</th>
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<td>Powers of arrest</td>
<td>Police forces</td>
<td>Immediate/first intervention</td>
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<tr>
<td>Administrative</td>
<td>Police forces</td>
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<td>Ten-day restraining order (which may be extended to 28 days) prohibiting perpetrator from entering their own house and contacting their partner and/or children</td>
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<tr>
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<tr>
<td>Criminal protective orders</td>
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<td>Restraining and protection order, mandatory contact of perpetrator with probation service, therapy</td>
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<td>Civil protective orders</td>
<td>Court (also via summary proceedings)</td>
<td>After court decision</td>
<td>Prohibiting offender from entering certain areas, to relocate or study at different university</td>
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<td>Code of civil law</td>
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</tbody>
</table>

**Criminal Law Directive**

- Domestic Violence and Honor-related Crimes (2010)

- Temporary Restraining Order Domestic Violence Act (2009)

**Public Prosecutor**

- Following criminal charge

**Code of civil law**
In all countries there has been a concern regarding both the immediate and the medium-term avoidance of further victimisation by the adoption of restraining orders which ban the presence of the perpetrator from home or limit his contacts with the victims. The way these orders are implemented varies significantly and their effectiveness is not well established in all the partner countries.

In some countries there is evidence of obstacles in the implementation of such legal mechanisms. In Germany some flaws persist at the level of family courts’ decisions: the application for protection orders are not treated with the necessary speed; some courts refuse to take decisions on applications for restraining order if the offender fails to appear; violation of protection orders are not being effectively and timely sanctioned; when the offender and the victim have joint children courts regard the contact right predominantly as a more important legal interest than the need of protection; and family courts often promote settlements (Vergleich) instead of a judicial protection order.

Ireland reports difficulties in assessing the actual implementation of protection orders:

“While civil orders in theory are accessible to many victims of domestic violence to apply for them to increase protection, there is little research in Ireland that has considered their effectiveness in recent years.” (Safe Ireland, 2014:30).

In Portugal some flaws have also been detected in the actual implementation of the existing coercion measures. These include: resistance from police forces to resort to the immediate detaining order when the offender is not caught in the act; restraining and non-molestation orders not treated with the necessary speed; family courts’ decisions contrary to the protection needs of women; failure to impose consequences following the breach of restraining orders.

Austria and the Netherlands provide some positive assessments regarding the impact of protection orders in their countries:

“In conclusion, the three pillars have proved to be a solid foundation for victim protection in Austria. From the moment the police arrive until the end of the court case, the victim is protected. The first response mechanism of barring orders achieves breathing space to allow the victim to gather her thoughts and to reflect on her situation. Following this, the violence protection centres are there to provide support, psychological as well as legal. Yet, while the laws have shifted to ensure victim protection, in practice this has not been fully implemented by courts and public prosecutors.” (Amesberger & Haller, 2014: 8).

“Römken and Van Poppel (2007) have done a preliminary evaluation of the Temporary Restraining Order measure and the Risk Assessment tool when the Act Temporary Restraining Order was still under construction. They conclude that in theory the option of a temporary restraining order is always available when assessing a situation of threatened or already committed domestic violence, either in case of a criminal offence or not. (...) In 2013 De Vaan and colleagues conducted a study about the effectiveness of the Temporary Restraining Order measure. The study was designed as a quasi-experimental study with an intervention group (restraining orders) and a control group (similar situations in which, however, for various reasons no restraining order was imposed). (...) On the basis of police registrations they found that new (repeat) incidents do in fact happen still after a restraining
order has run out (after 10 days or an extended to 28 days). However there are less cases of new incidents in the intervention group (those with restraining orders) then in the control group (those without restraining orders).” (Drost et al, 2014: 23).

Apart from the above mentioned legal dispositions which are imposed on the offender/perpetrator in order to sanction his behavior and protect the victim it was possible to identify a whole set of procedures and measures which are directly available to IPV victims. These mechanisms and practices play a crucial role in protecting the safety and the dignity of victims and apart from their more immediate impacts, they contribute to the empowerment of victims and their strengthening in the course of criminal proceedings.

In all five countries victim support organisations play an important role, although differences may be found at the organisational level and in the connections between such support and the operation of the criminal justice system.

According to FRA (2014) there are three main models of generic victim support services in EU Member States. Distinctions are drawn between the (non-) governmental nature and sources of funding of the main generic support provider. The comparative analysis of the national reports produced for the present project provides further insights into the operation of such support services.

In Austria there is a close link between the intervention centres – legally established by the Federal Act on Protection against Domestic Violence (1997) – and the work of the police forces during the different stages of the criminal procedures. These centres provide free psycho social and legal support before and during the investigation stages and at court; support was recently (in 2009) expanded to civil procedures related to the criminal case.

“The Federal Act on Protection against Domestic Violence 1997 established the legal basis for the co-operation of police and intervention centres. Besides the obligation of the police to inform the violence protection centres about barring orders, other forms of close collaboration – partially integrating also other organisations – have been developed and institutionalised in some Laender, such as MARACs (Multi Agency Risk Assessment Conferences).” (Amesberger & Haller, 2014: 10).

In Germany, following the implementation of the 2002 Act for Protection against Violence (Gewaltschutzgesetz) a similar structure of “intervention centres against domestic violence have been established at the regional level more or less throughout Germany working with a pro-active, i.e. reach-out counselling approach in close cooperation with the police.” (Görgen et al, 2014: 17).

Although formal referral procedures between the police and the intervention centres have been established, their implementation varies between the different Laender. The police is deemed to submit basic information about the victim and the case to the intervention centre (with the consent of the victim), but in most of the Laender this is only possible with the consent of the victim. There is a lack of information on the implementation of these regulations.

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39 In Austria there are other non-governmental organisations also providing this type of support, such as shelters and child protection centres.
“Actually, former analyses of case files and interviews with intimate partner violence support organizations (IPVoW and Mind the Gap!) showed that very often no documentation is found in files on cases of intimate partner violence about the police request for consent and about the referral to an intervention office.” (Görgen et al., 2014:16).

In Ireland, the police forces Domestic Violence Policy states that victims shall be made aware by the attending officer of any relevant voluntary or statutory support service. However, in practice data protection constraints impede a stronger connection between agencies: “Accordingly, there are few formal referral procedures involving the criminal justice system and victim support services in widespread use in Ireland currently. Referrals up to this point have been made on a case-by-case basis, by the Gardaí or court staff to domestic violence support services and these processes usually vary from district to district.” (Safe Ireland, 2014: 17).

In the Netherlands local Domestic Violence Support Centres (Steunpunten Huiselijk Geweld) provide advice and support to victims, professionals, and perpetrators in order to stop violence.

“Besides an advisory task the Domestic Violence Support Centers have recently also taken on an intervention and a research task. These centers are therefore a kind of front office for the local and/or regional authorities that work together. Most of the DV cases are referred by the police. Also professionals from other organizations, victims and a few perpetrators go for advice and help to the Domestic Violence Support Centers (Lünnemann, Goderie & Tierolf, 2010).” (Drost et al, 2014: 14).

In Portugal there are no formal referral procedures involving the criminal justice system and victim’s support services systematically established across the country. However, there is evidence of increasing cooperation practices between police forces, public prosecutors and victim support services, which have often translated into formal partnerships or networks operating at the local level. The quality and intensity of such interagency cooperation greatly varies from region to region and there is no actual assessment of the impact of such initiatives in the actual protection of IPV victims.

In all countries the existence of shelters also responds to the specific needs for immediate and temporary protection of IPV victims. Shelters house women and children who are victims of domestic violence or under threat from a partner or relative and in many cases they operate with a “strengths based approach” towards the victims. Nevertheless, the organizational structure, the intervention models and the actual support provided vary widely not only between the countries but also within the national context.

Other types of protection and support procedures available to IPV (and other) victims during criminal procedures are in place in all the selected countries and they aim to respond to some of the Directive’s concerns regarding victims’ rights. These include provisions regarding:

- The right to be questioned and testify in a protected manner in court (AT, DE, IE, NL and PT);
- Existence of separate waiting areas for victims at court (AT, DE, IE and NL);
- Accompaniment at trial by support persons (AT, DE and IE);
- The right to receive state-funded compensation (AT, DE, IE, NL and PT);

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40 See www.ipvow.org.
• The right to private accessory prosecution (DE).

Overall, several types of measures and procedures to protect the safety of IPV victims – both directly or indirectly by restraining the offenders’ behaviours – are foreseen in all participating countries. There is evidence of positive developments in the adoption of such measures in line with the EU-wide trend to strengthen victims’ rights and ensure adequate protection during criminal proceedings. Nevertheless, further efforts are needed in order to bring actual practices by all relevant stakeholders closer to the theoretical principles and the legal regulations in place.

8. Understanding women’s needs, ensuring victims’ rights

“The EU has already acted on the rights of victims in criminal proceedings and most of the Member States have some level of victim protection and support in place. However, the role and needs of victims in criminal proceedings are still generally not sufficiently addressed and the level of victims’ rights continues to differ significantly across the EU.” (EC, 2011: 2).

There has been a relative paucity of research on the needs of IPV victims throughout the criminal justice trajectory in all the partner countries. This knowledge gap contrasts with the growing body of research on Domestic Violence and Intimate Partner Violence which is becoming available and which more often focus on women’s needs not related to their experiences with the justice system.

In Austria and Germany some recent surveys and studies have provided interesting insights into the needs of women within the justice system. In Austria and Germany (Sautner, 2010; Kavemann et al 2012) the authors point out one some major common features:

• victims needs are very heterogeneous, depending on different aspects (e.g. type of crime, sex and age of victim, time that has passed since the last violent event, level of risk and endangering, ability to cope with damages, circumstances of victimisation, relationship to the perpetrator);
• victims’ needs change over time;
• only a minority of victims wish formal punishment of the perpetrator; the majority want to live safely and seek help and support to end the violence;
• being recognized as a victim of crime already before the offender is convicted is very important;
• the quality of the support provided during the criminal trajectory is of vital importance, with a special emphasis on the quality of the first intervention.

In both countries the available studies highlight other specific aspects pertaining to women’s needs in their contact with the respective justice systems.
“Sautner (2010) sees two basic expectations of victims towards the criminal justice system: sanctioning the perpetrator’s acts and compensating the damages. The first one is oriented towards the re-socialisation of the perpetrator, the latter at self-stabilisation.” (Amesberger & Haller, 2014: 23).

“Analyses of victims’ interviews denote positive experiences with police forces specialised on intimate partner violence during inquiry, to a smaller degree also with the uniformed police. More negative experiences are reported related to court proceedings and the outcomes. (Libuda-Köster 2002, Greuel 2009, Schröttle & Hornberg 2012a).” (Görgen et al, 2014: 26).

The Irish report also provides interesting information on research undertaken on the needs of domestic violence victims in the legal system, namely as regards assessments of the effectiveness of the justice system’s responses.

Kelleher and O’Connor (1999) highlighted the importance of the pro-arrest policy undertaken by the Gardaí and the need to strongly support women in their decision to take action in relation to intimate partner violence. Safe Ireland (2014) identified a series of gaps throughout the Irish legal system, resulting in a failure to adequately respond to women’s needs when they ask for help and support.

“The research found consistent failings in the implementation of existing laws, understanding of risk factors across justice professionals, poor collection of evidence, poor investigation methods and a significant lack of risk assessment and coordination across Justice agency responses. (…) Safe Ireland heard that women learn that society and the system as a whole treats the abuse as separate to the other interconnected areas of their lives and that they should be interconnected under the protection of the family law system – issues such as financial orders on separation or divorce, child access and custody and so on. Based on the research findings recommendations have been formed to improve the situation and protect the rights of the victims of domestic violence.” (Safe Ireland, 2014: 20).

Several recommendations are put forward as a result of the outcomes of the studies undertaken. These include:

- The need to inform and train justice practitioners (e.g. Gardaí, judges, court staff, legal practitioners) on domestic violence (e.g. prevalence, risk factors, risk assessment);
- Implement a support service for women within the courts;
- Develop procedural rules in order to ensure that the voice of the woman is heard and that agency remains with the victim;
- Formalise the role of specialist DV advocates to ensure that victims have access to an advocate throughout their process of seeking protection and justice;
- Implement the mechanisms for granting out of hours emergency barring order.

Finally, and as regards protection needs of victims of crime the Irish report refers some of the main outcomes of a study undertaken by the Commission for the Support of Victims of Crime which also applies to IPV victims:

“One continuous thread of evidence emerging from the research is the criminal justice system’s responsibility to prevent further harm to victims by repeat victimisation. It was found that in the case of domestic violence victims measures such as efficient Garda responses; speedy arrests where
appropriate; information on safe places to stay; communication of decisions on bail to victims; secure victim waiting areas in court; the removal of long delays in relation to the prosecution of crime (i.e. court adjournments etc); consideration of the ways in which intimidation in the courtroom can be minimised; the proper enforcement of safety and protection orders; and the provision of information on parole and release dates, were all viewed as ways to prevent further harm (CSVC, 2010, p. 187).” (Safe Ireland, 2014: 27).

In Portugal and in the Netherlands there is no relevant research focusing on women’s needs in relation to their trajectory within the judicial system. At the local level Baptista et al (2014) carried out an evaluation study on the local services providing support to women experiencing domestic violence, including the police forces, the public prosecution office and the court. The analysis of the interviews with the women provides some insights into their experiences with the legal system, some of which are similar to aspects referred to above:

- the importance of the first contact with the police officers namely as regards the impact of the response obtained for the continuity of the legal proceedings;
- the lack of adequate physical conditions in police stations, namely regarding the need to ensure privacy;
- a very positive evaluation regarding the attitude of police officers in “listening to” and “understanding” victims’ experiences;
- the individualization of the level of satisfaction with the support received, strongly depending on the individual agent and not on a solid and consistent support structure prepared to deal with victims’ needs;
- women expressed a strong feeling of “absence/distance” in regard to their needs from the several stakeholders within the court services (e.g. the lack of information or feedback, the lack of support);
- a strong sense of injustice and misunderstanding regarding the judicial outcomes of proceedings fueled by the “absence” of the system throughout the judicial trajectory.

The paucity of existing research on women’s needs somehow contrasts with the wide acknowledgement of the need to reinforce victims’ protection rights in all countries. In recent years several initiatives on the rights of victims have been undertaken and others are being discussed. All the participating countries report that in recent years there has been a concern to strengthen the rights of the victims, in line with EU directions.

“According to several law experts the Austrian Criminal Proceedings Code takes account of victims’ needs and interests in a far reaching sense. They consider that a turn towards a victim-oriented criminal justice system has taken place.”41 (Amesberger & Haller, 2014: 21).

“Since 1986, the Netherlands has developed various indications of strengthening the legal position of victims, the last of which was formulated in response to the Law to Strengthen the Position of the Victim.” (Drost et al, 2014: 9).

“The Irish Government has also announced that work is being carried out to change legislation to enable Ireland to sign and ratify the Istanbul Convention, which would strengthen the rights of victims

41 See Sautner (2010, p. 126) and Stückler (2011, p. 60).
of domestic violence in this country, and would also necessitate commitment to change policy and practice responses from the Irish Government.” (Safe Ireland, 2014: 4).

“Given the German federal system the implementation requires changes and adaptations both at national level and the level of the federal states. At national level mainly the legislation in the field of criminal procedure is affected. Adaptations and changes in the field of victim protection measures and access to support services have to be dealt with by the federal states. Therefore the Federal Ministry of Justice and Consumer Protection (BMJV) has implemented a mixed level working-group (Bund-Länder-Arbeitsgruppe Umsetzung der EU-Opferschutzrichtlinie 2012/29/EU) including representatives of the federal states as well as national governmental representatives; this group is responsible for steering the process of implementation. According to the EU-Directive the BMJV recently has laid a draft law for strengthening victims’ rights, which now will be commented by the federal states and civil society organisations (BMJV 2014).” (Görgen et al, 2014: 5).

“In Portugal the Commission for the Protection of Crime Victims considers that the transposition of the Directive will not imply many changes, since the Portuguese internal law already foresees many of the situations mentioned, although there may be room for deepening some specific aspects. Such is the case of the victims’ rights at trial and the authorities’ obligation to provide information to crime victims.” (Silva et al, 2014: 9).

Some explicitly refer to national legislation which embodies the legal adoption of some of the Directive’s rights:

“Additionally to the already above mentioned rights of protection and careful interrogation further rights are subsumed under the heading Victims’ rights in the Criminal Proceedings Code (art.66 (1)).” (Amesberger & Haller, 2014: 21).

“The Law to Strengthen the Position of the Victim has improved the right of information to the victim (article 51a lid 3 Sv). The police must inform in writing the victim (if desired to be informed) about the decisions not to investigate the case, or the police send the report to the public prosecutor, who in turn is required to make an inventory of the victim’s wishes and direct the victim to the relevant organisations.” (Drost et al, 2014: 9).

In spite of these positive developments, the reports provide evidence that the actual implementation of the existing dispositions to address women’s needs throughout judicial proceedings continues to show some flaws, directly impacting on the fulfilment of women’s rights.

“Although the Act for Protection against Violence is seen as a milestone in policy on IPV and many improvements are seen, some problems related to the support and protection of victims of IPV still remain. Problems arise if the offender and the victim have joint custody for children and protection needs collide with contact rights, and when family courts promote settlements instead of orders. Victims’ support organisations also report about problems reinforcing protection orders and proving violations, other problems relate to slow decisions. Risk assessment in judicial proceedings and further training of judicial staff is seen as necessary.” (Görgen et al, 2014: 33).

“Evident from this report is that one of Ireland’s major downfalls is the lack of consistency across state agencies regarding domestic and sexual violence. Most procedures that aim to improve the experience of the victims during the judicial trajectory are applied on an ad hoc basis. There is no
formal procedure of referral, no formal policy on protecting domestic violence victims throughout the legal process. Procedures differ between and within agencies. However the Garda policy on investigation procedures for sexual crime is noteworthy, as it recognises the complexity of such a crime and provides Gardaí with practical guidance on investigation of sexual abuse. This example of good policy should be noted and considered.” (Safe Ireland, 2014: 30).

“At present, law enforcement agencies are the only entities to have harmonized risk assessment forms and procedures. All other entities involved in the support of intimate partner violence victims use their own risk assessment, making it difficult to make a judicial decision based on the different approaches to risk factors. The harmonization of risk assessment principles, procedures and tools should be discussed and decided among local networks supporting victims of intimate partner violence. This would be particularly important in conjunction with a clear definition of the roles, duties and responsibilities of each public and private organisation working in the area, thus promoting a culture of institutional and professional responsibility.” (Silva et al, 2014: 25).

“The psycho-social and legal support in particular has improved the consideration of victims’ needs and rights by actors in the judicial system. In addition, it enhanced the co-operation between victim protection services and the judiciary. Nevertheless, some difficulties still remain such as the attitude of some public prosecutors and judges who are annoyed when intervention centres intervene pointing out, for example, the risks of further victimisation. From the violence protection services’ perspective, efforts are made by the members of the judiciary but nevertheless the employees of the centres still have to engage themselves for the victims’ rights.” (Amesberger & Haller, 2014: 22).

Overall, there is wide agreement that it is important that the rights of victims become the same across the European Union for various reasons. Directive 2012/29/EU of the European Parliament and of the Council is an important milestone for the harmonization of rights, support and protection that a victim is entitled to receive before, during and for a period after criminal proceedings. The evidence collected across the partner countries shows that there is a long way to go beyond the date Member States are obliged to transpose the Directive into its domestic law, in order to ensure the fulfilment of the rights of women experiencing IPV. The assessment of the extent to which countries have put in place measures to comply with the Directive will necessarily have to include both the adoption of legislative measures and evidence on the actual implementation of such legal obligations.
9. Justice related good practices

The present section will provide evidence collected in some of the participating countries regarding the existence of good practices which directly involve the criminal justice system and aim to respond to identified women’s needs during their trajectory throughout judicial proceedings. They will be presented by country.

AUSTRIA

The legal entitlement to psycho-social and legal support during police investigations and criminal proceedings is extremely helpful. We consider this as a best practice model as it is applicable for all victims of violence, and because in the ideal case the support starts with the beginning of the investigations (each victim has to be informed by the intervening police about her/his entitlement of support). Despite of different professional systems and the tension between victim protection and law enforcement (Schwarz-Schloeglmann/ Sorgo 2013, 262) the cooperation among the various professionals works well (Haller/Hofinger 2007). Psycho-social and legal support is seen by Schwarz-Schloeglmann and Sorgo (2013, 256ff.) as a means of tertiary prevention that helps victims to cope with the emotional burden and the anxiety about for the victim so far unknown criminal proceedings. Legal assistance, organised via institutions offering psycho-social support, is provided by lawyers who have specific training. Since June 2009 the entitlement to psycho-social support has been extended to civil proceedings.
IRELAND

Sexual Assault Treatment Units (SATU’s) were set up to respond to the need for dedicated forensic examination facilities around the country to gather evidence and treat victims with specialist knowledge and understanding of the trauma they had undergone. There are now seven of them around Ireland. They all operate in accordance with an agreed set of National Guidelines, first published in 2006, revised in 2010, and about to be revised again in 2014. The National Guidelines were created and are continually revisited and revised, by a dedicated inter-agency expert committee, which includes representatives from all the principal agencies involved and which has advocated a joint, coherent, clear, victim-centred approach based on best international practice, from the beginning. It includes representatives from the HSE including a consultant medical examiner, forensic nursing representatives, An Garda Siochana, the Office of the Director of Public Prosecutions, independent legal advisers and rape crisis personnel. It meets regularly to discuss issues as they arise and agree solutions and how these should be implemented.

GERMANY

One problem related to criminal proceedings in all cases involving bodily harm is that victims often do not turn to the police immediately after a violent incident, but need more time to take a decision. This is especially true for violence in intimate relationships and sexual violence. Until a decision is taken, important medical evidence for criminal prosecution may be lost. For a potential criminal prosecution a medical examination by qualified experts has to be carried out as soon as possible after the violent incident. In Germany a forensic examination is paid for by the health system only in case of a criminal prosecution of the crime.

In Lower Saxony a project started in 2012 called Netzwerk ProBeweis (Network Pro Evidence). The project aims at connecting support of victims and securing evidence. Goal is that victims in Lower Saxony may reach a specialized institute for forensic examination within 100 km distance from their homes. Partners in the network are hospitals with emergency and gynaecological units. All partners work with the same documentation standard, and medical staff is trained in documenting injuries and saving evidence for criminal proceedings. Evidence like blood or urine samples and documentation are stored up to 20 years. Within the first two years of this project, 181 women and 6 men made use of the services offered (Zorn, 2014).
PORTUGAL

The Network of Public Prosecutors in the field of Domestic Violence is an informal mechanism promoted by the Lisbon Public Prosecution Office (PGDL). It brings together public prosecutors from the different services, departments and courts from the judicial district of Lisbon working in the criminal area. The network aims at the sharing of experiences among the different territorial units within the area of the PGDL, at promoting the direct contact among colleagues intervening in the same domain and at disseminating hierarchical guidelines in order to harmonise the intervention of the General Prosecutor’s Office. It has a training module available on the net and it allows the invitation of external experts from non-judicial areas who might contribute to their perspective on the solutions to be attained. The network has already produced guidelines regarding aspects concerning investigation and trial. That document was the basis for the preparation of another set of guidelines, addressed at the security forces.
10. Conclusion

The comparative analysis of the national desk research produced by the five partner countries aimed at consolidating a common understanding of the relevant legal and policy framework regarding criminal justice responses to IPV.

The report highlights recent European and international developments which have enhanced the existing links between the debate on domestic violence and on gender equality and human rights and, to a greater or lesser extent, influenced the development of legislation and policies in EU member states.

Across the partner countries and with different timings, the topic of IPV became a highly political one rising increasing public attention. Additionally, and in different degrees, international and European conventions and directives have been taken up by the domestic debates originating a diversity of responses at the policy and legal levels.

National Action Plans on preventing violence against women (NAPs) are in place in the five participating countries and policy implementation and evaluation has been taken on board at the state (national/federal) level. The development of multi-agency approaches in the delivery of services is also a common element in the description of the national policy contexts in the five countries, as an ideal strategic approach to DV presenting different levels of achievement. The involvement of different stakeholders (e.g. NGOs, local authorities, formal networks) within these multi-level intervention strategies varies significantly across the countries.

Overall, the five states have incorporated international orientations into domestic policy design and implementation at different levels, even though actual delivery of the intended purposes of those policy approaches is a road that needs to be travelled.

Recognising domestic violence as a public crime – rather than a private conflict – is the most obvious outcome of the comparative analysis of national law and regulations in the five countries. This increased criminalisation of different forms of violent acts pertaining to IPV/DV does not necessarily lead to the inclusion of a specific criminal offence in the Criminal Code, but rather on the use of existing regulations within criminal statutes. However, all countries have adopted dedicated DV/IPV laws defining remedies to protect victims of intimate partner violence which are particularly relevant from the perspective of victims’ protection rights. However, difficulties in implementation of such rights still persist, affecting victims’ experiences throughout the different stages of their trajectory within the justice system.

In the five countries, IPV victims’ trajectories are directly influenced by the interaction established within the criminal justice system’s main actors.

The police and the public prosecution offices are, in varying degrees, the institutions bearing the main responsibility for investigation procedures in cases of IPV. In spite of the existence of minimum standards regarding investigative procedures, and the introduction of additional or special
procedures targeting DV/IPV cases, constraints were reported in all countries in relation to the actual implementation of those existing facilitating mechanisms.

The comparative analysis followed the victims’ trajectory from the notification stage till the case is dismissed or alternatively is brought to court. It was possible to highlight some common features regarding both the initial stages of the investigation stage and the building up of the criminal case, such as:

- In all countries, the police are required to investigate whenever there is a report of a crime, either by the victim herself or by others;
- The role of the police is of the utmost importance during the first intervention as regards timely responses, stopping on-going criminal acts, collecting and securing evidence, assessing the situation, and taking measures to avoid further safety endangerment;
- Coordination between public prosecution offices and the criminal police plays a major role, although the role played by these different actors during the investigation stage varies across the countries;
- Constraining measures and/or protection measures aiming at preventing further violence against the victim and at ensuring adequate conditions for proceeding with the investigative procedures are available in all countries;
- The role of the victim as a witness within the building up of the criminal case is of the utmost importance for the different actors within the system.

The development of risk assessment procedures and instruments has been fostered by an increasing awareness on the wide range of outcomes arising from IPV cases. Most countries have developed risk assessment practices based on internationally standardized risk assessment tools which are being implemented by the police forces in almost all countries. However, the comparative analysis of the existing procedures and practices regarding IPV risk assessment procedures in use by the criminal justice systems showed that in all countries such practices are still falling short in terms of validation, evaluation and other crucial implementation prerequisites.

Directive 2012/29/EU explicitly recognizes the seriousness of violence in close relationships which may cause systematic psychological and physical trauma with severe consequences and considers that IPV victims may be in need of special protection measures. The comparative analysis of the available protection measures and procedures existing in the Austria, Germany, Ireland, Portugal and the Netherlands shows the presence of two main areas regarding the protection of IPV victims: the implementation of restraining measures imposed on the offenders which limit his scope of action and therefore protect the victim from further harm; the availability of mechanisms, services and provisions directly addressing the protection needs of the victims.

In all countries there has been a concern regarding both the immediate and the medium-term avoidance of further victimisation by the adoption of restraining orders which ban the presence of the perpetrator from home or limit his contacts with the victims. The way these orders are implemented varies significantly and their effectiveness is not well established in all the partner countries.
In all five countries victim support organisations play an important role in protecting the safety and the dignity of victims, although differences may be found at the organisational level and in the connections between such support and the operation of the criminal justice system.

Overall, there is evidence of positive developments in the adoption of measures and procedures to protect the safety of IPV victims in line with the EU-wide trend to strengthen victims’ rights and ensure adequate protection during criminal proceedings. Nevertheless, there is still a long way to go beyond the transposition of the Directive into domestic law, in order to ensure the fulfilment of the rights of women experiencing IPV. The assessment of the extent to which countries have put in place measures to comply with the Directive will necessarily have to include both the adoption of legislative measures and evidence on the actual implementation of such legal obligations.
References


GEC (Gender Equality Commission of the Council of Europe), (2013). *Feasibility study on equal access of women to justice*. Strasbourg: Council of Europe. Available at: [http://www.coe.int/t/dghl/standardsetting/equality/03themes/access_to_justice/GEC_2013_1_en%20rev_title.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/access_to_justice/GEC_2013_1_en%20rev_title.pdf) (last access 12.05.2014)


Hawkins, S. and Laxton, C. (2014), *Women’s access to justice: from reporting to sentencing*. A report from the All-Party Parliamentary Group on Domestic and Sexual Violence and Women’s Aid
England. Bristol: Women’s Aid Federation of England. Available at:  
http://www.womensaid.org.uk/core/core_picker/download.asp?id=4389 (last access 14.10.2014)

Helfferich, Cornelia; Kavemann, Barbara; Rixen, Stephan (2012). Bestandsaufnahme zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder in: BMFSFJ (Hg.) Bericht zur Situation der Frauenhäuser, der Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, Bundestagsdrucksache 17/10500 vom 16. 08. 2012.

http://books.google.pt/books?id=bif4oDEuGAwC&printsec=frontcover&dq=Silencing+the+Self+Across+Cultures+Depression+and+Gender+in+the+Social+World&hl=pt-PT&sa=X&ei=G7pPVNmlB4LxaJPXgcAJ&ved=0CB4Q6AEwAA#v=onepage&q=sofia%20neves&f=false (last access 03.11.2014)

http://www.eurowrc.org/05.education/education_en/12.edu_en.htm (last access 18.11.2014)


Silva, Alexandra et al (2015), The protection of IPV victims: Legal framework and criminal procedures – Portugal. Lisboa: CESIS. Available at:  


UNWomen (2011). Progress of the world’s women: in pursuit of justice. United Nations Entity for Gender Equality and the Empowerment of Women. Available at:  


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