



GREVIO

Baseline Evaluation Report Malta

” Group of Experts
on Action
against Violence
against Women and
Domestic Violence
(GREVIO)



Istanbul Convention

GREVIO's (Baseline) Evaluation Report
on legislative and other measures
giving effect to the provisions
of the Council of Europe Convention
on Preventing and Combating
Violence against Women and Domestic Violence
(Istanbul Convention)
MALTA

Group of Experts
on Action against Violence against Women
and Domestic Violence (GREVIO)

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Foreword

The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) is an independent human rights monitoring body mandated to monitor the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210; “the Istanbul Convention”) by the parties to the convention. It is composed of 15 independent and impartial experts appointed on the basis of their recognised expertise in the fields of human rights, gender equality, violence against women and/or assistance to and protection of victims.

GREVIO’s statutory activities include country-by-country monitoring of the Istanbul Convention (evaluation procedure), the initiation of inquiries into specific circumstances within a party to the convention (inquiry procedure) and the adoption of general recommendations on themes and concepts of the convention.

This report is the fruit of the first (baseline) evaluation procedure carried out in respect of Malta. It covers the Istanbul Convention in its entirety¹ and thus assesses the level of compliance of the Maltese legislation and practice in all areas covered by the convention. In light of the scope of the convention – as set out in its Article 2, paragraph 1 – the baseline evaluation focuses on measures taken in relation to “all forms of violence against women, including domestic violence, which affects women disproportionately”. Hence, the term “victim” used throughout this report is to be understood as referring to a woman or girl victim.

Based on this assessment, it proposes measures to strengthen the implementation of the convention. In proposing such measures, GREVIO has adopted the use of different verbs which correspond to different levels of urgency, noting that all levels are important. These are, in order of priority, “urges”, “strongly encourages”, “encourages” and “invites”. GREVIO uses “urges” where it considers that immediate action is required to bring the party’s legislation or policy into compliance with the Istanbul Convention, or to ensure its implementation. “Strongly encourages” is used where GREVIO has noted shortcomings that need to be remedied in the near future in order to ensure a comprehensive implementation of the convention. A third level of urgency is indicated by the use of “encourages”, which is used for shortcomings that require attention, though possibly at a later stage. Lastly, the verb “invites” points to small gaps in implementation that the party is requested to consider closing or to proposals made to provide guidance in the implementation process.

The first (baseline) evaluation procedure is made up of several steps, each of which allows GREVIO to obtain critical information upon which to base its report. It is carried out as a process of confidential dialogue with the aim of offering country-specific proposals and suggestions for improvement developed within the national context of the party. These include the following:

- submission, by the party, of a report drawn up on the basis of GREVIO’s baseline questionnaire (the state report);
- an evaluation visit to the party under review to meet with governmental and non-governmental representatives working in this field;
- comments by the party on GREVIO’s draft report;
- publication of GREVIO’s report after its adoption together with any comments received from the party.

GREVIO also collects additional information from various other sources, including non-governmental organisations (NGOs), other members of civil society, national human rights institutions, Council of Europe bodies (Parliamentary Assembly, Human Rights Commissioner and other pertinent bodies), as well as other international treaty bodies. Within the framework of the evaluation of Malta, GREVIO received a written contribution from a coalition of NGOs including the Women’s Rights Foundation, Men Against Violence, Dar Merhba Bik, Victim Support Malta and Fondazzjoni Sebh.

¹ With the exception of Chapter VIII of the convention, which GREVIO has considered as less relevant in assessing the national situation in each contracting party.

The state report and the written contributions submitted by civil society have been made public and are available on the official website of the Istanbul Convention.

The analysis, suggestions and proposals contained in this first baseline evaluation report were drawn up under the exclusive responsibility of GREVIO. It covers the situation as observed by the GREVIO delegation during its evaluation visit to Malta. Where available, significant legislative and policy developments up until 15 October 2020 have also been taken into account.

According to the convention, national parliaments shall receive this report from the national authorities (Article 70, paragraph 2). GREVIO requests the national authorities to translate this report into their official national language(s) and to ensure that it is widely disseminated, not only to the relevant state institutions at all levels (national, regional and local), in particular to the government, the ministries and the judiciary, but also to NGOs and other civil society organisations that work in the field of violence against women.

Executive summary

This report provides an assessment of the measures of implementation taken by the Maltese authorities with regard to all aspects of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereafter “the convention”).

This assessment has been carried out by the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), an independent human rights monitoring body mandated to monitor the implementation of the convention. GREVIO’s findings are based on the information obtained during the various steps of the first (baseline) evaluation procedure set out in Article 68 of the convention. These include written reports (a state report submitted by the country authorities and additional information submitted by several NGOs) as well as a five-day evaluation visit to Malta. A list of the bodies and entities with which GREVIO had exchanges can be found in Appendix II.

The report highlights a number of positive legal and policy measures that have been taken by the Maltese authorities, which demonstrate firm resolve to stem violence against women. The report first welcomes Malta’s adoption of “Society’s Concern – Gender-Based Violence and Domestic Violence Strategy and Action Plan” (hereafter, the “strategy and action plan”), with which Malta has broadened its policies to address other forms of violence against women, beyond domestic violence. Moreover, with the entry into force on 14 May 2018 of the Gender-Based Violence and Domestic Violence Act, the Maltese authorities have, *inter alia*, strengthened and widened the mandate of the former Commission on Domestic Violence by transforming it into a Commission on Gender-Based Violence and Domestic Violence (CGBVDV) and have amended a number of laws to bring them in line with the Istanbul Convention. The report also notes that Malta has increased the financial resources made available to the CGBVDV, as well as to the Domestic Violence Services of the Foundation for Social Welfare Services. The CGBVDV is praised in the report for being a fully institutionalised entity with legal personality and dedicated financial and human resources, as well as for having a diverse membership that includes a person with disability, a victim, a representative of NGOs and a representative of the LGBT community.

The report notes the authorities’ efforts to run an increasing number of awareness-raising campaigns since the entry into force of the Istanbul Convention and important steps taken towards the implementation of Article 14 of the Istanbul Convention in the area of education. Teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, sexual education, and to a certain extent, domestic violence are included in the mandatory national curriculum starting at primary school and its content is adapted to the maturity and capacity of the student. Finally, in the area of asylum, under the law, persecution is defined as including acts of physical or mental violence, including acts of sexual violence and acts of a gender-specific nature. Moreover, due consideration must be given to “gender” for the purposes of determining membership of a particular social group in the assessment of reasons for persecution.

Despite the above, GREVIO has observed a number of issues where urgent improvement is warranted to reach higher levels of compliance with the requirements of the Istanbul Convention. While, in principle, Malta has broadened its policies to address other forms of violence against women beyond domestic violence, on the side of implementation the strategy and action plan fail to provide for specific integrated measures to tackle harmful forms of violence against women other than domestic violence. Moreover, Malta has adopted a gender-neutral approach to violence against women. Throughout the strategy, as well as in legislation, the Maltese authorities have opted to employ the term “gender-based violence” instead of violence against women, with a view to addressing all experiences of violence in intimate relationships, including that experienced by men and boys (including GBTIQ). While GREVIO welcomes the will to address all experiences of violence in intimate relationships, it is of paramount importance that the different forms of violence against women are addressed as a gendered phenomenon. These forms of violence affect women disproportionately and are manifestations of gender-based violence against women, which is violence that is directed against a woman because she is a woman. As such, it should not be

considered as abuse experienced individually by women but needs to be understood as a social mechanism to keep women in a subordinate position to men.

The report also points to minimal initial training as regards domestic violence and no initial training with regard to other forms of violence against women across all of the professions involved in preventing and combating violence against women. In-service training is also primarily carried out on a voluntary basis and is sporadic. The insufficient training has serious ramifications, particularly for the criminal justice system. Police officers who routinely receive reports or respond to call-outs are not trained on the dynamics of domestic violence, nor on the gendered aspect of such violence, its risk factors and the need to ensure victim protection. This leads, *inter alia*, to the phenomenon of dual reporting, alleged refusals to receive reports, interviewing the victims in an insensitive manner, lack of recording of patterns of abuse, barriers to reporting for particularly vulnerable categories of women and insufficient and ineffective collection of evidence in cases of rape and domestic violence. Similarly, the report notes the little sensitivity of judges, leading to repeat victimisation and low levels of prosecutions and convictions. Moreover, judges appear to have inadequate understanding of the change in paradigm in proving rape, of the role and importance of emergency barring orders and protection orders in breaking the cycle of violence in cases of domestic violence, and of the role and importance of referring perpetrators to domestic violence programmes.

Numerous shortcomings are also identified in the way that immediate support services for victims of sexual violence are currently administered. Victims are required to present themselves before multiple services and/or retell their trauma in front of different professionals, leading, in most cases, to secondary victimisation. Second, there are serious risks of loss of evidence due to the potential long waiting time required for the victim to be visited and the evidence to be lifted. Moreover, since reporting obligations for professionals assisting rape victims have been introduced, there has been a drop in the number of victims that seek help. Finally, there is a gap in the support available to victims of sexual violence between the ages of 16 and 18, even though the age of consent is 16 years of age.

Victims of domestic violence wishing to separate are often required to undergo mediation. Due to their vulnerability stemming from the power imbalance that is typical in cases of domestic violence, victims are thus unlikely to be in a position to negotiate and reach an acceptable agreement that ensures the children's and the mother's safety. Moreover, in judicial proceedings related to separation or divorce, in practice, courts rely on court-appointed experts who have limited knowledge and lack of understanding of violence against women. The report also notes that there are no guidelines providing guidance on what tests should be applied by judges in reaching a decision on custody and visitation rights. Consequently, in cases of domestic violence, courts privilege granting shared custody and visitation rights to perpetrators, often through supervised access visits, with supervisors who are mostly untrained to work with perpetrators and on violence against women.

In the area of asylum, there are no procedures in place to identify vulnerable individuals rescued at sea upon their arrival. Where identification of vulnerable individuals does take place, it does not lead necessarily to their swift release from detention, owing to lack of space in open centres or other alternatives to detention. Moreover, recent overcrowding in closed as well as open reception facilities has led to mixed-sex accommodation. Furthermore, the report worryingly describes practices of abandoning search-and-rescue operations together with the closure of Maltese ports to boats carrying rescued migrants, which pose a serious risk of *refoulement* of women asylum seekers who are victims of gender-based violence. The practice of relinquishing responsibility for search-and-rescue operations to authorities that are unwilling or unable to protect rescued migrants or are in a state of civil war is also described and criticised.

While GREVIO welcomes Malta's ratification of the Istanbul Convention and the efforts taken in its implementation, it has also identified a number of priority issues requiring further action by the Maltese authorities to comply fully with the convention's provisions. These relate to the need to:

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- enhance the application of a gendered perspective in legislation and policies dealing with violence against women;
 - put in place a dedicated, transparent and accountable public procedure under which all NGOs that provide specialist support services to victims of all forms of violence against women and their children can compete and request for sustainable and long-term funding;
 - raise the funding available to the CGBVDV and provide for budgets with a longer time frame than is currently the case, to enable the commission to plan its activities in a more sustainable and effective manner;
 - collect disaggregated data on: all forms of violence covered by the Istanbul Convention at all stages of criminal justice; the number of protection orders issued in the context of civil proceedings; the number of Temporary Protection Orders and protection orders issued in the context of criminal proceedings, their violations, and the sanctions imposed as a result of such violations; the number of decisions on custody/visitation/residence of children that expressly have taken into account reports of domestic violence;
 - set up institutionalised structures for co-ordination and co-operation among governmental and non-governmental agencies and service providers to ensure multi-agency co-operation based on a gendered understanding of violence against women;
 - ensure immediate short and long-term specialist support services to victims of all forms of violence against women, beyond domestic violence;
 - introduce adequate protocols and standards that address all forms of violence against women, including protocols that may be followed in situations where female genital mutilation (FGM) or the risk thereof is identified, both for the victim and any young/child female family member of the victim that may be at risk of FGM;
 - review the obligation for professionals to report cases of violence against women and their children, other than in situations in which there are reasonable grounds to believe that a serious act of violence covered by the scope of the convention has been committed and further serious acts are to be expected;
 - guarantee that adequate information is provided in all phases of reception and the asylum determination procedure and appeal processes to all women seeking asylum, including on the right to claim asylum in their own right on grounds related to gender-based persecution.

Furthermore, GREVIO has identified a number of additional areas in which improvements are required in order to comply fully with the obligations of the convention. These relate, among others, to the need to: draw from the expertise and the findings of research in the area of violence against women; collect data on the number of cases in which women victims of violence have claimed and have obtained compensation by the perpetrator or the state for offences covered by the convention; and raise awareness among migrant women entering Malta on the basis of a family reunification scheme or upon marriage with a Maltese national of the possibility to obtain an autonomous residence permit on the grounds of being a victim of abuse irrespective of the duration of the relationship.

Introduction

Malta ratified the Istanbul Convention on 29 July 2014. In accordance with Article 78, paragraph 2, of the convention, Malta reserves the right not to apply the provisions laid down in Article 30, paragraph 2 and Article 44, paragraph 1, letter (e).

The Istanbul Convention is the most far-reaching international treaty to tackle violence against women and domestic violence. Its comprehensive set of provisions spans far-ranging preventive and protective measures as well as a number of obligations to ensure an adequate criminal justice response to such serious violations of human rights. It covers new ground by asking that root causes of violence against women (such as gender stereotyping, traditions harmful to women and general manifestations of gender inequality) be addressed.

The convention sets up a monitoring mechanism to assess the level of implementation by its parties. This monitoring mechanism consists of two pillars: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), an independent expert body, and the Committee of the Parties, a political body composed of official representatives of the parties to the convention.

In accordance with Article 68 of the convention, GREVIO initiated the baseline evaluation in respect of Malta by letter and transmission of its questionnaire on 8 February 2019. The order of reporting to GREVIO is based on a combination of regional groupings and order of ratification. The Maltese authorities subsequently submitted their state report on 9 September 2019 – the deadline set by GREVIO. Following an examination of the Maltese state report, GREVIO carried out an evaluation visit to Malta, which took place from 17 to 21 February 2020. The delegation was composed of:

- Iris Luarasi, First Vice-President of GREVIO
- Ivo Holc, Member of GREVIO
- Louise Hooper, Expert
- Francesca Montagna, Administrator at the Secretariat of the monitoring mechanism of the Istanbul Convention

During the evaluation visit, the delegation met with a wide range of governmental and non-governmental representatives working in the area of preventing and combating violence against women. A list of the national authorities, non-governmental organisations and others met is set out in Appendix II of this report. GREVIO is very grateful for the valuable information provided by all of them.

The evaluation visit was prepared in close co-operation with Ms Katya Unah, Assistant Director of the Commission on Gender-Based Violence and Domestic Violence, who was appointed as contact person for the evaluation by GREVIO. GREVIO wishes to extend its gratitude for the co-operation and support provided throughout the entire evaluation procedure, and for the constructive approach adopted by the Maltese authorities.

As a first baseline evaluation, GREVIO has looked into the measures of implementation taken by the Maltese authorities with regard to all aspects of the convention and reviewed data from the years 2017 and 2018. For the sake of brevity, this report prioritises some provisions over others. While it addresses all chapters of the convention (except Chapter VIII), it does not present detailed assessments and conclusions on every provision in each of these.

I. Purposes, definitions, equality and non-discrimination, general obligations

A. General Principles of the convention

1. Chapter I of the Istanbul Convention sets out general principles which apply to all the substantive articles contained in Chapters II to VII. These include, among others, that it is a fundamental human right for everyone, including women, to live a life free from violence in both the public and the private sphere, that the convention must be implemented without discrimination on any ground and that the potential for, and effects of, multiple forms of discrimination should be borne in mind. They also emphasise that a gender perspective must be integrated into the implementation of the convention and the evaluation of its impact.

2. By way of introduction, the Republic of Malta is an island country consisting of an archipelago of three main islands – Malta being the largest, most populated island hosting Malta's capital Valletta, followed by Gozo and, finally, Comino.

3. Malta's policies in the area of preventing and combating violence against women can be traced to 2006, with the entry into force of the Domestic Violence Act (Chapter 481) and the setting up of the Commission on Domestic Violence.² It is important to note, however, that relevant initiatives to prevent and combat violence against women started as early as 1986 with the opening of the shelter Dar Merhba Bik for victims of domestic violence, run by a religious congregation (the Good Shepherd Sisters) and later, with the setting up of the state-run Domestic Violence Service (DVS) in September 1994 with the aim of providing specialist social work services to victims of domestic violence.

4. Over the 2017-2018 biennium, the Ministry for European Affairs and Equality also implemented two projects co-funded by the European Union (EU) aimed at implementing its obligations stemming from the convention, albeit focusing primarily on domestic violence. The project "Full Co-operation: Zero Violence" (launched in 2014 and implemented between 2017 and 2018) aimed to strengthen the multisectoral and multidisciplinary co-operation of various professionals who are in contact with victims of violence against women by developing and implementing training programmes and a manual of procedures, and a set of standard operating procedures (SOPs) laying out such co-operation and co-ordination. One of the stated aims was also to set up a Multi-Agency Risk Assessment Meeting (MARAM) to facilitate, monitor and ensure information sharing between entities and prompt action to reduce the risk of harm to victims of domestic violence. The project also financed research to shed light on the stumbling blocks that victims of violence against women encounter when they access dedicated services.³ The second project, "Breaking the cycle of violence" (implemented between 2018 and 2020), aimed to identify the behaviours and attitudes towards three minority target groups (migrant women, LGBTIQ women and women with disabilities) and to change behaviours that may be conducive to violence against women, gender stereotyping and inequality.

5. Further to the ratification of the Istanbul Convention and its entry into force on 1 November 2014, Malta took important strides towards broadening its policy to encompass other forms of violence against women, other than domestic violence. Notably, in November 2017, Malta adopted "Society's Concern – Gender-Based Violence and Domestic Violence Strategy and Action Plan" (the strategy and action plan) whose stated aim is to seek to change the hearts and minds of individuals by calling on all members of society, in particular men and boys, to change attitudes, thereby achieving greater equality between women and men. The strategy and action plan identified prospective measures and actions to be achieved between 2017 and 2020, in four different areas:

² The first full-time staff member was however appointed in 2013, thus, until then the work of the Commission on Domestic Violence was limited.

³ See "Full cooperation: Zero Violence – Barriers to help-seeking in gender-based violence against women: a research study", Marceline Naudi, Marilyn Clark and Holger Saliba.

legal measures and integrated policies; data collection, research and training; awareness raising; and protection and support for victims and child witnesses.

6. In parallel with the adoption of the strategy and action plan, a further momentous step in the fight against violence against women was taken with the adoption of the Gender-Based Violence and Domestic Violence Act, CAP 581 (the GBVDV Act) and its entry into force on 14 May 2018, repealing and replacing the Domestic Violence Act. GREVIO welcomes the aim of the GBVDV Act to fully integrate and implement the provisions of the Istanbul Convention in national law. It introduces, *inter alia*, new state obligations such as the development of an action plan incorporating state-wide co-ordinated policies regarding all forms of violence against women; strengthens and widens the mandate of the former Commission on Domestic Violence (CDV) by transforming it into a Commission on Gender-Based Violence and Domestic Violence (CGBVDV); and amends a number of laws, including the Criminal Code, the Civil Code, the Police Act, the Probation Act and the Victims of Crime Act to bring them in line with the convention and international best practice. To this end, it transposes wholesale the Istanbul Convention into the Maltese legal framework, stating that where any ordinary law is inconsistent with these provisions of the convention, the latter will prevail, unless the former offers a higher degree of protection.⁴ At the same time, GREVIO notes that because not all practitioners may be fully aware of the text of the convention, this legislative technique may induce in error legal practitioners who apply the laws. To ensure clarity of the legal provisions in force, GREVIO considers that where inconsistencies persist between the convention and national law, and the national law does not offer a higher degree of protection, the latter should be amended accordingly.

7. With a view to ensuring clarity of the legal provisions in force, GREVIO encourages the Maltese authorities to amend national laws where inconsistencies persist between the Istanbul Convention and national law, and where the latter does not offer a higher degree of protection.

B. Scope of application of the convention and definitions (Articles 2 and 3)

8. In light of the scope of the Istanbul Convention set out in its Article 2, paragraph 1, the first baseline evaluation focuses on measures taken in relation to all forms of violence against women, including domestic violence, which affects women disproportionately. The term “violence against women” used throughout the questionnaire and throughout this report thus refers to any form of violence against women that is criminalised (or, where applicable, otherwise penalised) under Chapter V of the convention. These forms are psychological violence, stalking, physical violence, sexual violence, including rape, forced marriage, female genital mutilation (FGM), forced abortion, forced sterilisation and sexual harassment. The term also refers to domestic violence against women, which is defined as physical, sexual, psychological or economic violence that occurs within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

9. Further to the ratification of the Istanbul Convention and the entry into force of the GBVDV Act, the Maltese legal framework now addresses all forms of violence, mostly in line with the Istanbul Convention. Nevertheless, it is clear from reading the available policy documents and from the discussions held by GREVIO with state authorities and civil society that policies and service provision have not followed suit, as they address primarily domestic violence. GREVIO notes that there are insufficient policies and protocols in place as regards sexual violence/rape, and virtually no policies, protocols or dedicated service provision as regards other forms of violence against women such as female genital mutilation (FGM), forced marriage, forced abortion, forced sterilisation or stalking. GREVIO, indeed, notes that criminal justice responses are not sufficient and must be complemented with policies, services and dedicated measures addressing each form of violence against women identified and defined by the Istanbul Convention.

⁴ See Article 22 of the GBVDV Act.

10. The convention defines “violence against women” as “all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women ..., whether occurring in public or in private life”. The definition of “gender-based violence against women” offered in paragraph *d* of Article 3 seeks to ensure more clarity regarding the nature of the violence covered by explaining that this is “violence that is directed against a woman because she is a woman or that affects women disproportionately”. Hence, the violence addressed by the Istanbul Convention differs from other types of violence in that the victim’s gender is the primary motive. It is violence that is perpetrated against a woman that is both the cause and the result of unequal power relations based on perceived differences between women and men that lead to women’s subordinate status in the public and private spheres.

11. It is thus with concern that GREVIO notes that the GBVDV Act has adopted a gender-neutral approach to violence against women. The GBVDV Act does not define violence against women, using instead the concept of gender-based violence, understood as “all acts or omissions that are directed against a person because of their gender, that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. In its strategy and action plan document, the Maltese authorities have explained that “throughout the Strategy as well as in legislation, they have opted to employ the term gender-based violence rather than violence against women, in order to retain a gender perspective while encompassing all the gender and sex spectrum in its definition”. In other words, the authorities aimed to ensure that the law and strategy, in addition to women, addressed and could be resorted to by men and boys, including GBTIQ men and boys, fearing that it would otherwise be discriminatory. In this context, GREVIO recalls that Article 4, paragraph 4, sets out that special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of the Istanbul Convention.

12. GREVIO recognises the fact that domestic violence against men and boys exists, although research seems to indicate that their experiences of violence are different. Article 2, paragraph 2, of the Istanbul Convention in fact encourages parties to the convention to apply it to all victims of domestic violence, including men and boys. It also, however, emphasises that in doing so, “Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention.” GREVIO, however, deems that the gender-neutral approach has also had an impact in the implementation of laws and policies. Civil society has pointed out that the effects of the gender-neutral approach are particularly felt in the realm of justice. In this last respect, it is reflected in the insufficient response given to violence against women by the police and by the courts and has reinforced a system of dual reporting (see Chapter VI, Immediate response, prevention and protection). Professionals’ obligation to report instances of violence against women – such is the case in instances of rape or domestic violence – can also arguably be seen as not reflecting a gendered understanding of violence against women. Measures of protection and support provided to victims should in fact aim to empower women and avoid secondary victimisation. Where the state removes from the victim control over the ability to report violence to law enforcement and the subsequent measures to be taken, victims may feel disempowered, re-victimised and, at worse, may abstain from seeking needed assistance. GREVIO is therefore of the opinion that the definition of gender-based violence currently in use does not adequately reflect the scope of the convention. The legal framework in place thus omits to define violence against women and to state that it is a form of discrimination against women. In order to tackle the problem and its root causes effectively, both legislation and policy must acknowledge that violence against women is a violation of human rights and a form of discrimination against women because it affects them disproportionately more than men. Indeed, with the ratification of the Istanbul Convention, the Maltese authorities have committed not only to the implementation of its individual provisions but of its fundamental principles and definitions.

13. **GREVIO urges the authorities to enhance the implementation of the Istanbul Convention in relation to all forms of violence against women, beyond domestic violence, which are currently less addressed by policies, programmes and services, notably, rape and sexual violence, FGM, forced marriage, forced abortion, forced sterilisation and stalking.**

GREVIO furthermore recalls that Article 2, paragraph 1, of the Istanbul Convention affirms that all forms of violence against women, including domestic violence, affect women disproportionately and are a form of discrimination against women. It therefore strongly encourages the Maltese authorities to ensure that both national legislation and policies reflect this fundamental principle of the Istanbul Convention.

C. Fundamental rights, equality and non-discrimination (Article 4)

1. Gender equality and non-discrimination

14. GREVIO welcomes that the Maltese Constitution in its Article 14 prohibits discrimination on a wide range of grounds, including gender. GREVIO also welcomes the fact that in 2014 Malta became the first country in Europe and the second in the world to prohibit discrimination on grounds of sexual orientation and gender identity in its constitution. The Equality for Men and Women Act, the Employment and Industrial Relations Act and the Equal Treatment in Employment regulations are just some of the laws that aim to ensure equality between women and men in Malta. The National Commission for the Promotion of Equality (the NCPE) is the dedicated independent equality body that promotes equal treatment without discrimination and that hears cases of discrimination and issues non-binding opinions. GREVIO was informed that there are plans to extend the mandate of the NCPE to address more generally human rights and to equip it with sanctioning powers.

15. Reports, however, document that gender inequality, patriarchal attitudes and gender roles are deeply rooted in Maltese society. The expectation that women should remain with their male partners at all costs and that their primary role is to care for the family is one of its consequences.⁵ According to the EIGE Gender Equality Index, Malta is considered to be almost half way to gender equality.⁶ A 2011 study carried out by the CDV shows that out of a sample of 1 200 women, 16% had experienced physical violence, sexual violence or both by a current or former partner since the age of 15.⁷

2. Intersectional discrimination

16. Article 4, paragraph 3, of the convention requires parties to secure the implementation of their undertakings under the convention without any discrimination. This provision provides an open-ended list of grounds of discrimination which draws on that of Article 14 of the European Convention on Human Rights as well as the list contained in its Protocol No. 12 and, in addition, includes the grounds of gender, sexual orientation, gender identity, age, state of health, disability, marital status, and migrant or refugee status or other status. This obligation stems from the realisation that discrimination of certain groups of women, for example at the hands of law-enforcement agencies, the judiciary or service providers, is still widespread.⁸

17. GREVIO welcomes the ongoing research to document and analyse the violence experienced by certain women who are subject to multiple forms of discrimination (see Chapter II, Data collection and research). It notes, however, that Malta does not collect statistics on violence against women at the intersection of discrimination and that its strategy and action plan do not address the specific difficulties experienced by such groups. This notwithstanding, GREVIO notes that the information made available shows that several categories of women are likely to face increased and/or specific obstacles in relation to the forms of violence covered by the convention due to discrimination on multiple grounds – these are women with disabilities, women in prostitution and migrant women.

⁵. See “Full cooperation: Zero Violence – Barriers to help-seeking in gender-based violence against women: a research study”, Marceline Naudi, Marilyn Clark and Holger Saliba, p. 93.

⁶. Scoring 46.9/100, which ranks Malta 16th out of 28 EU member states. See Gender Equality Policies in Malta with a special focus on violence against women, in-depth analysis of the FEMM Committee, European Parliament, 2017.

⁷. Commission on Domestic Violence (2011), A nationwide research study on the prevalence of domestic violence against women in Malta and its impact on their employment prospects, p. 5.

⁸. See paragraphs 52-54 of the Explanatory Report.

18. As regards women with disabilities, GREVIO welcomes that Act No. VII of 2015, with a view to reflecting their perspective both at policy and operational level, has introduced the obligation to include people with disabilities in various state bodies present in the Maltese legal system, including in the CGBVDV. It further welcomes the social media campaign carried out during the 16 days of activism, in the context of the “Breaking the cycle of violence” campaign, which addressed domestic violence perpetrated against women with disabilities, raising awareness of how to recognise the signs, take action and seek support. Nonetheless, GREVIO recalls, as further specified in other sections of this report (see Chapter VI, Immediate response, prevention and protection), that women with disabilities experience several barriers to reporting, including as a result of the inaccessibility of police premises, a lack of training and stereotypes, including in the court system. GREVIO further notes that sufficient accommodation in domestic violence shelters and in long-term housing, catering to the needs of women with disabilities, requires improving.

19. As regards women in prostitution, as already indicated in Chapter VI, Immediate response, prevention and protection, GREVIO has received disquieting information indicating that the police often do not accept reports of rape or other forms of violence against women from them or are slow to respond, viewing such violence “as part of the job”. According to information received from civil society, it also appears that there have been instances in which women in prostitution were asked for sexual acts while reporting.⁹ The obligation of due diligence in the Istanbul Convention requires states to take into account the specific needs of women who face multiple and intersecting forms of discrimination and disadvantages.

20. Another group of vulnerable women is that of newly arrived women migrants or asylum seekers. As analysed in Chapter VII, Residence status, because of a lack of information provided to migrant women and/or made publicly available, migrant women are not aware that they can obtain an autonomous residence permit following a relationship breakdown as a result of domestic violence and, consequently, they often remain in abusive relationships. As regards women experiencing domestic violence while in the asylum process, they lack adequate social services support because of existing loopholes. Although a protocol between Agenzija Appogg and the Agency for the Welfare of Asylum Seekers (AWAS) is in place, it appears that at an institutional and budgetary level migrant and asylum-seeking women are viewed as the responsibility of AWAS and therefore Agenzija Appogg refers them back to AWAS rather than providing social services support. Furthermore, other significant barriers, partly a result of insufficient interpretation, hamper migrant women’s ability to report instances of domestic violence to the police. Finally, whereas interpretation is provided at the level of primary health care, migrants and asylum seekers experience difficulties at Mater Dei Hospital, the largest hospital in Malta. In the past, the hospital was resourced with a migrant unit with trained medical interpreters available. This service, however, is no longer available and causes difficulties for migrant/asylum-seeking women.

21. **GREVIO strongly encourages the Maltese authorities to address intersectional discrimination in its Strategy on Violence against Women and, in particular, to:**

- a. **carry out studies examining the incidence of violence against women experienced by women belonging to specific vulnerable categories, such as women with disabilities, women in prostitution and migrant/asylum-seeking women;**
- b. **include in policies specific measures aimed at preventing, protecting and prosecuting violence committed against particular vulnerable categories of women who are subject to multiple discrimination.**

D. State obligations and due diligence (Article 5)

22. Aspects in relation to the implementation of Article 5 of the Istanbul Convention are covered by Chapter V and VI of this report.

⁹. Information provided to GREVIO during the evaluation visit.

II. Integrated policies and data collection

23. Chapter II of the Istanbul Convention sets out the core requirement for a holistic response to violence against women: the need for state-wide effective, comprehensive and co-ordinated policies sustained by the necessary institutional, financial and organisational structures.

A. Comprehensive and co-ordinated policies (Article 7)

24. Malta's strategy and action plan to prevent and combat violence against women was launched on 25 November 2017, building on the measures taken under the project "Full Cooperation: Zero Violence". As explained in Chapter I, General Principles of the convention, the action plan identifies prospective measures and actions to be achieved between 2017 and 2020, in four different areas: (a) legal measures and integrated policies; (b) data collection, research and training; (c) awareness raising; (d) and protection and support for victims and child witnesses. These measures address a number of structural issues in the areas of prevention, protection and prosecution that affect all victims of violence against women (such as the need for awareness raising, training, collection of data and multi-agency co-operation, to name a few). Looking at its practical implementation, however, GREVIO notes that the strategy and action plan focuses principally on domestic violence and that it does not provide for specific integrated measures to tackle other harmful forms of violence against women such as rape and sexual violence, sexual harassment, stalking, FGM, forced marriage or forced sterilisation and abortion. GREVIO recalls in this respect that Article 7 of the Istanbul Convention requires states parties to ensure that co-ordinated and comprehensive measures to prevent and combat violence against women address all forms of violence against women, over and beyond domestic violence. GREVIO also recalls that the strategy does not address the specific difficulties experienced by women at the intersection of different grounds of discrimination, who, however, face increased obstacles in relation to the forms of violence covered by the convention.

25. Another requirement of Article 7 is that comprehensive and co-ordinated policies should be implemented throughout the entire national territory. GREVIO is concerned that current policies in the area of protection and support, as well as investigation and prosecution, do not sufficiently address the significant barriers and difficulties encountered by victims on the second largest island, Gozo (see Chapter IV, Specialist support services and Chapter VI, Immediate response, prevention and protection). GREVIO takes note that the Maltese authorities are aware of such barriers and that some preliminary steps have been taken to address those in the area of service provision.

26. Whereas an Interministerial Committee (IMC) chaired by the CGBVDV has been set up to spearhead the co-ordination and monitoring of the strategy and action plan, the implementation of the measures is left to each stakeholder for their respective area of competence. The IMC is composed of several governmental entities¹⁰ and meets every six weeks to discuss progress and any areas of concern in the implementation process of the strategy and action plan. The IMC also serves as a platform to co-ordinate the professionals who have been appointed as focal points of their respective entity under the new SOPs that were put in place under the Full Cooperation Zero Violence project. As will be discussed in Chapter IV, General obligations, the new SOPs aim to ensure co-operation and co-ordination of professionals from various sectors who come into contact with victims.

27. Article 7 of the convention requires that co-ordination should be ensured among all relevant actors, including civil society, both in the context of the adoption and in the implementation of policies to prevent and combat violence against women. GREVIO's attention has been drawn to the fact that,

¹⁰ The IMC is currently composed of the following entities: the CGBVDV and the Human Rights and Integration Directorate (Ministry for European Affairs and Equality); The National School Support System (Ministry for Education and Employment); Agenzija Appogg from the Foundation for Social Welfare Services (Ministry for the Family, Children's Rights and Social Security); The Department for Probation and Parole and the Malta Police Force (Ministry for Home Affairs and National Security); The Department for Justice, Ministry for Justice, Culture, and Local Government; The Department for Policy in Health (Deputy Prime Minister and Ministry for Health).

thus far, the IMC has met with civil society representatives once and that the insufficient consultation is leading to missed opportunities and possible duplication of work.¹¹ The Maltese authorities have explained that consultation with civil society is ensured through the CGBVDV, given that one of the sitting board members is a representative of civil society. They have further explained that such co-ordination was also ensured through meetings held by the predecessor of the CGBVDV with civil society. Civil society has, however, clarified that these meetings were not organised on a regular basis and did not touch upon policies. Furthermore, GREVIO has been informed that since the setting up of the IMC, important discussions on legislative changes to temporary protection orders (TPOs) have taken place in this forum without the input of civil society organisations, which are often the most familiar with the plights of victims that TPOs aim to address. GREVIO welcomes the acknowledgement by the Maltese authorities of the need to involve more NGOs, for example by consulting with them ahead of the IMC meetings, and encourages the Maltese authorities to embark in this direction.

28. As regards the evaluation of the strategy and its action plan, GREVIO welcomes the preparation of annual reports measuring the achievement of the measures that have been set in respect of 2018 and 2019 but has not been told whether they have been published. These reports highlight that a number of measures have been achieved or are ongoing, while some, such as the setting up of a multi-agency risk-assessment meeting, have been delayed.

29. GREVIO encourages the Maltese authorities to address at the policy level the significant barriers and difficulties encountered by victims who are in Gozo in the area of protection and support, as well as investigation and prosecution. GREVIO further strongly encourages the Maltese authorities to ensure that the Interministerial Committee holds regular consultations with civil society and that, more generally, the Maltese authorities support co-operation with all non-governmental actors and ensure their participation in the design of policies, legislative changes and programmes.

B. Financial resources (Article 8)

30. GREVIO welcomes the provision of the obligation, provided under Article 5, paragraph c, of the GBVDV Act, to allocate appropriate financial and human resources for the adequate implementation of the national action plan and strategy, including those actions carried out by NGOs and civil society. The report submitted by Malta pursuant to Article 68, paragraph 1, of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Baseline Report) (state report), indicates that the budget given for the implementation of the strategy and action plan in 2018 was part of the global annual budget allocated to the CGBVDV, notably €150 000. By comparison, prior to the launch of the strategy and action plan, the CGBVDV was allocated €72 000 in 2017. GREVIO was also informed that, as of 2019, a specific budget line has been allocated for the implementation of the strategy and action plan, although the allocated amount has not been communicated. The Maltese authorities have also indicated that the total annual costs of the Domestic Violence Services (DVS) is €1 746 148¹² and there was an increase in the budget of 57% between 2015 and 2019. The above-mentioned envelope includes sums earmarked for three shelters for victims of domestic violence (a total of €637 602 per year), which have entered into a public social partnership (PSP) with the Foundation for Social Welfare Services (FSWS) and are thus partially state funded.¹³ The Ministry of Family, Children's Rights and Social Security has, furthermore, entered into a six-month renewable agreement with Victim Support Malta (VSM), an NGO specialising in services for victims of crime, including sexual assault and rape, and the main provider of services in this area, and is currently negotiating with VSM a prospective three-

¹¹. See the written NGO submission, p. 10.

¹². The Domestic Violence Services are structurally located under the specialist agency Agenzija Appogg, which is in its turn administratively under the FSWS. The FSWS is a state agency under the Ministry of Family, Children's Rights and Social Security and is responsible, *inter alia*, for the provision of social welfare services, in particular in relation to alcohol and substance abuse and in relation to problems related to family welfare.

¹³. These include: the first stage shelter Dar Mherba Bik (run by the religious order Good Shepherd Sisters); the second stage shelter Dar Qalb ta' gesu of Fondazzjoni Sebħ; and the homeless shelter Dar Teresa Spinelli, which sometimes receives victims of domestic violence when the domestic violence shelters are at their full capacity.

year PSP agreement. GREVIO notes that, indeed, funding on a six-month basis is not sustainable and encourages the Maltese authorities to lengthen the duration of the agreements to enable the provider to work in a sustainable manner.

31. GREVIO notes that the prevalent sentiment among civil society actors that work in the area of violence against women is that the sum allocated to the CGBVDV, including to acquit its obligation to monitor and ensure the overall co-ordination of the implementation of the strategy and action plan, is not sufficient and does not enable it to ensure, for instance, regular awareness-raising initiatives and/or training. GREVIO has also received information indicating that the demand for services offered by VSM and domestic violence shelters seems to go far beyond the estimates that funding provision is based on and several NGOs are struggling with the resources made available, including where they have been increased to some extent. GREVIO understands, in particular, that frequently there are delays in the disbursement of funds made available to certain shelters that have entered into PSP agreements with the authorities and that, this notwithstanding, they are required to upgrade their services.

32. GREVIO encourages the Maltese authorities to increase funding for activities to prevent and combat violence against women and include measures that target all forms of violence against women, beyond domestic violence. GREVIO, furthermore, encourages the Maltese authorities to ensure that sums disbursed to NGOs providing services in the area of violence against women under a public social partnership agreement, enable them to fully meet the needs of all victims in a sustainable manner and on a long-term basis.

C. Non-governmental organisations and civil society (Article 9)

33. Malta benefits from a tightly knit network of NGOs that play a very important role in operating specialist support services for women victims of violence. These range from domestic violence shelters and NGOs carrying out advocacy and support, providing legal advice and representation or assisting victims of sexual assault and rape through psychosocial services, to name a few. Based on a victim-centred approach, they offer services that are essential and that cannot be met by the state alone. GREVIO notes that the Maltese authorities acknowledge the important contribution that these actors make in the area of violence against women but refers to the limited consultation with NGOs at the policy level noted in the section Comprehensive and co-ordinated policies of this chapter.

34. GREVIO notes that with the entry into force of the GBVDV Act, the state agency Agenzija Appogg has been designated under Article 19, paragraph 9, of the law as “the designated authority” for the provision of preventive, therapeutic and/or treatment programmes for victims and perpetrators of all forms of violence against women. As will be described in more detail in Chapter IV, Specialist support services, GREVIO notes that notwithstanding the GBVDV Act, Agenzija Appogg is primarily responsible for support services for victims of domestic violence. In addition to preventive, therapeutic and treatment programmes for victims and perpetrators of domestic violence, Agenzija Appogg’s primary responsibility includes, but is not limited to: the provision of a public helpline; the assessment of the needs and the risks of victims and the development of care plans; sheltered accommodation, including in partnership with other organisations; and the provision of information on the rights of victims. The GBVDV Act further provides under its Article 19, paragraph 9, that the designated agency “where necessary can liaise with any other agency, institution, non-governmental organization ... that is competent” in the area of violence against women. In this context, as has been described in Chapter II, Financial resources, Agenzija Appogg, through its line ministry, has entered into PSP agreements with three NGOs providing sheltered accommodation to victims of domestic violence and, in the case of Dar Merhba Bik, victims of rape. The Maltese authorities have explained that the decision to enter into a PSP agreement with an NGO is a political decision and is reliant on the NGO approaching the authorities and proposing a “business plan”. NGOs also receive funds on a project-based basis, in the context of EU co-funded projects when partnering with the CGBVDV, such as in the campaign Breaking the Cycle of Violence.

35. GREVIO thus notes with concern that there is no transparent and accountable procedure in place under which NGOs specialised in the area of violence against women can compete for and request sustainable, long-term state funding. GREVIO has been informed that a call for tender is issued on a project-based basis by the government annually and is open to all registered NGOs. NGOs working in the area of violence against women need to compete with other organisations that operate in entirely different realms such as sports or music, decreasing their chances of obtaining funding. Moreover, the amount allocated per project is limited to a maximum of €20 000 and is considered insufficient to properly carry out the mandate of NGOs operating in the area of violence against women.¹⁴

36. GREVIO remarks that the situation as described in the above paragraphs may impact on the ability of skilled and experienced specialist women's associations to play an independent role in providing essential services such as counselling, shelter and or advocacy. GREVIO's attention has been drawn to certain cases of specialist women's associations that operate in the area of violence against women but that do not benefit from sustainable state funding.¹⁵

37. Moreover, GREVIO notes that certain PSP agreements that shelters of domestic violence have entered into provide for mandatory referrals from the DVS of Agenzija Appogg. While some victims may seek help directly with the shelters and accordingly be offered immediate protection, GREVIO has been informed that the next day victims are, nonetheless, referred to DVS. GREVIO is concerned that mandatory referrals might prevent some women from coming forward to seek help due to a possible lack of trust in the authorities. At the same time, mandatory referrals would stand in the way of self-referrals by victims themselves.

38. GREVIO strongly encourages the Maltese authorities to put in place a dedicated, transparent and accountable public procedure under which all NGOs that provide specialist support services to victims of all forms of violence against women and their children can compete for and request sustainable and long-term funding. Such procedure should place due emphasis on their experience and track record in providing such services. GREVIO further strongly encourages the Maltese authorities to remove mandatory referrals from Agenzija Appogg to access domestic violence shelters, including by offering women victims of domestic violence the possibility to self-refer.

D. Co-ordinating body (Article 10)

39. The CGBVDV is regulated under Articles 6 to 18 of the GBVDV Act and therewith defined as a co-ordinating body that aims to offer a holistic response to all the forms of violence against women covered by the Istanbul Convention, as per Article 10 of the convention. Its functions are listed under Article 13 of the same act and include, but are not limited to: monitoring and overseeing/co-ordinating the effective implementation of the strategy and action plan; collecting and collating disaggregated statistical data at regular intervals; conducting, in co-operation with the competent authorities, population-based surveys; and conducting awareness-raising campaigns or programmes.¹⁶ For the purpose of collecting and collating disaggregated statistics, the CGBVDV has entered into an

¹⁴. See written NGO submission, p. 11.

¹⁵. One such NGO provides free legal assistance and the other sheltered accommodation.

¹⁶. Under this same article, the CGBVDV is also responsible for (a) advising the authorities on all issues relating to violence against women; (b) engaging with all relevant stakeholders, including civil society, in the effective implementation of the strategy and action plan; (c) determining the appropriate financial and human resources required for the adequate implementation of the integrated policies, measures and programmes; (d) supporting research in the field of violence against women in order to study its root causes and effects, incidence and conviction rates, as well as the efficacy of measures taken to implement the convention; (e) monitoring national standards for support services for victims and perpetrators of violence against women, including public or private shelter services or facilities; (f) monitoring standards and protocols for professionals and organising specialised training for the said professionals, including, but not limited to, educators, members of the judiciary and law-enforcement officers; (g) collaborating with the educational authorities to educate students on violence against women; (h) providing guidelines to the media in relation to violence against women.

agreement with the National Statistics Office (NSO), which provides technical assistance for the annual collection, collation and harmonisation of such data from relevant stakeholders.

40. Co-ordination and implementation of the strategy and action plan is further attained through the meetings of the IMC, which the GBVDV Commission chairs.

41. GREVIO welcomes the fact that the CGBVDV is a fully institutionalised entity with legal personality and dedicated financial and human resources. Under Article 6 of the GBVDV Act, it is legally represented by its commissioner and is composed of no less than six and no more than 12 members. Under this act the commissioner and commission members must be knowledgeable on issues related to violence against women and or legal and administrative-related issues and are appointed by the Minister of European Affairs and Equality for a term of three years after consulting both public and private entities involved in the research, prevention and treatment of violence against women. The commissioner and commission members meet on a monthly basis to discuss legislative and policy aspects, such as the need to focus on a particular area of violence against women; they also meet with service providers. GREVIO welcomes the diverse membership of the CGBVDV and that fact that it includes, in addition to a person with disability, a victim of violence against women, a representative of NGOs and a representative of the LGBT community. GREVIO notes, however, that under Article 10, paragraph 2, of the GBVDV Act, any member of the commission may at any time be removed by the minister after consultation with other members of the commission and replaced by another member. GREVIO considers that safeguards to limit the wide discretion that the relevant minister enjoys in appointing and dismissing commission members should be envisaged.

42. The budget for the CGBVDV was doubled in 2018 but no information on budgetary developments in 2019 have been provided. It is staffed with four full-time employees who are responsible for drafting policies and carrying out research and awareness-raising campaigns, among other tasks. Although current budgetary entitlements and staffing have clearly improved following the entry into force of the GBVDV Act and political will to stem violence against women is present, various stakeholders have indicated that budgeting on a yearly and project-based basis, as is currently the case, is insufficient. GREVIO was made aware of the benefit that an increase in the budget and a multi-annual budget plan would bring.

43. An evaluation of the implementation of the strategy and action plan was carried out in 2018 and 2019 by the CGBVDV. GREVIO notes that under Article 10 of the convention, the evaluation function is to be understood as implying an independent and scientific assessment of whether measures taken achieve their aim and/or expose any unintended effects. GREVIO highlights the importance of differentiating between policy making, implementation, monitoring and evaluation and attributing these functions to separate institutions. A set-up in which those who co-ordinate and implement measures and bear political responsibility for them are at the same time called upon to evaluate the efficacy of those very measures might not ensure the necessary objectivity to assess and independently evaluate the policies and measures taken.

44. GREVIO encourages the Maltese authorities to set up separate bodies, on one hand for the co-ordination and implementation of policies and measures, and on the other hand for their monitoring and evaluation, in order to ensure objectivity. It further encourages the Maltese authorities to increase the funding available to the Commission on Gender-Based Violence and Domestic Violence and provide for budgets with a longer time frame than is currently the case, to enable the commission to plan its activities in a more sustainable and effective manner.

E. Data collection and research (Article 11)

1. Administrative data collection

45. Preventing and combating violence against women, including domestic violence, requires evidence-based policy making. The collection of systematic and comparable data from all relevant administrative sources is crucial in this regard, as is information on the prevalence of all forms of violence against women.

46. GREVIO welcomes the initial steps taken by the CGBVDV to collect data on violence against women together with the NSO, to whom the task of data analysis and harmonisation of data has been subcontracted since 2017. As of 2017, the data collected by the CGBVDV originating from the courts, prosecuting authorities, law enforcement, health-care practitioners, social workers and domestic violence shelters has been transmitted to the NSO, which in turn verifies, analyses and harmonises the information and generates statistical tables that are published by the CGBVDV in its annual report. GREVIO notes, however, that many factors prevent the emergence of a detailed picture in Malta of the different forms of violence against women in relation to women's victimisation, reporting to the police, seeking help and how they are being responded to.

47. GREVIO notes from the outset that data collection pertains almost exclusively to information on domestic violence. Gaps in data collection are particularly significant in the area of law enforcement and justice. Indeed, the statistics collected by the police concern primarily offences related to domestic violence and/or stalking and do not encompass the wide range of offences provided under the Istanbul Convention. Furthermore, such statistics are not disaggregated in line with the requirements of the convention. Courts do not transmit data to the NSO and do not maintain statistics on victims and perpetrators disaggregated in line with the requirements of the convention. Data provided by the courts to GREVIO on the number of cases that have been prosecuted and the final convictions handed down has been extracted manually and relate exclusively to cases of domestic violence. Finally, police, prosecutors and courts do not use the same definitions when collecting data. The lack of co-ordination and comparability of such data makes it therefore impossible to track cases at all stages of the law-enforcement and judicial proceedings and to identify their outcomes. In this connection, GREVIO refers to the European Institute for Gender Equality recommendations, stating that the responsibilities in relation to data collection for the police and justice sectors should be fine-tuned through the adoption of guidelines.^{17 18}

48. Data from civil courts such as the number of protection orders issued in the context of civil proceedings and data on compensation claims brought before criminal and civil courts is equally lacking. GREVIO was not provided with data on the number of TPOs that have been issued, their violations, and the sanctions imposed as a result of such violations. The Maltese authorities, however, indicated that they intended from January 2020 to collect this type of data. While the number of protection orders issued in the context of summary proceedings is provided, this data does not include the number of violations and sanctions imposed as a result of such breaches and the number of cases where the woman was re-victimised or murdered because of the breaches. Data on the number of decisions on custody/visitation/residence of children that have expressly taken into account reports of domestic violence is equally unavailable. Finally, GREVIO notes that information as to whether victims use the remedies available to address the authorities' failure to diligently prevent, investigate and punish acts of violence covered by the scope of the Istanbul Convention is also absent.

49. GREVIO notes and welcomes the fact that data at the national level regarding victims' access to primary health care is available for cases of domestic violence. GREVIO welcomes in particular the introduction by the Ministry of Health of a Domestic Violence Register that records information such as the type of injury, sex of the victim, the victim-perpetrator relationship and the number of

¹⁷. See MALTA Recommendations to improve data collection on intimate partner violence by the police and justice sectors, EIGE, 2018, p. 2.

¹⁸. GREVIO has been informed by the authorities that steps are being taken to adopt an integrated approach to the collection of data across all criminal justice sectors, through a "digital justice strategy".

minor dependents present in the household of the victim. Data has also been collected documenting the number of cases of domestic violence registered at the DVS of Agenzija Appogg, broken down by gender, type of abuse, age and districts. Furthermore, statistics are also collected on the number of cases registered with perpetrator programmes, broken down by gender, age and district. Statistical disaggregated information is also available on the number of victims registered at the domestic violence shelters. Once again, however, comparable data on access to social and health services with respect to other forms of violence against women under the convention are not collected.

50. GREVIO further notes that Malta does not collect statistics about violence experienced by women who are subject to multiple discrimination.

51. In the area of asylum, GREVIO welcomes that in the course of 2019 the Office of the Refugee Commissioner (REFCOM) began collecting data on the grounds under which refugee status is granted, disaggregated by sex. It is therefore possible to determine whether any women have been granted refugee status on the basis of belonging to a specific social group or on the basis of any other refugee ground. Notwithstanding this positive development and taking into account that no women have been granted refugee status in the course of the last two years, it appears that no statistics are collected to capture whether women are granted international protection on the basis of gender-based persecution.

52. GREVIO strongly encourages the Maltese authorities to ensure the comprehensive collection of disaggregated data in relation to all forms of violence covered by the Istanbul Convention at all stages of criminal justice (from reporting, to investigation, to the opening of criminal proceedings and their outcome), disaggregated by sex, age, type of violence and the relationship of the perpetrator to the victim. Such data should be co-ordinated and comparable so that cases can be tracked at all stages of the law-enforcement and judicial proceedings. To this end, GREVIO encourages the Maltese authorities to issue guidelines on data collection for the police and justice sectors. Such steps would allow the Maltese authorities to assess the effectiveness of the criminal justice system and to study the factors that lead to low prosecution and conviction rates and to take legislative and policy measures to address these.

53. **GREVIO further strongly encourages the Maltese authorities to collect disaggregated data on:**

- a. **the number of protection orders issued in the context of civil proceedings;**
- b. **the number of temporary protection orders issued, their violations and the sanctions imposed as a result of such violations in cases of violence against women;**
- c. **the number of protection orders issued in the context of criminal proceedings, including the number of violations and sanctions imposed as a result of such breaches and the number of cases where the woman was re-victimised or murdered because of such breaches;**
- d. **data on the number of decisions on custody/visitation/residence of children that have expressly taken into account reports of domestic violence;**
- e. **whether victims of all forms of violence use the remedies available to address the authorities' failure to diligently prevent, investigate and punish acts of violence covered by the scope of the Istanbul Convention;**
- f. **the number of cases in which women victims of violence have claimed and have obtained compensation either from the perpetrator or the state for offences covered by the Istanbul Convention; and**
- g. **access to social services and to health care with respect to other forms of violence against women under the convention, other than domestic violence.**

2. Population-based surveys

54. In 2018 Malta participated in the testing and piloting of a survey on violence against women as part of a Eurostat project. The aim of this project was to pre-test, translate and pilot an EU questionnaire on violence against women which is based on the methodology used by the European Union Agency for Fundamental Rights (FRA) for its report “Violence against women: an EU-wide survey” published in 2014. Due to the small sample size of the pilot, the results are not yet deemed adequate to measure the prevalence of violence against women in Malta. It is thus not known whether there have been any changes to the prevalence rates identified by the FRA survey in 2014, which showed that 22% of women in Malta had experienced physical and/or sexual violence by a (former or current) or non-partner.¹⁹

55. **GREVIO encourages the Maltese authorities to carry out dedicated surveys on all forms of violence against women at regular intervals. All surveys should be conducted with the use of methods that allow women to feel safe and free to disclose incidents of violence.**

3. Research

56. The Maltese authorities brought to GREVIO’s attention an important research study entitled “Barriers to help-seeking in gender-based violence against women”, carried out in 2017 by the Department of Gender Studies, Faculty of Social Wellbeing at the University of Malta, as part of the EU co-funded project “Full Cooperation: Zero Violence”. The research aims to identify and explore the barriers faced by women victims of violence against women in Malta and Gozo when seeking help from various state and non-state services, as well as those faced by professionals when delivering those services to victims. It identifies the predominantly patriarchal Maltese society as an underlying barrier and finds that gender inequality still manifests itself in social attitudes, gender roles and dominant discourses. From the research, it emerges that, *inter alia*, victims felt they were not sufficiently informed about the available services and their rights, poor interagency collaboration, and victims’ re-victimisation through the justice system. As a result of this qualitative study, a list of 32 recommendations was presented by the University of Malta touching upon, among other things, awareness campaigns, specialist training, promotion of gender sensitivity in the justice system, the provision of handbooks and training to first-response officers and investigators, specialist services on the Island of Gozo and mechanisms for more effective interagency collaboration.

57. Also of particular interest is a research study on FGM in Malta, published by the National Commission for the Promotion of Equality (NCPE) in the context of the 2013-2015 campaign “Forms of Violence in Malta, a gender perspective”. This study is the first of its kind in Malta and looks at *inter alia*, the health implications of FGM and the legal framework at the international, European and national levels, highlighting a number of findings. These include the absence of policies and specific guidelines for health professionals in Malta who may come into contact with patients who have suffered from FGM, as well as inadequate training both for health professionals and those working in the area of asylum. It concludes with some important recommendations such as the need to: train police officers on how to deal with cases of FGM to ensure the effective prosecution of this crime; develop training for health-care professionals on this issue; develop protocols and procedures that may be followed when FGM or the risk thereof is identified. Finally, GREVIO is aware of ongoing research commissioned under the “Breaking the Cycle of Violence” project that addresses the prevalence of violence among women with disabilities, migrant women and LGBTI women.

58. GREVIO welcomes these initiatives as an effort to understand the root causes and effects of violence against women and considers that current policies do not as yet capitalise on the wealth of the information and findings provided. Moreover, GREVIO considers that synergies between policy makers and academia for the purposes of ensuring evidence-based policies is still limited.

¹⁹. “Violence against women: an EU-wide survey”, (2014), European Union Agency for Fundamental Rights, Table 2.1., p. 21; available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf.

59. **GREVIO encourages the Maltese authorities to step up their support for academic research into issues related to violence against women, including by financially encouraging research into these areas. When designing policies and laws that aim to prevent and combat violence against women, GREVIO invites the authorities to draw from the expertise and the findings of research in the area of violence against women. GREVIO further encourages the Maltese authorities to evaluate existing policies and legislative measures and assess their level of implementation, efficacy and victim satisfaction, also in light of research in the area of violence against women.**

60. **GREVIO, moreover, encourages the authorities to support research on all forms of violence against women and on violence that affects specific groups of victims, such as women from ethnic minorities.**

III. Prevention

61. This chapter contains a number of general and more specific obligations in the area of prevention. These include early preventive measures such as changing social and cultural patterns of behaviour of women and men, eradicating prejudices and gender stereotypes, and measures to involve all of society, including men and boys, in achieving gender equality and prevention of violence against women. It also includes more specific preventive measures such as awareness raising and campaigning, ensuring the adequate training of all professionals, education in schools and other settings, and, last but not least, measures such as perpetrator programmes to prevent further victimisation.

A. Awareness raising (Article 13)

62. GREVIO welcomes the Maltese authorities' efforts to run an increasing number of awareness-raising campaigns since the entry into force of the Istanbul Convention. These awareness-raising campaigns are listed in the state report²⁰ and include, but are not limited to, the campaigns launched in the context of the EU co-funded projects "Full Cooperation: Zero Violence" and "Breaking the cycle of violence". The subjects covered address primarily domestic violence but have in some instances also tackled sexual harassment,²¹ gender equality²² and violence against women at the intersection of discrimination. Nonetheless, GREVIO is concerned that awareness campaigns do not address all the different manifestations of violence against women as covered by the Istanbul Convention, including sexual violence, rape, stalking, forced abortion or forced sterilisation. GREVIO is also concerned that no dedicated awareness-raising initiatives have been carried out to prevent and combat child and forced marriages or harmful practices such as FGM. Information reviewed by GREVIO indicates that, while not widespread, forced marriage and FGM are prevalent among certain migrant communities present in Malta, thus making preventive action extremely important. The above-mentioned campaigns include components targeting victims, thereby raising their awareness of their rights and referring them to support services, but also include segments that are directed towards the general public to change attitudes and perception of violence against women and to support victims. GREVIO notes that women's NGOs have been actively involved in the implementation of such awareness-raising campaigns, together with the CGBVDV, the NCPE and other authorities.

63. GREVIO further notes that most campaigns seem to be project-based, dependent on EU funding and mostly carried out in the context of the annual international campaign, 16 Days of Activism against Gender-Based Violence, and on International Women's Day. GREVIO recalls that Article 13 of the convention entails the obligation to run public awareness campaigns on a regular basis in order to help all members of society to recognise violence, speak out against it and support its victims. It therefore welcomes the inclusion in the national strategy and action plan of a specific remit to run public awareness campaigns on a regular basis.

64. GREVIO is not aware of any evaluation carried out at the national level thus far to measure the impact that awareness-raising campaigns have had on how the Maltese population perceive sexism, gender equality and gender-based violence.

65. GREVIO strongly encourages the Maltese authorities to promote on a regular basis awareness-raising campaigns to increase awareness among the general public of the different manifestations of all forms of violence covered by the scope of the Istanbul Convention, beyond domestic violence. The Maltese authorities should in particular:

²⁰. See page 15 of the State report.

²¹. For instance, the campaign run by the NCPE "Sexual Harassment: At the Workplace and in the Social Context" Women's International Day on 3 March 2018. The objective was to raise awareness as well as to encourage stakeholders to work towards preventing and combatting sexual harassment in all social, economic and political spheres.

²². Notably in 2017, the NCPE ran the campaign "Equality Beyond Genders" targeting post-secondary male school students. Similarly, the CGBVDV under the project "Breaking the Cycle of Violence" has carried out equality and violence prevention training to a large number of boys in the context of the Boy Scouts organisation.

- a. **ensure that sufficient and sustainable funding is made available for awareness-raising campaigns, including, for this purpose, to women's support services and women's NGOs;**
- b. **carry out research on the impact that awareness-raising campaigns have had on the Maltese population and the way they perceive sexism, gender equality and gender-based violence.**

B. Education (Article 14)

66. While Malta's school system is divided into three streams – state schools, Church schools and independent schools – all schools are required to follow a minimum national curriculum. GREVIO welcomes the fact that teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, sexual education and, to a certain extent, domestic violence are included in the mandatory national curriculum through the course Personal, Social and Career Development (PSCD). This topic is introduced in primary school and its content is adapted to the maturity and capacity of the student. In addition to the issues mentioned above, PSCD addresses in an engaging and sensitive manner a wide variety of matters ranging from communication, recognising caring and non-caring relationships, safety on the internet, accepting diversity and different sexual orientations, sexual education, bullying, personal hygiene and career orientation. The Maltese authorities have also referred to the Ethics classes offered in state schools as an alternative to the classes on religion in secondary school. GREVIO was informed that such classes touch upon abusive relationships, xenophobia, racism and the importance of consent in sexual relations, among other topics. However, due to the shortage of qualified teachers, the provision of this course does not meet the demand. Notwithstanding the positive aspects referred to above, GREVIO notes that teaching of the different forms of gender-based violence against women, including the provision of more in-depth information on the characteristics and dynamics of domestic violence and the specific vulnerability of women at the intersection of discrimination is still lacking in the Maltese education system. GREVIO welcomes the acknowledgement by the Maltese authorities of the need to strengthen the education curriculum with a view to preventing violence against women and the fact that some steps are currently being taken in that direction.

67. As regards the identification of victims and the way they are handled by school establishments, GREVIO has been informed that Church schools have guidelines that set out procedures that apply to the following cases: disclosure of violence at home or at school by a student, when s/he is a victim of abuse or a by-stander; and disclosure from parents who are victims of violence. They also provide information on how to seek support and on how the school should intervene following receipt of a report of violence. As regards state schools, GREVIO has been informed by the authorities that a memorandum of understanding between the Ministry for Education and Employment and Child Protection services is currently being reviewed and includes guidelines to follow in case abuse of a child is reported. It is not clear to what extent, however, such guidelines apply already in state schools, should issues related to violence against women arise. The Maltese authorities have also referred to the role of guidance counsellors in state schools – teachers with a reduced working load that students can turn to if they have any problems.

68. Notwithstanding the above, GREVIO is concerned that education establishments may not be sufficiently sensitised on all of the different existing forms of violence against women nor about their role in preventing them, including through standardised dedicated protocols. In particular, there seems to be a lack of an understanding on how to identify children at risk or potentially at risk of being taken out of Malta for the purpose of forced marriage or to perform FGM. By way of example, according to information provided by civil society, there have been instances of children not returning to school, which may have been linked to forced marriage (see Chapter V, Forced marriage). The inclusion of these issues in the curricula for future teachers and the issue of dedicated guidelines/protocols to instruct teachers on how to take preventive action is therefore of vital importance. GREVIO has been informed by the authorities that in future they envisage including

some training for school staff on the practices of forced marriage and FGM and to formulate a prevention strategy in this respect.

69. As regards the promotion of the principles mentioned above in informal educational facilities, as well as sports and cultural facilities, GREVIO has been informed that football clubs and local Girl and Boy Scouts groups have been involved in awareness-raising campaigns on violence against women, such as the campaign “Full Cooperation: Zero Violence”.

70. GREVIO encourages the Maltese authorities to strengthen the teaching of all of the different forms of gender-based violence against women, including the provision of more in-depth information on the characteristics and dynamics of domestic violence and the specific vulnerability of women at the intersection of discrimination, at all levels of education, adapted to the evolving capacity of learners.

C. Training of professionals (Article 15)

71. The standard set by the convention in its Article 15 is that of systematic initial and in-service training of the relevant professionals who deal with victims or perpetrators of all acts of violence. The training that is required must cover the prevention and detection of such violence, equality between women and men, the needs and rights of victims and the prevention of secondary victimisation. The questionnaire drawn up by GREVIO lists, in the table appended to it, the professional groups that GREVIO considers relevant and in need of such training.²³

72. Against this background, the information obtained by GREVIO from the Maltese state report and during the evaluation visit reveals significant lacunae in the level of training on violence against women imparted to members of the various professions. This information points to minimal initial training as regards domestic violence and no initial training with regard to other forms of violence against women across all of the professions referred to. Furthermore, in-service training is primarily carried out on a voluntary basis and sporadic for all professions as is outlined in the following paragraphs. The principal in-service training programme referred to by the Maltese authorities was carried out under the project “Full Cooperation: Zero Violence”²⁴ and addressed a wide range of professionals.²⁵ The aim was to increase the awareness of these professionals of violence against women and equip them with the skills needed to identify and treat respectfully victims while avoiding secondary victimisation. It also aimed to strengthen the co-ordination among professionals in the provision of all related services. The training was divided into three stages and was delivered during 2017 and 2018, with both stage one and stage two training sessions lasting three days.²⁶

73. As regards more specifically professionals in the criminal justice system, GREVIO notes with great concern that there is minimal or no mandatory training on violence covered by the Istanbul Convention. A four-month training programme is required to qualify as a police officer in Malta. This programme does not encompass any training on violence against women, although the authorities have referred to short workshops that police officers can attend on a voluntary basis. As regards in-

²³. These professional groups are, at a minimum, police and other law-enforcement officials, prosecutors, judges, social workers, medical doctors, nurses and midwives, psychologists (counsellors and psychotherapists), immigration and asylum officials, educational staff and school administrators, journalists and other media professionals, servicemen and servicewomen.

²⁴. In the state report, the Maltese authorities have defined this initiative as initial training of professionals; however, GREVIO understands initial training to mean training provided systematically at the beginning of the professional career. GREVIO understands that the above-mentioned training was a stand-alone initiative that did not necessarily concern professionals at the beginning of their career.

²⁵. These included doctors, nurses, midwives, gynaecologists, social workers, psycho-social professionals, PSCD and guidance teachers, legal aid lawyers and professionals from the Department of Justice, judges, magistrates, probation officers, police officers and professionals from NGOs.

²⁶. As indicated by the state report, in total 716 professionals completed the three-day training programme of stage 1. Participants who completed Stage 1 of the training were reinvited for Stage 2, which was delivered in 2018. In total, 600 professionals completed the additional three days of Stage 2. Stage 3 training was specifically designed for professionals who have the capacity and motivation to train their peers and colleagues and, for this, 98 professionals completed a one-day train-the-trainer programme.

service training, in addition to the training under the “Full Cooperation: Zero Violence” project, the authorities have referred to in-house training carried out during 2019 for a number of police officers on legislative developments, including on the introduction of risk assessments and on the existing SOPs in place, as well as a training for 157 new police sergeants carried out in 2019 by the CGBVDV. The information available to GREVIO shows, however, that those who benefit from training are often higher ranking officers and not police officers who are in the front-line and receiving reports from victims.²⁷ Furthermore, the training addresses solely domestic violence and does not cover the wide variety of forms of gender-based violence against women, including, for instance FGM, forced marriage, or even rape. The lack of systematic and mandatory training for law-enforcement officers on all forms of violence against women has serious ramifications for the responses to such violence and criminal investigations. As a result, officers who routinely receive reports or respond to domestic violence call-outs are not trained on the dynamics of domestic violence, power and control, nor on the gendered aspect of such violence, its risk factors and the need to ensure victim protection. The lack of training leads to the phenomenon of dual reporting, alleged refusals to receive reports, interviewing the victims in an insensitive manner, lack of recording of patterns of abuse in cases of domestic violence, barriers to reporting for particularly vulnerable categories of women, insufficient and ineffective collection of evidence in cases of rape and domestic violence and other grave consequences described in Chapter VI, Immediate response, prevention and protection.

74. Similarly, prosecutors and judges do not benefit from any initial training on the different forms of violence against women, and the sporadic training that is dispensed on a voluntary basis does not reach all relevant actors. As a result, information brought to GREVIO’s attention points to little sensitivity from judges, leading to repeat victimisation. Moreover, in the absence of training and in light of the low levels of prosecutions and convictions, GREVIO has noted in Chapter VI, Immediate response, prevention and protection, and in Chapter V, that judges appear to have inadequate understanding of the change in paradigm in proving rape, of the role and importance of temporary protection orders and protection orders in breaking the cycle of violence in cases of domestic violence, or of the role and importance of referring perpetrators to domestic violence programmes.

75. As regards legal aid lawyers, GREVIO was informed that they received a one-off training session in 2017 as part of the project “Full Cooperation: Zero Violence”, as well as mandatory training in 2019 on this same topic. As for issues related to violence against women with a specific focus on migrants, three seminars were offered to legal aid lawyers by the UN Migration Agency (IOM) in 2019.

76. As regards health professionals, reports show that health establishments are one of the first entry points for victims of violence against women and that specialised training to increase knowledge and skills in this respect is greatly needed.²⁸ GREVIO notes that, other than the training provided under the “Full Cooperation: Zero Violence” project, an 11-day project-based training programme was provided by IOM, which addressed, *inter alia*, how to identify FGM and certain aspects of domestic violence. In this respect, a report published by the NCPE on FGM highlights the need to introduce systematic training on FGM for health professionals, accompanied by standardised protocols. Health professionals have also highlighted the dire need for training in the area of sexual violence as they have had to resort to training provided abroad, on their own initiative. Furthermore, GREVIO is aware that training for these categories of professionals has been suspended, pending the disagreement on the interagency protocol (see Chapter IV, General obligations).

77. As regards educators, once again, the main training on violence against women provided by the authorities is the training under the “Full Cooperation: Zero Violence” project. The lack of awareness of education establishments about how to identify children at risk or potentially at risk of being taken out of Malta for the purpose of forced marriage or to perform FGM and about their role in preventing these and other forms of violence against women and children, including through standardised dedicated protocols, has been addressed in the section on Education. No specific

²⁷. See the written NGO submission, p. 15.

²⁸. See Full Cooperation: Zero Violence, Barriers to help-seeking in gender-based violence against women: a research study, Marceline Naudi, Marilyn Clark, Holger Saliba, p. 34.

training on violence against women has been brought to GREVIO's attention as regards journalists, whereas in-service training has been offered to social workers by the FSWS on a range of issues such as the prevention and detection of violence, equality between men and women, rights of victims, prevention of violence and secondary victimisation and multi-agency co-operation.

78. GREVIO urges the Maltese authorities to equip the police with the knowledge and powers to respond promptly and appropriately to all forms of violence against women covered by the Istanbul Convention. In particular, the Maltese authorities should:

- a. step up initial and in-service training on all forms of violence against women for all police officers who directly or indirectly receive/investigate such offences. Training should in particular:**
 - address all forms of violence against women covered by the Istanbul Convention;
 - address the concept of power and control and the need to adequately record patterns of abuse in the context of domestic violence;
 - instruct on how and where to receive reports and interview the victims in a manner that prevents secondary victimisation;
 - sensitise and prepare police officers to deal with reports from women who are in a particularly vulnerable situation such as women with disabilities and women in prostitution;
- b. provide guidelines/protocols specifying how to proceed in cases of domestic violence, including cases of psychological violence and other forms of violence against women. Such protocols/guidelines should in particular address how to build a case fit for prosecution and cover, *inter alia*, how to comprehensively collect all relevant evidence in addition to the victim's statement or, in cases of rape, in addition to the forensic evidence lifted from the victim.**

79. With a view to curbing the alarmingly low level of prosecutions and convictions of all forms of violence against women, GREVIO urges the Maltese authorities to provide robust training on violence against women to members of the Attorney General's office, the police (given their prosecutorial role) and judges, as well as guidelines or protocols. These should in particular address:

- a. domestic violence, including the concept of power and control and the need to take into account patterns of abusive behaviour;**
- b. the dissuasive and re-victimising effect that impunity for violence against women has on victims; and**
- c. the implications of the new provision on rape based on lack of consent, including the shift of the onus onto the perpetrator to ensure that all sexual acts are engaged in voluntarily. Training on how to collect evidence and assess "the surrounding circumstances, including the state of that person at the time among other considerations" in rape cases will enable prosecutors and judges to evaluate whether consent was present.**

80. GREVIO further urges the Maltese authorities to step up the training of judges on the role of temporary protection orders and protection orders in breaking the cycle of violence in cases of domestic violence, as well as on the importance and preventive role of perpetrator programmes.

81. GREVIO strongly encourages the Maltese authorities to introduce systematic and mandatory initial and in-service training for the relevant professionals who deal with victims or perpetrators of all acts of violence, in line with the requirements of the Istanbul Convention. It strongly encourages the Maltese authorities, in particular, to ensure initial and in-service training for health professionals that will enable them to identify all forms of violence against women, refer victims to specialist support services and bring their skills and responses – including with respect to sexual violence and FGM – up to the required standards.

82. **GREVIO strongly encourages the Maltese authorities to introduce in education establishments dedicated guidelines/protocols that lay out the preventive action to be undertaken where indications of violence against women exist or there is a risk thereof, including, in particular, in cases of forced marriage and FGM. In this connection, dedicated training for teachers on all of the forms of violence against women should be envisaged and strengthened.**

D. Preventive intervention and treatment programmes (Article 16)

1. Programmes for perpetrators of domestic violence

83. Domestic violence perpetrator programmes in Malta exist only in non-custodial settings. In addition to the programme targeting male perpetrators, named the Domestic Abuse Intervention Programme (DAIP), managed by the Managing Abusive Behaviour service (MAB) of Agenzija Appogg, the DAIP also includes a programme targeting women who use force. This programme is based on the belief that some women can resort to using force within an intimate relationship to gain short-term control of abusive relationship dynamics. This service, however, has not been operational due to the insufficient number of users considered eligible for the programme.²⁹ A programme targeting child to parent violence is also run by the same service.

84. The DAIP programme aims to assist men who are abusive in intimate relationships to become aware of, understand and take responsibility for their behaviour. The programme lasts 28 weeks and covers topics such as gender equality, patriarchy, misogyny, gender roles and fathering. Following the group programme, the participants are also encouraged to receive continued support through a support group. This service liaises with the Domestic Violence Unit of Agenzija Appogg, the main service provider in the area of domestic violence, so that in parallel victims can attend support groups and otherwise be supported and protected with their children. The DAIP programme is offered in the central island of Malta only.

85. The statistics provided by the authorities indicate that 107 and 119 men were registered with the MAB service in 2017 and 2018 respectively. GREVIO notes that only one full-time social worker and three facilitators manage this programme and that an increase in human resources would be required. Although the DAIP programme is attended both on a voluntary basis and through court referrals or referrals from the Department of Probation and Parole (DPP), GREVIO has been informed by the authorities that most cases are self-referrals and notes with concern that there have been only 11 court-mandated referrals in the last three years. Even where the perpetrator has been referred by the court, it appears that no measures are taken if the perpetrator refuses to submit to the programme, which GREVIO notes with concern. GREVIO welcomes that the current National Strategy and Action plan includes the measure to strengthen the perpetrator programme and an increase in referrals; however, the implementation of this measure clearly needs to be strengthened.

86. According to the state report, every programme is evaluated by the person receiving the service, as well as by feedback provided by partners/spouses. A general, scientific evaluation of the impact of the DAIP programme has thus not been carried out. The authorities have referred to plans to draw up a strategy for the MAB services, as well as an evaluation of their impact thereafter.

87. **GREVIO strongly encourages Malta to introduce perpetrator programmes in custodial settings. It further strongly encourages the Maltese authorities to use all available means to ensure that perpetrator programmes are widely attended, including by incorporating them into the criminal justice system as a tool to reduce recidivism and to ensure attendance also by convicted perpetrators in prison. The authorities are also encouraged to increase the human resources within the DAIP programme and initiate**

²⁹ According to the statistics provided in Annex 3 of the state report, only three women were registered for this programme in 2017, whereas none were registered in 2018. Out of those three, only one was considered eligible to attend the programme, but she refused to attend.

scientific outcome studies (evaluation) of the programmes to assess, among other aspects, the risk of reoffending, in order to ensure higher levels of safety and protection for victims.

2. Programmes for sex offenders

88. The DPP runs the Community-based Sex Offender Intervention Programme for convicted offenders aged 16 years and over. After an initial in-depth assessment of the sexual offenders has been conducted to identify their specific needs, individual sessions are then offered. All sexual offenders that are followed by the DPP are considered eligible for the programme, except if they have severe learning difficulties, are considered “unstable” or have acute drug dependency issues. No information has been made available by the authorities on the number of perpetrators who have benefited from this programme.

E. Participation of the private sector and the media (Article 17)

89. Under the Equal Treatment in Employment regulations (subsidiary legislation 453.9), employers are under the obligation to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, when offering access to employment, vocational training and promotion. To incentivise employers’ respect of gender equality, the NCPE awards companies an Equality Mark Certification when employers give priority to gender equality. One of the criteria on the basis of which the certification is granted is whether the company has put in place a sexual harassment policy.³⁰ To benefit from such certification, the interested company must be audited by the NCPE. The NCPE further assists the company by providing training on gender equality and sexual harassment and through a model sexual harassment policy, made available on the NCPE’s website. The Equality Mark Certification is valid for two years and recertification is valid for three years. Companies that obtain this certification can display a logo and are given publicity. Complaints in relation to sexual harassment in the workplace can be lodged before the industrial tribunal, whereas any complaint regarding discrimination at the workplace on grounds of gender can be lodged before the NCPE.

90. As regards the media, current legislation does not specifically address respect of gender equality and avoidance of gender stereotyping or sensationalistic reporting on violence against women by broadcast media. The Maltese authorities have referred to Article 13 of the Broadcasting Act and subsidiary legislation 350.14 and 350.16,³¹ however these address more generally the obligation to avoid offensive and indecent material. The Broadcasting Authority Broadcasting Board deals with any complaints arising from breach of these provisions, but no complaints have ever been lodged concerning reporting on violence against women or the portrayal of women.

91. GREVIO welcomes a set of guidelines that has been issued by the CGBVDV to encourage journalists to report on domestic violence in a non-sensationalist and victim-blaming manner.³² These guidelines are an initiative of the CGBVDV and not a self-regulatory standard issued by the order of journalists. They primarily provide guidance on how to report on domestic violence and sexual violence and are not binding. GREVIO notes that guidelines to journalists addressing other forms of violence against women do not exist and that it is not clear to what extent training on the existing guidelines on domestic violence has been dispensed to journalists. Information provided by civil society confirms that reports still lack sensitivity and are often presented in a sensationalised manner, or can otherwise blame victims or downplay the gravity of the offence.

³⁰. GREVIO was informed that as of May 2019 the NCPE had awarded the Equality Mark to 91 companies employing over 22 600 employees.

³¹. Respectively on Requirements as to Standards and Practice applicable to news bulletins and current affairs programmes and on Requirements as to standards and practice applicable to the coverage of tragedies in broadcasting.

³². See [Reporting Domestic Violence, Guidelines for Journalists and Media Content Producers](#).

92. **In light of the important role played by the media and the private sector in shaping and changing attitudes to the status and role of women in society and the level of acceptance of violence against women, GREVIO encourages the Maltese authorities to promote the development and monitoring of self-regulatory standards, and training in those standards, in relation to the non-stereotypical and non-sexist portrayal of women in the media, including in the context of reporting on violence they have suffered.**

IV. Protection and support

93. Chapter IV of the Istanbul Convention aims at a multifaceted, professional and victim-oriented support structure for any woman who has experienced any of the forms of violence covered by the convention, as well as children who have witnessed violence.

A. General obligations (Article 18)

94. In line with the general multi-agency and comprehensive approach promoted by the Istanbul Convention, Article 18, paragraph 1, requires parties to take the necessary legislative or other measures to protect all victims from any further acts of violence. Paragraph 2 requires parties to ensure that there are appropriate mechanisms in place that provide for effective co-operation among the judiciary, public prosecutors, law-enforcement agencies, local and regional authorities and NGOs. This would require structures such as round tables and agreed protocols that would enable a number of professionals to co-operate around individual cases in a standardised manner. According to the Istanbul Convention, such co-operation must be based on a gendered understanding of violence against women and domestic violence and focus on the human rights and safety of the victim. Specialist women's support services representing the victim with her consent play an important role in guaranteeing that the rights of victims, including the right to data protection, are safeguarded in multi-agency co-operation.

95. Malta has taken some initial steps to ensure co-operation between the stakeholders who provide support and protection to victims of domestic violence. GREVIO welcomes the agreement of a number of SOPs under the "Full Cooperation: Zero Violence" project, with a view to ensuring co-ordination. Notably, an interagency protocol between Agenzija Appogg and the Malta Police Force was signed in October 2019 to clarify the respective roles of each agency in providing support to victims of domestic violence and to enhance co-ordination. A second interagency protocol addressing, once again, domestic violence, was entered into between Agenzija Appogg and primary health care in 2017. This protocol, however, was suspended shortly thereafter because of the trade union of nurses and midwives' opposition to the obligation of mandatory reporting of incidents of domestic violence to the police. A memorandum of understanding (MoU) has also been entered into by the FSWS and the National School Support Department to help co-ordinate responses when child abuse and/or neglect is suspected. In the context of the "Full Cooperation: Zero Violence" project a "collection of services document" has also been published with a view to equipping professionals from various sectors with knowledge and contact information about other services that assist victims of violence against women. The Maltese authorities have also reported that an MoU will be entered into by Legal Aid Malta, Agenzija Appogg and the Victim Support Unit of the Malta Police force (VSU) to strengthen interagency co-operation in relation to domestic violence and other forms of violence. As regards co-operation in the area of sexual violence and rape, informal co-operation is ensured through a service called Care for Victims of Sexual Assault between the police, health-care establishments, Agenzija Appogg and Victim Support Malta, which co-ordinates the service and provides support services such practical support, psychological and legal counselling as well as social services in certain cases. As noted in the section on Support services for sexual violence in this chapter, however, this mechanism does not provide for effective co-operation.

96. The national strategy and action plan included as a planned measure the setting up of a Multi-Agency Risk Assessment Meeting (MARAM) to ensure multi-agency co-operation between the various state agencies and other stakeholders with respect to individual cases of domestic violence and to provide effective protection to the victim. A domestic violence MARAM was foreseen to combine up-to-date information on the victim's risk and an assessment of the victim's safety needs, and participation of the various stakeholders was to be ensured through designated representatives/focal points. GREVIO welcomes the undertaking of training of different professionals to act as focal points for the MARAM and the appointment of Agenzija Appogg as the co-ordinator. It notes, however, that this mechanism has not yet been implemented due to problems that pertain to information sharing between the various stakeholders, arising from concerns on data protection.

GREVIO welcomes the expression by the Maltese authorities of their intention to operationalise the MARAM, however no clear time frame has been communicated to GREVIO in this respect.

97. GREVIO notes with concern that no interagency collaboration exists as regards other forms of violence against women such as stalking, FGM and forced marriage. Furthermore, the need for more effective and better-structured interagency collaboration in relation to domestic violence and sexual violence and rape have been noted by reports³³ and remarked on by civil society. GREVIO further notes that the existing protocols between agencies on domestic violence do not duly ensure co-ordination with prosecutors, the judiciary and all of the NGOs providing support services. Moreover, protection and support services are dislocated in various locations and are not available in a “one-stop-shop” format, increasing the hardships for the victim.

98. **GREVIO strongly encourages the Maltese authorities to set up institutionalised structures for co-ordination and co-operation among all of the different governmental and non-governmental agencies and service providers to ensure multi-agency co-operation based on a gendered understanding of violence against women and domestic violence and focusing on the human rights and safety of victims, as well as on their empowerment and economic independence. Such structures for co-ordination and co-operation should address all forms of violence against women, beyond domestic violence. This should include guidelines and co-operation procedures/protocols for authorities dealing with violence against women, as well as a system for sharing expertise and experience in handling such cases, such as the MARAM. GREVIO strongly encourages the inclusion of specialist women’s support services run by NGOs in any formal and informal co-operation structures. Finally, GREVIO encourages the Maltese authorities to ensure that protection and support services are made available as much as possible on the same premises.**

B. Information (Article 19)

99. GREVIO welcomes the inclusion in the strategy and action plan of a planned measure for the provision of timely information on available support services and legal measures to victims. GREVIO notes that such information is provided through different channels but that it primarily focuses on domestic violence. In this respect, several information campaigns have been carried out in the past years and some dedicated information sessions on domestic violence have been organised by the DVS of Agenzija Appogg at local community services. Leaflets and cards with contact information of the relevant support services for victims of domestic violence are made available, *inter alia*, at the various points of entry for victims such as health establishments and Agenzija Appogg. Cultural mediators for Somali, Arabic, Tigrinya and Amharic languages (Eritrean and Ethiopian languages) are also available on certain weekdays in primary health-care settings to help victims obtain information in a language they understand. Under the Victims of Crime Act, victims have the right to receive information, including on support services available, legal assistance and interpretation throughout the criminal proceedings and from the first contact with the competent authorities. Moreover, once a victim files a criminal complaint to the police, the police, in principle, should ask the victim whether she wants to be referred to the Victim Support Unit, which will then provide her with all of the information on relevant support services, including legal aid.³⁴ GREVIO refers, however, to the barriers in reporting violence against women discussed in Chapter VI, Immediate response, prevention and protection, which in turn lead to barriers to accessing information. Furthermore, referral to the VSU may not be immediate, thus potentially leaving the victim with a period of time in which she does not know who to turn to. Handbooks on reporting domestic violence have also been published by the NGO Women’s Rights Foundation in different languages.

³³. See Full Cooperation: Zero Violence – Barriers to help-seeking in gender-based violence against women: a research study, Marceline Naudi, Marilyn Clark and Holger Saliba, p. 94.

³⁴. The VSU is a service of the Police which provides a single point of contact for vulnerable victims of crime shortly after they have lodged a report. It facilitates referrals to support services, it provides crisis counselling and gives information about the outcome of the police investigation, as well as the release of the perpetrator, among other services. See Chapter VI, Immediate response, prevention and protection.

100. The information campaign “Breaking the Cycle of Violence” also refers in its leaflets to other forms of violence other than domestic violence. Moreover, further to a study commissioned on FGM, the NCPE has published leaflets in an array of languages on this form of violence, which are made available at health establishments. They target health professionals, raising their awareness of the issue, and migrant women. GREVIO welcomes the initial steps taken to address other forms of violence but stresses the importance of stepping up the range of information made available on all forms of violence such as rape, sexual violence, stalking, sexual harassment and forced marriage. Information made available to GREVIO indicates that victims are still insufficiently informed about the available services and their rights, both with regard to domestic violence, as well as other forms of violence against women.³⁵

101. GREVIO encourages the Maltese authorities to ensure that victims receive adequate and timely information on available support services and legal measures for all forms of violence against women, in a language they understand.

C. General support services (Article 20)

1. Social services

102. Finding long-term housing has been identified as being particularly problematic for victims of domestic violence by both state authorities and civil society. Reports indicate that the majority of the homeless in Malta are women and children fleeing domestic violence.³⁶ Women who leave their homes because of domestic violence have the option of finding temporary shelter in first-stage emergency shelters and then moving to a second-stage shelter, which will receive them for a longer period. Following sheltered accommodation, if victims do not manage to secure accommodation either through social housing or the private market, they may have to move to a homeless shelter. GREVIO has been informed that because rental costs in Malta are prohibitive, demand for social housing is extremely high. The Maltese authorities have informed GREVIO that a specialised housing programme (SHP) is in place to cater for the needs of vulnerable individuals, including victims of domestic violence. Social housing and subsidised rent in the private market are allocated according to “a points system”, with victims of domestic violence given, in principle, precedence. This notwithstanding, GREVIO notes that the provision of social housing does not meet the demand and that there are extremely long waiting lists.³⁷ More specifically, GREVIO has been informed that securing social housing for victims of domestic violence is still extremely problematic, all the more for women whose separation has not yet been finalised. To access social housing, documents attesting legal separation (in case of wedded victims) is required and the completion of separation proceedings may take up to four years in Malta. Although prior to the finalisation of separation proceedings the victim is entitled to apply for rental subsidies if she opts for housing in the private market, GREVIO has been informed that the above-mentioned administrative hurdles linked to social housing do increase the hardships and risks of homelessness for victims of domestic violence.

103. As regards financial assistance, victims of violence against women may apply for the social benefits that are available for the general population. Civil society has indicated that the lengthiness of the procedure to request social benefits exposes victims of domestic violence to a high risk of poverty and dependency on charity or can lead them to refrain from severing ties with the perpetrator. As regards reintegration into the labour market, while no dedicated training schemes are available for victims of domestic violence, they can benefit from various schemes offered to vulnerable individuals by Jobsplus, Malta’s public employment service.³⁸ Furthermore, the DVS of Agenzija

³⁵. See Full Cooperation: Zero Violence – Barriers to help-seeking in gender-based violence against women: a research study, Marceline Naudi, Marilyn Clark and Holger Saliba, p. 72.

³⁶. See Domestic Violence and the Feminisation of Homelessness in Malta: A Critical Perspective, Vakili Zad, p. 558.

³⁷. The authorities have informed GREVIO that there is an average of 2 800 people on the waiting list for social housing and that they are planning to build 1 700 units in the next two years.

³⁸. The authorities have referred, *inter alia*, to the: Inclusive Employment Services, through which an employment advisor draws up a personal action plan with the vulnerable person; the VASTE programme, which assists disabled and vulnerable persons to find and retain employment, including through training and counselling; the Bridging the Gap scheme, which

Appogg or social workers at the shelters can assist victims with their CVs, finding employment and preparing for job interviews. While GREVIO welcomes the inclusion in the strategy and action plan of a measure to strengthen housing and training schemes for victims of violence against women, it notes that implementation has not yet ensued.

104. GREVIO strongly encourages the Maltese authorities to set up dedicated programmes that cater to the specific needs of victims of violence against women in the areas of financial assistance, training, employment and housing, thus ensuring their recovery as well as their economic independence and empowerment, in particular by pursuing their efforts to strengthen housing and training schemes for women victims of violence as set out in the national strategy and action plan.

2. Health care

105. In relation to health care, as referred to in this chapter's section on General obligations, a protocol addressing the identification, treatment and referrals of victims of domestic violence was entered into between Agenzija Appogg and the primary health-care authorities in 2017. Because of the suspension of this protocol, an information booklet for primary health-care professionals was issued outlining a standardised care path to identify victims of domestic violence, document injuries and report to the police. As is described below in the section Reporting by professionals, health-care professionals are legally bound to refer cases of domestic violence, whether disclosed or suspected, and irrespective of the client's consent and the extent and nature of the injury, to Agenzija Appogg and/or the police. In all cases, the health-care professional is required to document the incident and findings on the client's file and the doctor must issue a police certificate regardless of whether it is requested by the victim. The details of the case must also be recorded in the Domestic Violence Register (see Chapter II, Data collection and research). In addition to the above, Mater Dei Hospital has a standardised care path for the management of cases of rape or sexual assault (see section on Support services for sexual violence). On the other hand, although health professionals are required to report cases of FGM to the police, GREVIO notes with concern that there are no specific guidelines or protocols for health professionals that comprehensively address the steps to be taken and that no training has been delivered to fill this void. Such guidelines would need to detail the psychosocial needs of women and girls, the possible physical complications and the remedies available to victims of FGM. They would also need to address referrals to support services and the signalling and referral of young/child female family members of the victim, such as sisters or daughters, that may be at risk of FGM.

106. GREVIO encourages the Maltese authorities to introduce adequate protocols and standards that address all forms of violence against women. GREVIO, in particular, strongly encourages the Maltese authorities to develop and implement protocols that may be followed in situations where FGM or the risk thereof is identified, both for the victim and any young/child female family member of the victim that may be at risk of FGM.

D. Specialist support services (Article 22)

107. The drafters of the Istanbul Convention created a distinction between general and specialist services, indicating their respective roles in the process of the victims' recovery. Thus, specialist services are aimed at empowering victims through optimal support and assistance catered to their specific needs, an aim which can be best ensured by women's organisations and support services provided, for example, by local authorities with specialist and experienced staff with in-depth knowledge of gender-based violence.

108. Agenzija Appogg is the state agency that operates as the primary support services provider for victims of domestic violence, through its DVS. The DVS comprises the Domestic Violence Unit (DVU), which supports victims and their children through the identification of risk factors, safety

planning and referral to any other services they may require in the areas of shelter, psychological and legal assistance, and health. Social workers from the DVU may also support victims with regard to employment, financial assistance, child minding and housing by accompanying them to relevant appointments or by informing the relevant government agencies about the circumstances of the victim, with her consent. DVS also includes the first-stage emergency shelter Għabex, which also provides to its residents psychological support as well as support with regard to employment, financial assistance, child minding and housing. GREVIO has been informed that, since 2018, support services for victims of domestic violence have been provided on a 24/7 basis through the service of the After-Hours Emergency Services, which also operates in Gozo. Moreover, since the introduction of mandatory risk assessments for victims of domestic violence that lodge police reports, DVS's outreach to victims has significantly risen.

109. GREVIO welcomes the doubling of staff at the DVS since 2015, which now comprises a total of 47 professionals, of which 13 are employed on a full-time basis and the rest on a part-time basis. The budget has also been increased in the same period by over 50%. This notwithstanding, GREVIO has been informed that the capacities of the DVS are overstretched and that many victims do not always appear to have ready access to social workers.

110. As regards legal services for victims of domestic violence, GREVIO has been informed that DVS has one staff member who can provide legal counselling and that victims are referred to either Legal Aid Malta or to NGOs providing legal services. Professionals from the DVS also attend domestic violence court sittings. Overall, however, GREVIO is concerned that legal counselling may not be easily available to all victims of domestic violence. As indicated in Chapter VI, Legal aid, Legal Aid Malta is particularly understaffed and its lawyers' training on violence against women is limited. Furthermore, it has been reported that referrals to the only NGO that provides legal counselling free of charge (the Women's Rights' Foundation) in the area of violence against women have not always been ensured, leaving victims with few options. As regards psychological services, victims can be referred to the psychological services or to the Home-Based Therapy Services, both under the FSWS; however, civil society has indicated that the waiting times for accessing such services can be extremely long, up to eight months. Psychological counselling can also be provided by the staff working in shelters. As regards referrals to health and mental health establishments, an SOP between Agenzija Appogg and the primary health-care authorities was entered into in 2017 and updated in 2019, however, GREVIO understands that it has been suspended, though referrals still take place. GREVIO further notes that not all of the above-mentioned services are available in the same premises, thus increasing the risk of re-victimisation of the victim by requiring her to recount her trauma numerous times.

111. In addition to the above, reports and civil society have pointed to limited availability of interpreters for migrants who are victims of domestic violence and the insufficient provision of specialised services for victims in Gozo.

112. As regards services for victims of sexual violence and rape, these are provided by Victim Support Malta, which has entered into a PSP agreement with the Ministry for the Family, Children's Rights and Social Solidarity. It provides, in particular, social work services, free psychological services, free legal representation/consultation and liaison with the hospital and the police (see section on Support services for victims of sexual violence).

113. GREVIO notes with great concern that specialist support for other grave forms of violence against women such as stalking, FGM, forced marriage and sexual harassment are not available in Malta and that there are no special protocols or co-ordination among the relevant stakeholders to identify, prevent, protect and support such victims. As regards, in particular, FGM and forced marriage, GREVIO notes that the criminalisation of these practices is not sufficient and that it must be complemented with dedicated services, policies, training and awareness raising. The insufficient response in this area is exemplified in Chapter V, Forced marriage and Female genital mutilation, where GREVIO notes the competent authorities' inaction in instances in which children were allegedly taken out of the country to perform these criminal practices.

114. **GREVIO strongly encourages the Maltese authorities to ensure the provision of immediate short- and long-term specialist support services to victims of all forms of violence against women, beyond domestic violence. Prompt provision of psychological and legal counselling should be particularly increased, with systematic referrals, where necessary, to specialist women's organisations with in-depth knowledge of gender-based violence. GREVIO also strongly encourages the Maltese authorities to ensure that Agenzija Appogg is given sufficient resources to respond promptly to victim's requests in a way that minimises re-victimisation, including by looking into ways to ensure that support services are located on the same premises. Attention should furthermore be given to strengthening interpretation services and providing appropriate support services in Gozo.**

E. Shelters (Article 23)

115. Malta has three specialist women's shelters. One is an emergency, short-term, state-run shelter (Għabex) that opened in 2000 and can provide shelter for a maximum period of three months for 14 victims of domestic violence and human trafficking and their children. In order to increase its capacity, new premises have been identified. The current shelter can be easily accessed and is centrally located. The second specialist shelter that receives victims of domestic violence for a longer period (around nine months) is Dar Merhba Bik, run by the religious order Good Shepherd Sisters. It is regulated through a PSP agreement with the government and is partially state funded to the order of €42.50 per family, regardless of the number of children. It hosts 14 families at any given time with a total bed capacity of 42. An additional second-stage shelter is Dar Qalb ta' Ġesu', which is Church-run and also partially state funded. In addition, GREVIO has been informed that a third, second-stage shelter named Dhar Santa Bherkita will shortly be hosting three families that do not have specific safety issues for a period of 12 months. GREVIO has been informed that when accommodation cannot be provided in specialist women's shelters, and where no significant safety issues have been identified, victims of domestic violence and their children are referred either to the NGO-run women's hostel Tereža Spinelli or to homeless shelters – one in Gozo (Dar Emmaus) and the other one in Malta (YMCA).

116. GREVIO notes that the ratio of one family place per 10 000 head of population as suggested in the Explanatory Report to the Istanbul Convention is in principle satisfied in Malta. However, reports have highlighted that with increased awareness raising more women are coming forward to seek help and support, thus the current capacity might not suffice in the future. GREVIO further notes with concern that no specialist women's shelter is present in Gozo and that homeless shelters cannot be considered to provide the necessary support and empowerment to victims of domestic violence.³⁹

117. All shelters require a contribution from the victims, however those who cannot afford to pay are still provided with the necessary services. GREVIO further notes that shelters have limited capacity for women with disabilities, as well as women with problems of substance abuse. Migrant women in an irregular situation are accepted and assisted in obtaining the required documents. GREVIO notes, however, that should the victim fail to proceed for any reason (including out of fear of being deported) to regularise her situation, the specialist shelter must refuse its services to the victim. GREVIO notes in this respect that the right to be free from violence should be ensured to all victims, regardless of their residence status, and that service provision should not trigger legal procedures that the victim may not wish to engage in.

118. **GREVIO strongly encourages the Maltese authorities to ensure that the number and capacity of specialist women's shelters meet the growing demand, including in Gozo, without resorting to general shelters such as those for the homeless that do not provide the necessary support or services to victims of domestic violence. It further strongly encourages the Maltese authorities to ensure that shelters are sufficiently equipped to welcome women with different needs, such as women with disabilities, and that solutions are also found for women with problems of substance abuse. Finally, GREVIO strongly encourages the Maltese**

³⁹. See the Explanatory Report to the Istanbul Convention, p. 81.

authorities to ensure access to domestic violence shelters irrespective of women victims' residence status and without conditions that may be prohibitive.

F. Telephone helplines (Article 24)

119. In Malta there is no dedicated telephone helpline providing advice to callers on all forms of violence against women. Instead, Malta has been running a free, state-funded national telephone helpline called Supportline since 1996. This is a generic free-of-charge, 24-hour support line that addresses a range of crises, including child abuse and domestic violence. Full-time employees and volunteers operate the service under the supervision of six social workers and a psychology officer who are on call 24/7 and can be contacted over the phone to guide the employees/volunteer in difficult cases. The staff of the telephone helpline have attended training on domestic violence. It is unclear, however, if they have also benefited from training concerning other forms of violence against women. The callers can remain anonymous, but the call is logged in a password-protected database. This is done to ensure that necessary data are kept as evidence if the victim wishes to press charges, as well as to identify any pattern of abuse and risk factors for the victim. While GREVIO notes that data are password protected, it recalls that the identity of callers should not in any circumstance be disclosed to helpline staff and that personal data, that is, any information relating to an identified or identifiable individual, is adequately protected against unauthorised access, alteration or dissemination.⁴⁰ The authorities have clarified that if there is an imminent risk of harm, Supportline will report it to the police and disclose the victim's identity. Otherwise, the authorities have clarified that the Supportline staff lend a listening ear, refer the caller to support services and do not provide counselling by telephone. Telephone calls regarding domestic violence represented 5% of the total calls received by the Supportline in 2017 and 7% of those received in 2018. Supportline also includes an extension called "internet helpline", which offers support to parents, educators or children on online safety issues including forms of technology-facilitated violence such as non-consensual image or video sharing of intimate images or online stalking.⁴¹ Civil society has also referred to "Violet" a 24-hour online support line for victims of violence against women, however it is project-based and will soon no longer be operational.

120. GREVIO welcomes the existence of a helpline that victims of domestic violence can reach out to, but it notes with concern that victims of other harmful forms of violence against women including sexual harassment, rape, stalking, FGM and forced marriage do not benefit from a similar service and that the Istanbul Convention sets the standard of one national helpline for all forms of violence against women.

121. GREVIO strongly encourages the Maltese authorities to set up a state-wide, round-the-clock helpline dedicated to all forms of violence against women capable of providing counselling to victims, with due respect for the confidentiality and anonymity of all callers and operated by trained staff.

G. Support services for victims of sexual violence (Article 25)

122. In 2010 Malta took steps to set up a service called Sexual Assault Response Team (SART), to provide support to victims of sexual violence. This service aimed to bring together in a multidisciplinary team representatives from law enforcement, a crime lab, forensic medical

⁴⁰. Article 5 of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data sets out the obligation to ensure that personal data undergoing automatic processing shall be obtained and processed fairly and lawfully, stored for specified and legitimate purposes and not used in a way incompatible with those purposes and preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored. Article 6 explains that personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards.

⁴¹. The internet helpline is part of an initiative called BeSmartonline, co-ordinated by Aġenzija Appoġġ, the Malta Communications Authority (MCA), the Office of the Commissioner for Children and the Education Department. The hotline has an MOU with the Police force and co-operates with the Cyber Crime Unit.

specialists, social workers, psychologists and lawyers. According to information provided by civil society, however, this pilot project was not successful because of a lack of commitment to adhering to agreed protocols, a lack of dedicated nurses and doctors assigned to work specifically in this service and the prioritisation on their part of other types of emergencies. Co-ordination with the police was also particularly problematic. Many cases of sexual violence were in fact investigated by the district police, rather than the competent police unit in this area – the Vice squad. Where the police was the victim's first point of entry, district police were often not informed about the SART and thus failed to call VSM/social work services or inform victims of their right to free legal representation under the service. The SART has been renamed recently "Care for Victims of Sexual Assault" and, in principle, is still in place. Although recommendations have been made to sign MOUs between the various stakeholders in order to ensure the smooth running of referrals and a well-established multidisciplinary team, GREVIO understands that this has not taken place and that the functioning of the Care for Victims of Sexual Assault is still riddled with inefficiencies. Since 2014, Victim Support Malta has co-ordinated the above-mentioned service, liaising with the police, health-care establishments and Agenzija Appogg and providing support services such as practical support, psychological and legal counselling, and social services in certain cases.

123. GREVIO has been informed that Mater Dei Hospital is the hospital of reference for cases of sexual violence and rape and is the only hospital that has issued specific guidelines on the management of such cases. Although there are instances in which rape victims seek care in other clinics or hospitals, GREVIO has been informed that these other establishments lack guidelines or training on the procedures to follow. Victims of rape residing in Gozo are also reportedly referred to Mater Dei Hospital. Even within Mater Dei, health professionals have informed GREVIO that doctors/nurses are in dire need for training on sexual violence and that those that are most implicated have resorted to training abroad on their own initiative.

124. Victims who seek assistance at Mater Dei Hospital must first see the doctor in the emergency services, who will carry out a first assessment and verify that there are no life-threatening injuries, as well as arrange the HIV post-exposure prophylaxis. This doctor is also under the obligation to inform the police who will call the magistrate on duty so that s/he can appoint a court expert for the forensic examination. After the victim has been seen by the emergency doctor, she is then referred to the gynaecological department. At this time Victim Support Malta or a social worker will be called to assist the victim, provide support and request her consent for the gynaecological visit and for the lifting of forensic evidence during a forensic examination (two separate examinations). The forensic examination can take place only once the social worker or Victim Support Malta, the police officer and the forensic expert are on site. Forensic evidence is then taken and processed by a forensic expert at a private laboratory rather than at Mater Dei Hospital. An additional visit called gynaecological review takes place after the forensic examination to address the patient's medical and gynaecological needs, including possible pregnancies and emergency contraception, which, in principle, is available at the hospital. GREVIO has been informed, however, that victims need to purchase emergency contraception independently following their discharge from the hospital upon prescription. The victim is then referred to an additional appointment the next day at the Genitourinary Clinic for a genitourinary examination. Following the services provided at Mater Dei Hospital victims benefit from psychological and legal counselling through VSM.

125. GREVIO identifies numerous shortcomings in the way that immediate support services for victims of sexual violence are currently administered. First, services available for victims of sexual violence are not offered in a one-stop-shop format and victims are required to present themselves before multiple services and/or retell their trauma to different professionals, leading, in most cases, to re-victimisation. Second, there are serious risks of loss of evidence due to the potential long waiting time required for the forensic expert and the other above-mentioned professionals to arrive at the hospital and, therefore, for the victim to be visited. Both civil society and research have indicated waiting times of up to 10 hours.⁴² Third, evidence is lifted from the victim only if she reports the crime to the police – women who do not want to lodge a report to the police in the immediate aftermath of a rape are thus denied the opportunity to preserve valuable medical evidence should

⁴² See Full Cooperation: Zero Violence – Barriers to help-seeking in gender-based violence against women: a research study , Marcelline Naudi, Marilyn Clark and Holger Saliba, p. 84.

they decide to seek justice later.⁴³ Fourth, although in principle there is a list of forensic experts competent to take evidence in these cases, GREVIO has been informed that, in practice, only one expert is used, creating a bottleneck and raising doubt, following concern shared with GREVIO, about the lack of a victim-centred approach and insensitivity towards rape victims. Moreover, information provided to GREVIO seems to indicate that since the reporting obligation for professionals assisting rape victims has been introduced, there has been a drop in the number of victims that seek help. Finally, there is a gap in the support available to victims of sexual violence who are above 16 and under 18, even though the age of consent is 16 years of age.

126. GREVIO understands that a dedicated unit to treat victims of sexual violence in a holistic way, with services offered on a one-stop-shop basis and accompanied by sufficient training on sexual violence and rape kits, has been advocated by many, including health professionals. GREVIO notes that setting up such a unit would represent a logical consequence to the important steps taken already thus far by the Maltese authorities.

127. On another point, scientific research has shown that women victims of sexual violence, including in the context of domestic violence, face many risks relating to their sexual and reproductive health such as sexually transmitted infections, unwanted pregnancies, stillbirths, obstetric complications and recourse to non-medical abortion practices.⁴⁴ These harmful effects are amplified by attacks on the right to self-determination of these women when perpetrators control their ability to make autonomous choices on reproduction. Such control can have the effect of hampering their access to contraception and/or forcing them to carry an unwanted pregnancy to term or, conversely, requiring them to terminate a pregnancy. In these complex situations, women experience grave psychological suffering linked to sexual violence but also to coercion concerning their reproductive rights. Psychological distress can be exacerbated by the social isolation and, where applicable, economic dependence that characterises sexual violence in the domestic sphere. Because sexual violence has a direct impact on the sexual and reproductive health of victims, its consequences need to be addressed by support services so that victims' traumatism can adequately be tended to and negative lifelong consequences can be prevented.⁴⁵

128. Several European studies reveal that a significant proportion of women who decide to use emergency contraception or resort to an abortion, and all the more so in cases of successive abortions, have suffered sexual violence, often committed by a former or a current intimate partner.⁴⁶ Victims of rape with an unwanted pregnancy must have access to support services in the same way as any victim of sexual violence, including when they wish to terminate their pregnancy. In countries like Malta where recourse to abortion is penalised even in the event of rape, it is necessary to examine, limiting oneself to the scope of the convention, the impact of this context on the application of Article 25. GREVIO recalls in this respect that one of the general obligations imposed on parties by Article 18, paragraph 3, of the convention is that all protection and support measures should aim to avoid secondary victimisation and empower victims. GREVIO further stresses that any obstacles in accessing support services may result in victims' reluctance to report sexual violence, which in turn may contribute to low reporting rates and mask the extent of sexual violence.

⁴³. The Explanatory Report to the Istanbul Convention explains that it is good practice to carry out forensic examinations regardless of whether the matter will be reported to the police and to offer the possibility of having samples taken and stored so that the decision as to whether or not to report the rape can be taken at a later date. See p. 83.

⁴⁴. See Pallitto C. et al. (2005), "[Is Intimate Partner Violence Associated with Unintended Pregnancy? A Review of the Literature](#)", in *Trauma, Violence, & Abuse*, 6(3), 217-235; Fanslow J. et al (2019), "[Intimate partner violence and women's reproductive health](#)", in *Obstetrics, Gynaecology & Reproductive Medicine*, 29(12), 342-350.

⁴⁵. See the [Council of Europe Commissioner of Human Rights Statement](#), "COVID-19: Ensure women's access to sexual and reproductive health and rights", of 7 May 2020: "In their response to the COVID-19 pandemic, Council of Europe member states must: ensure full access to sexual and reproductive health care information, services and goods for all women without discrimination, and with specific attention for women at risk or victims of gender-based violence and other vulnerable groups of women".

⁴⁶. See, for example, Citernes A. et al. (2015), "[IPV and repeat induced abortion in Italy: A cross sectional study](#)", in *The European Journal of Contraception & Reproductive Health Care*, 20(5), 344-349; Öberg M. et al. (2014), "[Prevalence of intimate partner violence among women seeking termination of pregnancy compared to women seeking contraceptive counseling](#)", in *Acta Obstetrica et Gynecologica Scandinavica*, 93(1), 45-51; Pinton A. et al. (2017), "[Existe-t-il un lien entre les violences conjugales et les interruptions volontaires de grossesses répétées?](#)", in *Gynécologie, Obstétrique, Fertilité & Sénologie*, 45 (7-8), pp. 416-420; Lewis N. et al. (2018), "[Use of emergency contraception among women with experience of domestic violence and abuse: a systematic review](#)", in *BMC Women's Health*, 18 (156).

129. GREVIO notes that there is little information on the extent to which health, social services or NGOs provide adequate assistance to meet the needs of victims of sexual violence who make it known that they wish to end their pregnancy. Taking into account that abortion very much remains a taboo issue in Malta both in the public debate and for many women, GREVIO is concerned that fear of stigma and prosecution may discourage these women from seeking the necessary support services, including psychological support. It ensues that heavy financial, administrative and psychological burdens weigh on women victims of rape who seek to end their pregnancy, in particular when they do so without the knowledge of the perpetrator. GREVIO is concerned about these obstacles to the self-determination of victims of rape, which affect all the more women with little financial and social autonomy.

130. **GREVIO urges the Maltese authorities to:**

- a. **ensure the availability of dedicated rape crisis and/or sexual violence referral centres in Malta and Gozo equipped with trained specialist staff, providing a response to sexual violence and rape with a victim-centred approach, on a one-stop-shop basis;**
- b. **ensure the prompt and efficient co-ordination between health professionals and other stakeholders involved in the area of sexual violence and rape, including to ensure prompt referrals;**
- c. **take additional measures to guarantee all victims of sexual violence access to the above services, as well as longer-term psychological support, ensuring that the reproductive choices of women victims of rape do not constitute a barrier to their access.**

131. **GREVIO also strongly encourages the Maltese authorities to ensure that forensic examinations are carried out in line with internationally recognised standards⁴⁷ and that samples are stored with the consent of the victims, regardless of whether the matter has been reported to the police. GREVIO further strongly encourages the Maltese authorities to ensure that protocols/guidelines and training are made available on the management of cases of sexual violence and rape in other clinics and hospitals and that support is made available to victims of sexual violence who are above 16 and under 18.**

H. Protection and support for child witnesses (Article 26)

132. The obligation set out in this article is to ensure that whenever children have witnessed domestic violence, rape, sexual harassment or other forms of violence covered by the convention, the services provided to direct victims are also equipped to address the needs and rights of any children who were present. While this is most relevant to domestic violence cases, it is important to bear in mind that other forms of violence may also be witnessed by children.

133. Research has shown that children who witness one parent's assaults on another in the home often develop emotional problems and cognitive functioning disorders and accept attitudes around violence that need to be addressed in the long term.⁴⁸ It is thus of crucial importance to ensure their access to psychological counselling and therapy as soon as they come to the attention of the authorities.

134. GREVIO notes that under Article 9 of the Minor Protection (Alternative Care) Act, Chapter 602, any professional who has knowledge of an act which constitutes a criminal offence causing significant harm to a child must immediately report it to the competent authorities or the police. Failure to do so is sanctioned with imprisonment or a fine. This same article clarifies that "significant harm" includes abuse, neglect, harassment, ill-treatment, exploitation, abandonment, exposure and trafficking. GREVIO notes that witnessing domestic violence is not explicitly foreseen as "significant harm" and that it is not clear to what extent reporting is systematically carried out in these cases.

⁴⁷. See the [Guidelines for medico-legal care for victims of sexual violence](#), World Health Organization, 2003.

⁴⁸ "Problems associated with children's witnessing of domestic violence", Jeffrey L. Edleson, VAW Net, available at http://vawnet.org/sites/default/files/materials/files/2016-09/AR_Witness.pdf.

135. According to the state report, children who witness domestic violence are supported by Agenzija Appogg DVS and the services provided by shelters when residing therein. GREVIO notes in this respect, however, that dedicated services for children who are victims of domestic violence are not provided for and that extremely long waiting periods have been reported in accessing psychological counselling services, including where children are concerned. Other services such as Family Therapy services and the Home-Based Therapy Services under the FSWS may be involved in supporting children who witness domestic violence once the child is no longer at risk. GREVIO has also been informed that the National School Support System offers personalised support services to students who witness domestic violence and that an SOP has been entered into with the FSWS to help co-ordinate responses when child abuse and/or neglect is suspected. In the context of schools run by the Catholic Church, the Secretariat for Catholic Education Student Services (SfCE) can set up a team of professionals, in co-operation with Agenzija Appogg's DVS and Child Protection Services, to ensure the safety of children who witness domestic violence, as well as that of any other family members who are at risk, and can design a care plan. Church schools, furthermore, have guidelines in place setting out procedures on how to provide support in cases of violence. GREVIO notes with satisfaction that the strategy and action plan has included a dedicated measure on the need to introduce age-appropriate psychosocial counselling for child witnesses of all forms of violence against women, providing due regard to the best interests of the child. As a result, an MoU has been entered into between the Ministry for Education and Employment and Agenzija Appogg to ensure the referral of children who witness domestic violence to school guidance counsellors. It is not clear, however, to what extent guidance counsellors are competent and trained to provide psychosocial counselling in cases related to violence against women.

136. GREVIO notes that currently there are no special protection measures for child victims and child witnesses of violence against women. Child victims are often required to recount their experiences numerous times and it is not possible to record the child's statement so that it can be used subsequently in court.⁴⁹ Furthermore, currently there are no experts trained in interviewing children. The Maltese authorities are aware of the need to take measures in this connection and have included in the strategy and action plan a dedicated measure to ensure support to children throughout court proceedings. In furtherance of this aim, qualified professionals from Agenzija Appogg accompany the child during court proceedings and a child advocate is now appointed to protect and act in the child's best interest. In this last respect, however, GREVIO refers to Chapter V, Custody and visitation rights, in which various shortcomings are noted in relation to child advocates. GREVIO welcomes that the testimony of the child witness is usually taken through videoconferencing material to avoid contact with the perpetrator.

137. GREVIO strongly encourages the Maltese authorities to introduce dedicated services for children who are victims or witnesses of all forms of violence against women, such as age-appropriate psychosocial counselling and experts trained in interviewing children, providing due regard to the best interests of the child.

I. Reporting by professionals (Article 28)

138. Under the GBVDV Act and the SOP entered into between Agenzija Appogg and primary health-care authorities in 2017, all health-care professionals are legally bound to report any case of alleged violence or abuse, including domestic violence and/or rape, whether it has been disclosed or is suspected/visible, and irrespective of the extent and nature of the injury. Such cases are reported to both Agenzija Appogg and the police, irrespective of the client's consent. Professionals' obligation to report other serious cases of violence against women, including FGM and forced marriage are also provided under national legislation and internal regulations. GREVIO has been informed that the obligation to report, regardless of the victim's consent, has been met with strong resistance, in particular from nurses and midwives. It appears that due to this opposition, the SOP between Agenzija Appogg and primary health-care authorities has been suspended. GREVIO concludes that, admittedly, professionals' obligation to report is affecting co-operation and co-

⁴⁹ GREVIO has been informed in this respect that amendments to the Minor Protection (Alternative Care) Act are expected, addressing this specific issue.

ordination between health establishments and the main provider of specialist support services for victims of domestic violence, and hence, the overall support provided to these victims. Moreover, information provided to GREVIO seems to indicate that since the reporting obligation for professionals assisting rape victims has been introduced, there has been a drop in the number of victims that seek help.

139. GREVIO points out that the requirement deriving from Article 28 of the convention is carefully worded so that when there are reasonable grounds to believe that a serious act of violence has been committed and other such acts can be anticipated, professionals may report their suspicions to the relevant authorities without risking punishment for a breach of their duty of professional secrecy. This provision does not impose an obligation to report. While GREVIO notes that the imposition of reporting obligations on professionals does not run counter to Article 28 of the Istanbul Convention, blanket reporting obligations may raise issues around the provision of victim-centred and gender-sensitive support services. Mandatory reporting may in fact constitute a barrier to seeking help for women victims who do not feel ready to initiate formal procedures and/or fear the consequences of reporting for them or for their children (for example, retaliation from the abuser, financial insecurity, social isolation or the removal of children from their care). Where the authorities have introduced mandatory obligations for professionals, GREVIO notes that these should allow for the balancing of the victims' protection needs – including those of her children – with the respect for the victim's autonomy and empowerment, and should thus be circumscribed to cases in which there are reasonable grounds to believe that a serious act of violence covered by the scope of the convention has been committed and further serious acts are to be expected. In these cases, reporting may be made subject to certain appropriate conditions such as the consent of the victim, with the exception of some specific cases such as where the victim is a child or is unable to protect her/himself because of disabilities.⁵⁰

140. Recalling the principle of women's empowerment mainstreamed throughout the convention, GREVIO strongly encourages the Maltese authorities to ensure that the duty to report imposed on professionals is tempered by full and sensitive information being provided to the victim to allow her to make an informed decision herself and maintain autonomy. To this end, GREVIO strongly encourages the Maltese authorities to review the obligation for professionals to report cases of violence against women and their children, other than in situations in which there are reasonable grounds to believe that a serious act of violence covered by the scope of the convention has been committed and further serious acts are to be expected. This may well require making the obligation to report contingent upon the prior consent of the victim, unless the victim is a child or is unable to protect her/himself because of disabilities.

⁵⁰ See paragraph 148 of the Explanatory Report to the Istanbul Convention. With regard to violence committed against children, General comment No. 13 (2011) of the Convention on the Rights of the Child, paragraph 49, provides that "in every country, the reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals working directly with children". In relation to forced marriage and FGM, the Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on harmful practices, of 14 November 2014, under its paragraph 55J, provides that "States parties should ensure that it is made mandatory by law for professionals and institutions working for and with children and women to report actual incidents or the risk of such incidents if they have reasonable grounds to believe that a harmful practice has occurred or may occur. Mandatory reporting responsibilities should ensure the protection of the privacy and confidentiality of those who report".

V. Substantive law

141. Chapter V of the Istanbul Convention covers a range of provisions related to substantive law, both in the area of civil and criminal law. Their aim is to help create, in all parties to the convention, the necessary legislative framework to prevent violence against women, protect them from further victimisation and to ensure robust intervention and prosecution by law-enforcement agencies. In the interest of prioritisation, this section of the report addresses several but not all provisions of Chapter V of the convention.

A. Civil law

1. Civil remedies against the state – ensuring due diligence (Article 29)

142. A core aim of the convention is to end impunity for acts of violence against women. This not only requires that individual perpetrators be held accountable through criminal law and other measures, but also that legal avenues be available to challenge and address any failure of state actors to prevent, investigate and punish acts of violence (Article 5 of the convention).

143. Public officials are criminally liable for any negligent or intentional violation of their public duties under the Criminal Code of Malta, although it remains unclear which provisions apply. No information was provided as to the legal avenues available to victims who wish to take action against state officials under civil law. GREVIO is not aware of any convictions of public officials, or actors acting on behalf of the state, for acts of violence covered by the convention when acting in an official capacity.

144. As regards in particular avenues of redress against the police, should the police refuse to investigate a report/complaint, the victim can apply under Article 541 of the Criminal Code to the Court of Magistrates to request that the police institute proceedings. If, after hearing the evidence produced by the applicant, the court is satisfied that the report/complaint is *prima facie* justified, it allows the application and notifies the Commissioner of the Police of the order given to start proceedings. Reports on failure to act can also be lodged with the Internal Affairs Unit⁵¹ and with the independent Police Complaints Board (Article 36 of the Police Act), although the relationship between the two bodies in this respect remains unclear. The Police Complaints Board can inquire into and report on any matter regarding the conduct of the police force and may refer its findings to the Attorney General and to the Commissioner of Police when the matter may give rise to criminal proceedings. It remains unclear whether disciplinary action can be taken against police officers or judges and prosecutors if they break their respective code of conduct. GREVIO notes, however, that no leaflets or written information summarising the above-mentioned redress mechanisms against alleged police failure to act are made available at police stations and that this information is, in principle, given by the police officers when necessary.

145. More generally, GREVIO has been informed that remedies against the state, although provided for under Maltese law, are difficult to access in practice by victims with low incomes due to the high threshold required to benefit from legal aid. In the absence of data showing to what extent women victims of gender-based violence are using the above remedies, GREVIO has been unable to ascertain whether Malta is effectively implementing its obligations under Article 29, paragraph 2, of the convention.

146. **GREVIO strongly encourages the authorities to include elements regarding the civil responsibility of public officials in information provided to victims in pursuance of Article 19 of the Istanbul Convention and monitor progress in this area by keeping data on numbers of civil claims and their outcomes. GREVIO, furthermore, encourages the Maltese authorities to**

⁵¹ The mission of this unit is to maintain and safeguard the integrity of the Malta Police Force through an internal system of investigation. It investigates, *inter alia*, complaints or allegations about the violation of the force's policies, procedures and code of ethics.

make available at police stations across the country written information on redress mechanisms against the police for any negligent or intentional violation of their public duties and for failure to prevent and investigate acts of violence. GREVIO further encourages the Maltese authorities to collect data on whether victims of all forms of violence use the remedies available to address authorities' failure to diligently prevent, investigate and punish acts of violence covered by the scope of the Istanbul Convention.

2. Compensation (Article 30)

147. Under Article 15A of the Criminal Code, in the course of criminal proceedings the judge may order restitution or compensation to the victim for material damages incurred, or order compensation for any other injury or harm. The payment of moral damages has been recently introduced to Malta's legal framework, following the signing of the Istanbul Convention and can be requested in criminal and civil proceedings. The award of moral damages in criminal proceedings, however, appears to be limited to certain categories of offences, provided that they are subject to punishment of at least three years of imprisonment and is capped at a maximum of €10 000. As a result, it appears that the payment of moral damages cannot be ordered for all offences provided under the Istanbul Convention, notably in certain cases of physical violence (slight bodily harm), stalking, forced abortion and sexual harassment, which are all punished with a term of imprisonment of less than three years. Furthermore, GREVIO has received reports indicating that both the wording of the law and the little awareness over this new provision mean that in practice moral damages are rarely awarded in criminal proceedings. Claims for compensation can also be made by bringing a separate civil lawsuit, however no damages can be claimed in family proceedings. GREVIO notes that no information is available on the extent to which victims of violence against women receive such compensation in practice, whether in criminal law or civil proceedings.

148. Malta has reserved the right not to apply Article 30, paragraph 2, of the convention, choosing instead to apply its legislation regarding state compensation under the Criminal Injuries Compensation Regulations, which implement the EU Directive relating to compensation to crime victims. These regulations allow for the payment of up to €23 300 to the victim of a violent crime. The violent crimes referred to in the regulations, however, do not include forced abortion (Article 241 of the Criminal Code), enforced sterilisation (Article 251F) and private violence (Article 251). State compensation would thus not be granted in these cases. To receive state compensation, the victim should submit an application, along with a police report, within one year of when the violent crime was committed. If the court orders compensation of the victim, the government is subrogated in the rights of the victim against the perpetrator and will be considered part of the civil damages sustained. No evidence has been provided, however, as to whether such compensation has been awarded to women for the offences provided under the Istanbul Convention (other than those offences that have previously been commented on).

149. **GREVIO invites the Maltese authorities to collect data on the number of cases in which women victims of violence have claimed and have obtained compensation either by the perpetrator or the state for offences covered by the Istanbul Convention.**

150. **GREVIO notes that under Article 79, paragraph 3, of the Istanbul Convention, the Maltese authorities will be required to provide GREVIO with an explanation of the grounds for the reservation entered in relation to state compensation (Article 30, paragraph 2) upon expiry of its period of validity and prior to its renewal.**

3. Custody and visitation rights (Article 31)

151. Custody and visitation decisions in relation to families with a history of abuse require a careful balancing of the different interests at stake. Article 31 of the Istanbul Convention requires such decisions to take into account any incidents of violence covered by the convention, in particular incidents of domestic violence. Furthermore, it requires parties to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children while taking into account the parental rights of the perpetrator. In particular, in cases of domestic violence,

issues regarding children often represent the only ties that remain between victim and perpetrator. For many victims and their children, complying with contact orders can be seen as a continuation of the violence and can also present a serious safety risk because it means meeting the perpetrator face to face.⁵²

152. Victims wishing to separate from their spouse must lodge a request to the court to proceed with separation. Ordinarily, parties are required to undergo mediation before proceeding with the separation and therefore an application for a mediator to be appointed must be filed.⁵³ However, when evidence of domestic violence is presented along with the request for separation, courts should summon the parties and determine whether mediation can be dispensed with. Article 37, paragraph 2, of the Civil Code specifies that if there are allegations of domestic violence, applications for separation that include a request for interim measures such as maintenance or a decree determining who shall reside in the matrimonial home during the separation proceedings, should be heard by the court within four days. At this time the court may also issue a protection order under Article 412C of the Criminal Code and/or a treatment order under Article 412D.

153. GREVIO has received reports, however, indicating that victims encounter serious obstacles in obtaining hearings that dispense with mediation and that decide on the needed interim injunctions in respect of residence and contact. As with the criminal courts, it appears that serious physical violence is required before the court will take the allegation of domestic violence seriously. With respect to interim injunctions on contact/visitation rights, the difficulties experienced in obtaining hearings have led some women to choose not to comply with visiting regimes in order to secure children's and their own safety, thus impacting negatively on the final decision on custody, and leading to the loss of their custody rights.⁵⁴

154. It follows that victims of domestic violence wishing to separate are often required to undergo mediation – a procedure that can be decisive in determining custody and visitation rights and that can then be validated by the court. GREVIO notes that in these cases victims are particularly vulnerable due to the power imbalance that is typical in cases of domestic violence. This power imbalance is likely to impair the ability of the victim to negotiate and reach acceptable agreement that ensures, *inter alia*, the children's and the mother's safety. Court regulations require mediators to inform the court in writing if they suspect or are aware of domestic violence.⁵⁵ However, GREVIO was informed that, due to a lack of training in the area of domestic violence and a lack of understanding of the duty of confidentiality, mediators rarely inform judges in these cases. In this connection, the authorities have informed GREVIO that they plan to provide training to mediators on violence against women and GREVIO encourages the authorities to pursue this endeavour.

155. When mediation is dispensed with by the court due to domestic violence or if the mediation is unsuccessful,⁵⁶ family courts avail themselves of the Court Services of Agenzija Appogg to advise them on issues related to custody and visitation rights. These assessments are provided, in principle, by a team of professionals who are appointed by Agenzija Appogg. GREVIO has been informed, however, that to date no such group of professionals has been appointed. Instead, courts seem to rely on court-appointed experts who have limited knowledge and lack of understanding of violence against women.⁵⁷ In addition to the recommendations made by such professionals, during the proceedings the court may also appoint a child advocate to hear the views of the child and inform the court's decision on visitation rights and custody issues. According to information received by GREVIO, the three child advocates currently available work on a part-time basis and have not

⁵². See the Istanbul Convention, Explanatory report, paragraph 176.

⁵³. See the Regulation 4 Civil Court (Family Section), the First Hall of the Civil Court and the Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations (hereinafter court regulations).

⁵⁴. GREVIO has been informed of one such case in which the custody of a 5-year-old child was withdrawn from her mother because she did not comply with visiting regimes.

⁵⁵. This provision was introduced in 2008 in the court regulations to try to counter mediators' tendency to turn a blind eye to domestic violence but has not been successful in curbing this phenomenon.

⁵⁶. Under the court regulation (Article 11), when the court is informed by the mediator that the parties have failed to reach an agreement through mediation, the Court authorises the parties to initiate separation proceedings before the court within, in principle, two months.

⁵⁷. See the written NGO submission, p. 30.

received any training on violence against women, psychology or interactions with children. Furthermore, their assessment is sent to the court after a cursory interview with the child. It is then left to the discretion of the judge to determine whether episodes of violence are grave enough to justify loss of custody/access rights. GREVIO notes that there are no policies and guidelines providing guidance on the level of violence required and/or what tests should be applied by judges in reaching a decision on custody and visitation rights. Furthermore, it does not appear that family courts liaise with criminal courts to verify whether criminal proceedings are pending against the father of the victim's children or have been brought in the past.

156. Article 56 of the Maltese Civil Code provides that in the context of separation/divorce proceedings, the welfare of the child is the guiding principle in all decisions surrounding custody. Article 56A further provides that courts may declare for grave reasons, including in cases of domestic violence, sole custody. Under this article, the court decides in a discretionary manner the time, place and modalities in which the spouses shall have access to their children and the judge may forbid access when s/he deems that it can be detrimental to the welfare of the children or to the welfare of one of the parents. While GREVIO welcomes the fact that incidents of domestic violence are explicitly provided as a cause for forfeiture of custody rights, it notes that they are not explicitly referred to as instances giving rise to forfeiture of visitation rights. On this specific point, the authorities have referred to Article 47 of the Maltese Civil Code. This article, however, provides for the possibility of the court to limit or deny access to the children if this would put them or the other parent at risk, where there is evidence of domestic violence only "during the pendency" of the action for separation. Thus, GREVIO notes that there is no specific provision providing explicitly for the need to take into account incidents of domestic violence or other types of violence against women in the determination of visitation rights when separation is pronounced.

157. Indeed, GREVIO is aware that in cases of domestic violence courts privilege the granting of shared custody and visitation rights to perpetrators often through supervised access visits.⁵⁸ This is not surprising given the above-mentioned considerations, coupled with the lack of specific training of judges on violence against women and the fact that cases of domestic violence are heard only by one judge with a significant caseload.

158. As regards supervised visitation, the Supervised Access Visits service of Agenzija Appogg supervises visitation between children and the non-custodial parents when parents are in the process of separation and the family court deems it necessary for the well-being of the children or when it is in the child's best interest. Such visits are supervised, in principle, by a pool of trained personnel specifically selected and monitored by Agenzija Appogg. Nonetheless, GREVIO has received reports indicating that the number of trained personnel does not match the volume of supervised visits it must ensure.⁵⁹ As a result, supervisors are often students or people who are not necessarily trained to work with perpetrators and, more generally, on violence against women. It has been further brought to GREVIO's attention that the venue where supervised visitations take place is not always adapted to prevent the perpetrator and the mother having to wait in the same waiting area. GREVIO is therefore concerned that the exercise of visitation rights as they stand in Malta can endanger the physical safety and psychological well-being of domestic violence victims and their children and can be used as a tool to perpetuate the cycle of power and control. Furthermore, meetings with the Child's Advocate, which under the law are to take place in the presence of both parents in court premises, are also an opportunity for the perpetrator to pursue his abusive behaviour.

159. **GREVIO urges the Maltese authorities to take a number of priority actions in the area of custody and visitation rights to ensure the safety of victims and their children and to break the cycle of power and abuse exercised by the perpetrator, notably to:**

⁵⁸. This information was provided by the written NGO submission and confirmed by the authorities. For the year 2019, the authorities referred to only 13 separation proceedings heard by the Family court in which the Court Services of Agenzija Appogg recommended that the access to the children be supervised due to domestic violence. Out of the 13 cases, in only two cases Agenzija Appogg recommended and the court ruled that the perpetrator have no contact with the children.

⁵⁹. See the written NGO submission, p. 31.

- a. explicitly provide in the law that incidents of domestic violence shall be considered as a cause for forfeiture of visitation rights of the perpetrator in all cases;
- b. take measures to ensure that the exemption from mediation in proceedings dealing with separation, custody and visitation rights in cases of violence, including domestic violence, is implemented in practice and that hearings for interim injunctions/protection orders are heard swiftly;
- c. ensure that mediators receive robust training on violence against women and issue guidelines on their obligations with respect to cases of domestic violence;
- d. ensure an adequate number of judges in family courts that are trained in the area of domestic violence and provide them with guidelines shedding light on the level of violence required and/or what tests should be applied by judges in reaching a decision on custody and visitation rights;
- e. ensure that family courts take into account any episodes of violence, including by consulting with all relevant professionals;
- f. ensure that the number of professionals employed by the Court Services of the Agenzija Appogg to issue recommendations in the course of separation proceedings, including where there is suspicion of domestic violence, as well as the Children's Advocates, are sufficient in number as well as trained in domestic violence;
- g. ensure a sufficient number of professionals trained in violence against women to accompany the supervised access visits;
- h. ensure that both in the context of supervised visitation and during meetings with the Child Advocate, the mother of the child does not have to meet face to face with the perpetrator.

B. Criminal law

160. At the outset, GREVIO would like to praise the Maltese authorities for its will and effort in incorporating the concepts and definitions of the Istanbul Convention into its legal framework. Many of the provisions of the Maltese Criminal Code that have been amended further to Malta's ratification of the Istanbul Convention adopt wholesale the convention's definitions. The statistics made available by the Maltese authorities offer, however, a bleak picture as to the effective implementation of these criminal provisions, pointing to a worrying level of impunity. The statistics collected by the police concern primarily offences related to domestic violence and/or stalking and do not encompass the wide range of offences provided under the Istanbul Convention, nor do they clearly distinguish between reports received by the police and cases that are prosecuted. Data extracted manually on the number of cases (prosecution) and final convictions provided by the courts also appear to mainly relate to cases of domestic violence and are not broken down by type of offence.

1. Domestic violence, including psychological violence (Article 33)

161. GREVIO welcomes the definition of domestic violence provided under the GBVDV Act, which covers all of the elements set out in the Istanbul Convention, notably verbal, physical, sexual and psychological or economic violence causing physical and/or moral harm or suffering.

162. GREVIO welcomes the steps taken to criminalise psychological violence. Under the offence of private violence (Article 251, paragraph 1), the Maltese Criminal Code criminalises "the use of violence, including moral and, or, psychological violence, and, or coercion, in order to compel another person to do, suffer or omit anything or to diminish the other person's abilities or to isolate him/her, or to restrict access to money, education or employment". In the absence of guiding principles addressed to the police or the judiciary, it is unclear, however, how this offence is to be applied in practice, including because the constitutive elements of psychological violence are not clarified. Guidance would be required, moreover, on whether the provision requires an abusive pattern of behaviour or whether one act would be sufficient.

163. GREVIO notes that special protocols and/or training on domestic violence, including on psychological violence, for the Attorney General and judges are not in place. While specific statistics

on conviction rates for private violence/psychological violence have not been made available, GREVIO notes that the conviction rates for domestic violence are extremely low.⁶⁰ GREVIO is also concerned that the statistics provided on domestic violence may encompass cases of women victims of domestic violence charged with insulting the perpetrator, while seeking protection from the police and reporting the episodes of domestic violence.⁶¹

164. Indeed, based on information obtained from women's rights groups, the police, and some other professionals, are not familiar with the concepts of psychological violence, nor with the concept of the cycle of power and control and its relevance in the context of domestic violence.⁶² All in all, this was confirmed in meetings held by GREVIO with the police and the judiciary. Police officers did not appear to be well versed with the concept of coercive control and tended to treat reported instances of psychological abuse as mere disputes or quarrels between couples. Furthermore, as described in Chapter VI of this report, Immediate response, prevention and protection, there are multiple barriers to reporting and women are often dissuaded from lodging a complaint. Moreover, in meetings held with judges responsible for adjudicating on cases of domestic violence, the judges did not recall hearing any domestic violence case based on psychological violence (i.e. private violence), referring instead to cases they had adjudicated on that dealt with the offences of insults, gross insults, threats and threats of violence.

165. **GREVIO strongly encourages the Maltese authorities to ensure, either through legislative amendments or through guidelines issued to the police or the judiciary, that the offence of private violence can be applied in practice. This would require that:**

- a. **the constitutive elements of psychological violence are defined;**
- b. **that the required threshold, notably whether an abusive pattern of behaviour is needed, is clarified, in line with the Istanbul Convention.**

2. Stalking (Article 34)

166. Article 251AA of the Criminal Code defines stalking as including conduct such as "following a person, watching or spying on a person, loitering in any place (public or private), contacting or attempting to contact a person by any means, monitoring the use by a person of the internet and email ... if these acts amount to harassment, and the conduct is wilful and repeated, causing the victim to fear for their safety". Aggravated forms of stalking are provided under the Criminal Code depending on the type of relationship between the perpetrator and the victim and the severity of the fear instilled. GREVIO notes that the provision appears to be broadly in line with the convention.

167. The statistics provided by the Maltese authorities indicate that the police received 21 reports of alleged stalking in 2017 and 20 reports in 2018. GREVIO welcomes the collection by the police of statistics on the number of reported cases of stalking. In the absence of statistics on the number of prosecutions and convictions, it is difficult to assess whether the provision is effectively being implemented. GREVIO is particularly attentive to stalking carried out online and is not aware of whether efforts have been made to investigate such instances.

168. **GREVIO encourages the Maltese authorities to conduct specialist training on the gendered and serious nature of stalking and to ensure the application of preventive operational measures to avoid reoffending. It further encourages the authorities to improve the collection of data on stalking, particularly on the number of cases that proceed to trial and final convictions.**

⁶⁰. The conviction rate of domestic violence cases prosecuted as summary offences stands at around 9%, with imprisonment ordered only in 0.4% of cases, and the vast majority (75%) are concluded through an "extinguishment of action" because the victim withdraws her complaint/refuses to testify. See Chapter VI, Immediate response, prevention and protection.

⁶¹. Please see Chapter VI, Immediate response, prevention and protection, where this issue is addressed further.

⁶². See the written NGO submission, p. 32.

3. Sexual violence and rape (Article 36)

169. GREVIO commends Malta for having made great strides in the legislative framework governing sexual violence and rape. It welcomes in particular that the definition of rape was modified following the entry into force of the GBVDV Act, in line with requirements of the convention. Indeed, while prior to 2018 proof of violence was required under the law, now the offence of rape is based on lack of consent. Article 198 of the Criminal Code specifies that there is a presumption of “lack of consent, unless consent was given voluntarily, as the result of the person’s free will, assessed in the context of the surrounding circumstances and the state of that person at the time, taking into account that person’s emotional and psychological state, amongst other considerations”. GREVIO further commends Malta for having amended the legal categorisation of sexual offences. While prior to 2018 these offences were classified under the title “Of Crimes against the Peace and Honour of Families and against Morals”, they are currently placed under the heading “of Sexual offences”, thereby reflecting international law requiring that rape and other non-consensual acts of a sexual nature should be defined as violations of an individual’s bodily integrity and sexual autonomy. GREVIO further welcomes the fact that the Criminal Code provides that rape committed by former or current spouses or partners qualifies as an aggravating circumstance. In conjunction with the entry into force of the GBVDV Act, the age of consent was also lowered from 18 to 16 years. The Criminal Code criminalises other offences of a sexual nature with respect to children under the age of 16 under “participation in sexual activities with persons under the age of sixteen” (Article 204D) and “unlawful sexual activities” (Article 204D). It further covers non-consensual acts of a sexual nature that fall short of penetration through the offence of non-consensual acts of a sexual nature (Article 207).

170. GREVIO welcomes the enactment of these amendments to align legislation with the standards of the convention and the intention of the legislator to improve the likelihood of securing convictions for rape. GREVIO also acknowledges and welcomes the fact that the Maltese criminal provisions are more explicit than the convention in requiring not only that consent “be assessed in the context of the surrounding circumstances” but that attention should be given to the “state of that person at the time, taking into account that person’s emotional and psychological state, amongst other considerations”.

171. This being a very recent development, GREVIO has not had the opportunity to assess its implementation by the judiciary. However, from the information collected by GREVIO and the exchanges with the judiciary it is clear that there are a number of shortcomings that seriously impact on the effective implementation of the provisions criminalising sexual violence. There is a tendency, *inter alia*, to put the burden of proving the lack of consent on the victim. It is furthermore apparent that training and awareness raising of the judiciary on the new approach is much needed.

172. **While welcoming the alignment of Malta’s rape provision with the Istanbul Convention, GREVIO strongly encourages the Maltese authorities to monitor its implementation in practice, in particular by collecting statistics on the number of reports lodged, investigations opened, prosecutions and final convictions in respect of rape and other sexual offences with the aim of identifying and addressing possible shortcomings in implementation.**

4. Forced marriage (Article 37)

173. GREVIO notes with satisfaction that Malta’s provisions on forced marriage are perfectly in line with the Istanbul Convention. It further welcomes the abolition of provisions stating that a perpetrator would not be criminally liable if the woman he had abducted for the purposes of marriage remained married to him, further to the entry into force of the convention. The intentional conduct of forcing an adult or a child to enter into marriage is criminalised under Article 251G of the Criminal Code, in line with the convention, and is sanctioned with a term of imprisonment of three to five years. Luring an adult or a child to another state for the purpose of forced marriage is criminalised under Article 251GA of the Criminal Code and is sanctioned with a term of imprisonment of between four and six years. In both cases the marriage is considered null and without effect in the law and the sanctions are proportionate.

174. GREVIO has been informed by the authorities that there are no cases of forced marriage in Malta and that the only allegation of forced marriage of children that was received was unfounded. This type of violence against women is therefore not addressed in the strategy and action plan and the authorities do not collect any statistics on the incidence of this type of offence. GREVIO, however, has received reports indicating that forced marriage is practised by some migrant communities present in Malta and that since 2016 there have been several cases. These cases mainly concern instances in which children of the age of 12 were taken out of school and sent to their country of origin to marry an older family member. GREVIO has been informed that these cases have been brought to the attention of the police and that no action was taken. It appears, in fact, that because the marriages at issue were traditional rather than civil marriages and are therefore not recognised in Malta, it is not seen by the authorities as an issue of forced marriage. It would also appear that it is seen as a cultural issue that the authorities have no control over. While acknowledging the differences between underage and forced marriages, GREVIO points out that the young age of brides means that they are at a higher risk of not being able to express their full and free consent to a marital union, or to resist a forced marriage. The damaging consequences of both forced marriage and child marriage have been amply illustrated by international human rights bodies.⁶³ Child and forced marriages are widely acknowledged as a harmful practice that violates, abuses or impairs human rights and is linked to and perpetuates other harmful practices and human rights violations. Such harmful practice has a disproportionately negative impact on women and girls and constitutes a serious threat to multiple aspects of their physical and psychological health.

175. As stated earlier in this report, in addition to the criminal justice response, efforts to recognise and address this form of violence through training and awareness raising among professionals is also lacking. It is particularly important that education establishments are made aware of this issue and have a clear protocol to follow in such cases. GREVIO also notes that introducing services and protocols to support/assist victims of forced marriage is of paramount importance to increase reporting.

176. GREVIO strongly encourages the Maltese authorities to take appropriate measures, including issuing protocols and training to the police, prosecutors, judges and other relevant professionals, to ensure that both traditional forced marriages of children and adults and the conduct of luring fall within the scope of Articles 251G and 251GA and do not remain unpunished.

5. Female genital mutilation (Article 38)

177. FGM is criminalised under Article 251E of the Criminal Code, in line with the convention. It is sanctioned with a term of imprisonment ranging between 5 and 10 years. If death ensues, the applicable term of imprisonment is significantly longer. GREVIO notes with interest that any third party who “knowingly fails to avert FGM, by making a complaint or any other manner” may also be criminally liable.

178. The European Institute on Gender Equality has estimated that between 39 and 57% of girls are at risk of FGM in Malta out of a total population of 486 girls aged up to 18 originating from countries where female genital mutilation is practised (Somalia, Eritrea, Ethiopia, Egypt, Sudan, Nigeria and Sierra Leone). A large number of the female migrant population originate in fact from countries of origin with a high prevalence of FGM and are of a young age, factors that both contribute to a high risk of female genital mutilation.⁶⁴ By way of example, it was estimated that in 2016, 41 girls were at high risk, including asylum-seeking girls.⁶⁵ This notwithstanding, to date no cases of FGM in Malta have been officially reported or prosecuted.

⁶³. See Resolution 175 of the United Nations General Assembly and Joint General Recommendation No. 31 of the CEDAW Committee and the Committee on the Rights of the Child, and general comment 18 of the Committee on the Rights of the Child concerning harmful practices.

⁶⁴. See the EIGE fact-sheet, “Female genital mutilation How many girls are at risk in Malta?”, p. 1.

⁶⁵. See EIGE Report, “Estimation of girls at risk of female genital mutilation in Belgium, Greece, France, Italy, Cyprus and Malta”, 2018, p. 82.

179. GREVIO notes that, similarly to forced marriage, FGM is viewed by the Maltese authorities as a problem that occurs outside of Malta. According to the authorities, the FGM cases that come to the authorities' attention concern mainly migrant women from sub-Saharan Africa who were subject to the procedure prior to arriving in Malta and in need of obstetric care and intervention. From discussions held by GREVIO with medical professionals and NGOs, however, it appears that midwives have come across a number of cases in which women who had been previously cut sought to go through the process again. In these cases, notwithstanding their obligation to do so under the law, medical staff do not opt to lodge a report with the police. Instead, health-care professionals tend to consult with their hierarchy to decide on the next step on a case-by-case basis.⁶⁶ GREVIO received reports indicating that in one instance one such case was reported to Agenzija Appogg, however it is unclear what follow-up and preventive measures ensued. Furthermore, it appears that no preventive measures were taken to address the risk that the women's children would be taken out of Malta to undergo FGM. In this respect, GREVIO is concerned that there is a lack of an understanding on how to identify children at risk or potentially at risk of being taken out of Malta to perform FGM and that preventive action is not being taken.

180. As is the case for forced marriage, in addition to the criminal justice response, efforts to recognise and address this form of violence through training and awareness raising among professionals is also lacking. It is particularly important that education establishments are made aware of this issue and have a clear protocol to follow in such cases. GREVIO also notes that services and protocols to support/assist victims of FGM are currently lacking and that introducing them is of paramount importance to ensure an increase in reporting.

181. **GREVIO strongly encourages the Maltese authorities to raise awareness and provide training and guidelines to all professionals who may be in contact with women and girls at risk of FGM.**

6. Forced abortion and forced sterilisation (Article 39)

182. Under Maltese criminal law any abortion, including where the women consents or in cases of rape, is criminalised and punished with imprisonment for a term ranging between 18 months and three years. Forced sterilisation is criminalised under Article 251F of the Criminal Code in line with the convention and is punished with a term of imprisonment ranging from 4 to 10 years. In the absence of data on the number of cases reported, prosecuted and the convictions obtained in respect of these offences, it is hard for GREVIO to assess their effective implementation.

7. Sexual harassment (Article 40)

183. Sexual harassment is criminalised under Article 251A of the Criminal Code in line with the convention. It defines sexual harassment as "a course of conduct which the individual knows or ought to know amounts to harassment of such other person; or subjects another person to an act of physical intimacy; or requests sexual favours from another person; or subjects another person to any act and, or conduct with sexual connotations, including spoken words, gestures and, or the production, display or circulation of any written words, pictures, and, or any other material, where such act, words, and, or conduct is unwelcome to the victim, and could be reasonably be regarded as offensive, humiliating, degrading, and, or intimidating towards that person".

184. While GREVIO welcomes the introduction of the above criminal offence, the absence of data on the number of cases brought, prosecuted and the number of convictions renders it difficult to assess its effectiveness.

⁶⁶. See Female Genital Mutilation in Malta – a Research Study of the National Commission for the Promotion of Equality, p. 41.

185. **GREVIO strongly encourages the Maltese authorities to take appropriate measures to investigate, prosecute and punish acts of sexual harassment and to ensure the collection of data in order to assess the effectiveness of the response of the criminal justice system in this area, relying on proposals made in this report under Article 11.**

8. Aggravating circumstances (Article 46)

186. GREVIO notes with satisfaction that the Criminal Code of Malta lists all the aggravating circumstances mentioned in Article 46 of the Istanbul Convention as being applicable to all of the offences listed in the convention. GREVIO refers to the analysis of Article 51 of the convention, which highlights the low conviction rates.

9. Prohibition of mandatory alternative dispute resolution processes or sentencing (Article 48)

187. GREVIO welcomes the fact that mandatory alternative dispute resolution, including mediation and conciliation, are not applicable to criminal proceedings. GREVIO has, however, received consistent and worrying reports indicating that where there are concurrent civil/family proceedings, the trend is for the lawyer of the perpetrator to attempt to negotiate a “deal” whereby the victim agrees to refuse to testify in criminal proceedings in exchange for a favourable civil settlement. This phenomenon is made possible, on the one hand, due to the *de facto* mandatory mediation in relation to separation and custody/visitation issues, and, on the other hand, because criminal proceedings rely heavily on the victim’s testimony and fail to properly look into other types of evidence. While this practice, in principle, is not permitted by the law, it does not appear that steps are being taken to end the practice. GREVIO notes with great concern that as a result the vast majority of domestic violence cases do not proceed to a prosecution/conviction (see the analysis under Article 50).

188. As regards mediation in civil proceedings in relation to separation and custody/visitation rights, reports indicate that mediation is still taking place between spouses with a clear history of domestic violence.⁶⁷ This was confirmed by GREVIO during its evaluation visit, as discussed in the section in this chapter, Custody and visitation rights.

189. **GREVIO encourages the Maltese authorities to look into ways to address and eliminate practices that result in the discontinuation of prosecution/criminal proceedings against the perpetrator. More specifically, training and protocols for lawyers should address the existing practice to negotiate a “deal” between the parties so that the victim does not testify in criminal proceedings in exchange for a favourable civil settlement (where there are concurrent civil/family proceedings). In particular, such training and protocols should address the likeliness for such practice to interfere and prevent the dissuasive effect of criminal punishment, leading ultimately to repeated violence and impunity of perpetrators.**

⁶⁷ Full Cooperation: Zero Violence – Barriers to help-seeking in gender-based violence against women: a research study, Marceline Naudi, Marilyn Clark and Holger Saliba, p. 87.

VI. Investigation, prosecution, procedural law and protective measures

190. Full accountability for all acts of violence against women requires an adequate response from law-enforcement agencies and the criminal justice sector. Chapter VI of the Istanbul Convention establishes a set of measures to ensure criminal investigations, prosecutions and convictions of the various forms of violence covered therein.

A. Immediate response, prevention and protection (Article 50)

1. Reporting to and investigations by law-enforcement agencies

191. Malta's Police Force operates across Malta, Gozo and Comino with a total strength of 2 264 officers of whom 475 (around 20%) are women. District police officers are usually the first in line to receive reports, including those on violence against women. After taking the initial report, the district police officer will conduct the preliminary investigation and, depending on the severity of the case, s/he can either issue charges or refer the case to the inspector on duty for further investigations who may arraign and arrest the perpetrator. The case can also be referred to a specialist unit called the Vice squad, which is tasked, *inter alia*, with assisting investigations of sexual offences and domestic violence. GREVIO understands, however, that most cases of domestic violence and many cases of rape are investigated directly by district police officers, rather than the Vice squad. Under Article 543 of the Criminal Code, cases of domestic violence and rape must be investigated and prosecuted *ex officio*, even where the victim withdraws her complaint.

192. A distinctive feature of the Maltese police force is that most prosecutions are carried out under its authority.⁶⁸ Although the task of the prosecution is split between the police, inquiring magistrates and the Attorney General, the police investigate crimes and press charges in court for summary offences (the less serious offences). Only for the most serious crimes does the office of the Attorney General prosecute directly.⁶⁹ GREVIO notes that the dual role of the police as investigator and prosecutor has proved to be a stumbling block for the effective prosecution of cases of domestic violence. Due to the police's prosecutorial competence and the risk of self-incrimination, victims can in fact be dissuaded from reporting to the police instances of domestic violence. GREVIO notes with grave concern that, indeed, victims have found themselves charged with insults or other trivial offences when they lodged a report on domestic violence.⁷⁰ The Maltese authorities have informed GREVIO that to address this problem a bill amending the Criminal Code is being reviewed by parliament. The amendments require that the risk assessment be no longer carried out in front of a police officer (see section Risk assessment and risk management); this way, if incriminating details are disclosed at this time by the victim, it will not lead to her prosecution. The authorities have also informed GREVIO that it is planned in the future to shift all of the prosecutorial competence to the Attorney General.

193. Victims requiring further support are referred to the VSU, staffed with three women police officers. The VSU provides a single point of contact for vulnerable victims of crime shortly after they have lodged a report. It facilitates referrals to support services, provides crisis counselling and provides information about the outcome of the police investigation, as well as the release of the perpetrator, among other services. GREVIO notes with satisfaction the positive feedback it has received on the response and protection afforded by this specific unit.

⁶⁸. See the "[Malta - Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement, adopted by the Venice Commission at its 117th Plenary Session](#)" (Venice, 14-15 December 2018).

⁶⁹. From the information and the statistics made available by the authorities, it appears, however, that most cases of violence against women are investigated and prosecuted by the police as summary offences.

⁷⁰. This is the case, for instance, when in the course of the interview with the police, the victim stated that she had been taking drugs or had insulted her partner.

194. GREVIO notes that officers who receive reports and carry out the related investigations have received minimal training on violence against women. The Maltese authorities have acknowledged police officers' insufficient training and plans were in place to set up by September 2020 a dedicated unit for cases of domestic violence. While GREVIO welcomes this information and encourages the Maltese authorities to proceed in this direction, it also stresses the importance of providing all police officers with a basic level of training on violence against women that will allow them to properly receive and respond to such cases. An interagency protocol has been issued and signed by the Maltese Police Force and Agenzija Appogg, providing guidance on how to proceed in cases of domestic violence. GREVIO is concerned however that such a tool is not sufficiently well known by police officers. Furthermore, from GREVIO's perspective, the protocol has a number of significant shortcomings, including its failure to provide guidance on how to comprehensively collect evidence and build a case fit for prosecution. Other than a reference to the statement of the victim, the protocol does not address the need to secure other sources of evidence such as photographic evidence, interviewing neighbours or other possible witnesses, nor the documenting of evidence with the victim's consent, such as the use of injury reports.

195. Meetings held by GREVIO confirm that the lack of training combined with entrenched stereotypes and a patriarchal culture are creating structural barriers for reporting domestic violence and, therefore, perpetuate the cycle of abuse of victims. These barriers are almost insurmountable in Gozo.⁷¹

196. Due to a lack of knowledge of the dynamics that are typical in domestic violence, including the cycle of power and control, many police officers tend to treat reported instances of domestic violence as mere disputes or quarrels between couples. Information received by GREVIO indicates that there have been instances of women being told to withdraw their complaints. Prior to the introduction of risk assessments, but also following their introduction, there has been no adequate reporting and recording system to ensure that patterns of abuse are detected. Thus, context and history of violence are generally not taken into account and serious levels of physical violence are required before taking the allegations seriously.⁷² Even where levels of physical violence are serious, there have been instances of inadequate response from the police.⁷³ According to information provided to GREVIO, this frequently results in dual reporting. Victims are frequently charged of committing a crime because the perpetrator concurrently files a complaint for insults or other trivial offences, which is seen as having equal value, dissuading many victims from reporting domestic violence.

197. GREVIO notes additional barriers to reporting, including for women with disabilities. Police stations still appear inaccessible for people with disabilities and special assistance such as for women who are speech-impaired, for example, is unavailable. Furthermore, women with disabilities are not always viewed by police as women in relationships and their experiences of violence at the hands of their partners may be disbelieved. On a separate point, women are not always provided with conditions that are conducive for reporting. Although the above-mentioned protocol states that "the victim should always be interviewed in a private room and not in front of the alleged perpetrator", there appear to be many instances in which victims are heard in the reception area of the police station instead.⁷⁴ If interviewed at the crime scene, this may be done in front of relatives or even in the middle of the road, immediately after the incident and while suffering from shock. As concerns

⁷¹. Due to persisting attitudes towards shame and family honour, coupled with the small size of Gozo's territory and the likelihood that police officers are related or know the victim, reporting domestic violence is extremely difficult.

⁷². See also the landmark constitutional case described in Chapter VI, Immediate response, prevention and protection, finding that Malta had breached the victim's right to respect for private and family life and the right not to be subjected to inhuman or degrading treatment, due to its repetitive failure to protect her. It found in particular that there were "systemic shortcomings in police procedures for the investigation of reports filed by victims of domestic violence and for the prosecution of these cases".

⁷³. GREVIO refers, by way of example, to the killing of Lourdes Agius on 14 September 2018. The victim reported to the police the physical violence she and her mother had suffered at the hands of her husband and the related hospitalisation. In taking the victim's report, the police did not take into account the fact that the victim had been filing police reports for domestic violence since 2015 and that the perpetrator had been reported by other women for harassment. The perpetrator was released from custody. Two days later the victim was murdered.

⁷⁴. See Full Cooperation: Zero Violence – Barriers to help-seeking in gender-based violence against women: a research study, Marceline Naudi, Marilyn Clark and Holger Saliba, p. 34.

call-outs received for domestic violence, there have been reports of instances in which the police do not necessarily respond by going on sight but may request that the victim come report the incident at the police station.

198. With regard to responses to reports made by victims of sexual violence, GREVIO has also identified significant shortcomings. GREVIO is concerned about the process of obtaining and storing evidence as forensic evidence is lifted from the victim only if she reports the crime to the police. Women who do not want to lodge a report to the police in the immediate aftermath of a rape are thus denied the possibility of preserving valuable medical evidence should they decide to seek justice later. Furthermore, reports indicate substantial delays in securing a forensic expert, leading to the loss of precious evidence.⁷⁵ Forensic evidence must in fact be taken and processed by a court-appointed forensic expert at a private laboratory rather than at Mater Dei Hospital. The process of appointing the expert requires the police to accept the veracity of the police report and then apply to a magistrate, which can take significant time. Finally, GREVIO is particularly concerned that the current procedure leads to the repeat victimisation of rape victims. The victim's statement is taken by the police in the immediate aftermath of the rape when the victim is still traumatised. GREVIO has received reports that this statement has been used against the victim if during the trial her recollection proves to be different. In effect, both the police and judges do not appear to be cognisant of the fact that inconsistencies are frequently a consequence of trauma and interpret them as an indication that the victim is untruthful or unreliable. GREVIO is concerned that this approach, coupled with the lack of training of police and judges on trauma and sexual offences, may dissuade victims from reporting. Victims may in fact fear prosecution if they cannot substantiate their claim. From the information made available to GREVIO it is also clear that when victims do report, there is little awareness by law-enforcement authorities and the judiciary of the importance and role of evidence, other than forensic evidence lifted from the victim. GREVIO was not made aware of any existing protocol or guidance relating to the collection of evidence capable of guiding the police on how to assess "the surrounding circumstances, including the state of that person at the time amongst other considerations".⁷⁶ GREVIO also refers to the reported instances in which girls of the age of 12 were taken out of school and sent to their country of origin to marry an older family member and notes with concern that no investigation was opened with regard to the sexual relations not consented to.

199. As regards women in prostitution, GREVIO has received disquieting information indicating that the police often do not accept reports of rape or other forms of violence against women from them or are slow to respond, viewing such assaults "as part of the job". The reporting and investigations of cases of forced marriage and FGM are discussed in Chapter V, Immediate response, prevention and protection.

200. **GREVIO urges the Maltese authorities to equip the police with the knowledge and powers to respond promptly and appropriately to all forms of violence against women covered by the Istanbul Convention. In particular, the Maltese authorities should:**

- a. **pursue plans to set up a specialist unit on domestic violence, extending its remit where possible to other forms of violence against women such as FGM and forced marriage;**
- b. **remind police officers of their due diligence obligation to immediately respond to, prevent and protect women from all forms of violence covered by the Istanbul Convention and apply the related sanctions for failure to do so;**
- c. **secure innovative ways to eliminate the substantial barriers to reporting encountered in Gozo;**
- d. **take measures to ensure that the prosecutorial competence of the police does not represent in practice a barrier to reporting for victims.**

⁷⁵. See Full Cooperation: Zero Violence – Barriers to help-seeking in gender-based violence against women: a research study, Marceline Naudi, Marilyn Clark and Holger Saliba, p. 84.

⁷⁶. See Article 198 of the Maltese Criminal Code.

201. **Moreover, GREVIO urges the Maltese authorities to take robust measures aimed at removing the obstacles to the effective implementation of criminal provisions on rape and other sexual offences, notably by ensuring that forensic medical evidence may be lifted from victims should they so wish, whenever they seek medical assistance, regardless of whether they have filed a report to the police.**

1. The role of the prosecution services and conviction rates

202. The data provided by the authorities demonstrate a high level of attrition in the area of domestic violence and other forms of violence against women. Out of the total number of complaints received by the police, only a small number of domestic violence cases is actually prosecuted.⁷⁷ GREVIO also notes with concern that the conviction rates are alarmingly low and suggest that violence against women takes places with impunity. By way of example, out of 480 cases prosecuted in 2017 as “summary offences”, only 53 ended with a guilty verdict (11%). The vast majority of cases were closed with an “extinguishment of action” (75%) because the victim had withdrawn her complaint or refused to testify. Imprisonment was ordered in two cases (0.4%).

203. There are many factors that are contributing to the high rate of attrition. First, GREVIO refers to the limited or no training provided to police, members of the Attorney General’s office and judges on domestic violence and violence against women (see Chapter III, Training of professionals). Both reports⁷⁸ and civil society confirmed the lack of gender sensitivity of criminal justice actors, including the judiciary, indicating that they lack a full understanding of the dynamics of domestic violence and other forms of violence against women, the pressure and trauma victims may be suffering from and their need for safety and protection. GREVIO was particularly concerned to learn that, because bail is almost always granted pending appeal and it is not possible to monitor the respect of protection orders, judges often determine that it is not in the women’s best interest to continue with a prosecution as it will increase violence against her. Another factor to consider is the overreliance on the victim’s statement at the investigation stage (as opposed to looking into other sources of evidence), which cannot be used before court. Notwithstanding the fact that domestic violence is an *ex officio* offence, victims’ frequent refusal to testify⁷⁹ often leads to “an extinguishment of action” because there is little evidence to go on.

204. Other factors that may be contributing to the low conviction rates include the substantial delays in court proceedings, which have a dissuading effect,⁸⁰ secondary victimisation, including within the court room, and inadequate protection for victims after reporting and in court (see Chapter VI, Measures of protection).

205. As regards the prosecution and conviction of rape cases and other forms of sexual violence, the statistics provided by the Maltese authorities do not provide specific figures. Nonetheless, according to information collected by GREVIO in the course of the evaluation visit, GREVIO notes that the figures seem to be extremely low. Indeed, given that the rape offence based on consent was introduced in 2018, it may be too early to see whether case law has emerged and convictions have been secured. Nonetheless, GREVIO was informed of a number of investigations in respect of which no charges of rape were brought because the lack of consent of the victim was contested by the defendant and the victim was intoxicated at the time or unconscious. From discussions with the judiciary it also appeared that, in those cases that do proceed to trial, there is a tendency to place the burden of proof concerning the lack of consent on the victim. Moreover, GREVIO also noted a lack of awareness of judges about how inconsistencies in the accounts of the crime are typical in rape cases as a result of the victims’ trauma.

⁷⁷. Please refer to the data provided by the authorities in the report submitted by Malta, table d., p. 114.

⁷⁸. See Full Cooperation: Zero Violence – Barriers to help-seeking in gender-based violence against women: a research study, Marceline Naudi, Marilyn Clark and Holger Saliba, p. 37.

⁷⁹. There may be different reasons, including fear, dynamics of power and control, or in exchange for a favourable civil settlement where there are concurrent civil/family proceedings (see section on custody).

⁸⁰. A non-summary criminal offence can take years to be heard by the court.

206. GREVIO wishes to point out that with the new rape legislation the onus is on the perpetrator to ensure that all sexual acts are engaged in voluntarily. This shift in paradigm is what is needed to move away from case law that focuses on the behaviour of the victim, including her appearance and actions prior, during and after the act. It is thus of crucial importance to ensure, through training and awareness raising that the members of the Maltese judiciary are aware of and fully apply the new approach and provisions.

207. GREVIO strongly encourages the Maltese authorities to step up efforts to end impunity for acts of violence against women, in particular domestic violence. To this extent, the Maltese authorities should explore mechanisms and procedures, including through legal amendments, that will remove the centrality of the victim's statement in criminal proceedings for intimate partner violence and sexual violence. GREVIO strongly encourages the Maltese authorities to swiftly identify and address any/all legislative and procedural factors that contribute to the low levels of conviction in relation to all forms of violence against women.

B. Risk assessment and risk management (Article 51)

208. Concern for the victim's safety must lie at the heart of any intervention in cases of all forms of violence covered by the Istanbul Convention. Article 51 thus establishes the obligation to ensure that all relevant authorities, not just law-enforcement authorities, effectively assess and devise a plan to manage the safety risks a victim faces on a case-by-case basis, according to standardised procedures and in co-operation with each other.

209. Malta's risk assessment tool (in line with the DASH model⁸¹) was introduced in 2018, following the ratification and entry into force of the convention and the adoption of the GBVDV Act, which GREVIO welcomes. Risk assessments only began to be used, however, in March 2019, as training of the police and social workers in its use was required.

210. Under Article 540A of the Criminal Code as recently amended, when a victim files a complaint of domestic violence, the police officer receiving the complaint must contact Agenzija Appogg. The latter will then provide the police officer with a trained social worker, available 24/7, who will conduct a risk assessment of the victim. Although the risk assessment is carried out by the social worker, a police officer must be present. Where a victim approaches Agenzija Appogg rather than the police, the agency will carry out a preliminary assessment and prepare a safety plan. In situations of crisis where there is an imminent risk the victim is encouraged to seek help and lodge a report with the police; however, if she is at high risk of harm Agenzija Appogg is legally bound to report it to the police, even without the victim's consent.

211. GREVIO welcomes the significant increase in the number of cases brought to the attention of social services following the introduction of standardised risk assessments. It further notes with satisfaction that a significant number of risk assessments were carried out in 2019 (1 263). However, GREVIO notes with concern a number of shortcomings that should be addressed without delay.

212. First, the risk assessment is currently carried out on the basis of information originating from two sources only, namely the police and Agenzija Appogg. The convention and best practice requires, however, for this assessment to be a multi-agency endeavour, channelling information also from other sources such as schools, kindergartens, neighbours, the victim, etc. GREVIO notes that the strategy and action plan envisaged a multi-agency risk assessment process (MARAC) but that this has not yet been put in place. While co-operation with other stakeholders and the referral of victims is ensured to differing extents through SOPs, GREVIO stresses the importance of ensuring that an assessment of the victim's risk is carried out by all relevant authorities in co-operation and that they provide co-ordinated protection and support.

⁸¹. DASH stands for Domestic Abuse, Stalking and Honour Based Violence. Please see www.dashriskchecklist.co.uk/ for more information.

213. Second, GREVIO's attention has been drawn to the fact that although risk assessments are to be conducted in every reported case of domestic violence, this does not always happen, nor do the police look systematically into past courses of conduct. Third, when risk assessments are carried out, they are not always speedy, and victims may wait for hours in the police station.⁸² This is presumably due to the fact that, notwithstanding the efforts made by Agenzija Appogg, the agency is under-resourced and can be overwhelmed. Furthermore, GREVIO refers to the risk of self-incrimination described in the section Immediate response, prevention and protection. As a result of their prosecutorial competence, police stop risk assessment interviews when there is a risk of self-incrimination, leading to the possible prosecution of the victim. Moreover, the effectiveness of the risk assessments that are carried out are limited by the insufficient protection mechanisms that are available to the authorities such as panic buttons or monitoring of the offender through tagging. This is compounded by the inability of the courts to monitor the breach of barring orders. Last, GREVIO notes that no retrospective review into the death of the many women killed in Malta due to domestic violence in the last few years⁸³ have been carried out by the Maltese authorities. GREVIO draws attention to the importance of this review in order to identify systemic gaps in the institutional response to domestic violence.

214. **GREVIO strongly encourages the Maltese authorities to improve their practices of risk assessment and risk management for all forms of violence against women, including domestic violence, by:**

- a. **ensuring that in cases of domestic violence, an assessment of the victim's risk is carried out systematically and speedily by all relevant authorities in co-operation, providing co-ordinated protection and support;**
- b. **ensuring that risk assessments are carried out and systematically maintaining all records of reports of violence to allow the evaluation of the risk of repeat and escalating violence while ensuring respect for the principles of personal data protection;**
- c. **considering setting up a system, such as a domestic homicide review mechanism, to analyse all cases of gender-based killings of women, with a view to preventing them in the future and resolving any systemic shortcoming in the risk assessment process;**
- d. **ensuring that there are mechanisms to implement the safety plan, including, for instance, through panic buttons and monitoring of the offender through tagging.**

C. Emergency barring orders (Article 52)

215. The Maltese Criminal Code sets out TPOs as an emergency measure under Article 540A. These were introduced into the Maltese legal system in 2018 and were reviewed only a year later following reported criticism by legal practitioners⁸⁴ and the lodging of a constitutional appeal.⁸⁵ Under the amended provision, TPOs are issued according to the following procedure. Upon receipt of a victim's report on domestic violence, the police officer together with a social worker from Agenzija Appogg should immediately conduct a risk assessment. The police officer should, at the same time, conduct an investigation and hear the alleged perpetrator. Following the risk assessment, sheltered accommodation should also be provided as needed. If from the investigation it emerges that the victim is at serious risk of harm, the police within 12 hours from the receipt of the report should file an application to a magistrate to issue a TPO. The magistrate issues the TPO within eight hours of the receipt of the request, if s/he is satisfied that there are sufficient grounds to justify it. Prior to the 2019 amendments, the magistrate would issue a TPO as long as the risk assessment indicated that the victim was at high risk, regardless of the results of the investigation.

⁸². See the written NGO submission, p. 34.

⁸³. It appears that there have been seven women killed by their partners since 2018.

⁸⁴. Prior to the amendments, a TPO would be issued by a magistrate upon the request of the police if the risk assessment of the victim indicated a high risk. Further to the amendments of the Criminal Code, a TPO *can* be issued by the magistrate if he deems that the conditions are satisfied and provided that the high risk emerges from the investigation carried out by the police.

⁸⁵. GREVIO is aware of one such constitutional claim on grounds of breach of Article 39 of the Maltese Constitution (right to a fair trial) because of a failure to hear the alleged perpetrator prior to the issue of the TPO.

216. Like protection orders, TPOs can (a) prohibit or restrict the perpetrator from approaching or following the victim or another individual; (b) prohibit or restrict access of the perpetrator to premises in which the victim or any other individual specified lives, works or frequents, even if the perpetrator has a legal title to those premises; or (c) prohibit the perpetrator from contacting or molesting the victim or any other person that is specified. TPOs remain in force for up to a maximum of 30 days from when they are issued or until the first hearing against the perpetrator, whichever happens first. They can be renewed and can also lapse if the authorities do not institute criminal proceedings against the perpetrator.

217. GREVIO understands that with the TPOs, the authorities initially intended to achieve the aims pursued by emergency barring orders (EBOs) as provided for under the convention. Nonetheless, there are a number of serious concerns in the letter of the law as well as in its practical implementation that GREVIO wishes to address.

218. GREVIO notes that the purpose of Article 52 of the convention is to provide a tool for law-enforcement agencies and criminal justice actors to react quickly to a situation of immediate danger without lengthy proceedings. More specifically, EBOs are tools to prevent a crime and are thus intended to put safety first, before evidentiary requirements. EBOs should therefore be time-bound and incident-based with longer-term protection being granted by a court through a protection order, upon application of the victim. Under Article 52 of the convention, EBOs should moreover ensure the safety of victims without forcing them to hurriedly seek safety in a shelter or elsewhere. The burden of leaving the home is in fact shifted to the perpetrator who should be ordered to vacate the residence of the victim and barred from returning “for a sufficient period of time” and contacting the victim and her children, where applicable.⁸⁶

219. GREVIO regrets that TPOs do not achieve any of these aims. According to the amended provision, TPOs are requested by the police officer only after a thorough risk assessment has been carried out and provided that the investigation suggests that the victim is at high risk. As noted in the Risk assessment and risk management section of this chapter, risk assessments can be carried out with significant delays, thus TPOs as they are now conceived do not constitute a quick tool. The competent authorities should in fact be able to issue an EBO on the spot, in situations of immediate danger. Moreover, making TPOs dependent on the outcome of the risk assessment is also questionable. Article 52 requires that TPOs err on the side of safety because risk assessments may not always be accurate, as demonstrated by the numerous gender-based killings in Europe of women who had been assessed as being low risk. Furthermore, pending the investigation and the magistrate’s decision (up to 20 hours), Article 540A of the Criminal Code provides that the victim and her children should be removed from their home to ensure their safety. The burden, therefore, falls squarely on the victim, which defies the whole purpose of Article 52. Finally, TPOs lapse if criminal proceedings have not been instituted, which raises concerns in view of the high number of domestic violence cases that end in “an extinguishment of action”, in particular in cases where women indicate their reluctance to testify in court.

220. GREVIO notes with great concern that there is no centralised system to record the issue and/or the breach of TPOs and that, as a result, the burden of proving that a TPO has been issued falls on the victim. This puts into question the ability of the Maltese authorities to enforce such measures, and, of course, also contributes to re-victimisation and should therefore be addressed by the Maltese authorities as a matter of priority. Due to the absence of a system to record information on the issue of TPOs and breaches thereof, it is difficult for GREVIO to assess the effective implementation of the relevant provisions. Nonetheless, their use has reportedly declined further since the 2019 amendments. In this regard GREVIO notes with grave concern, as confirmed both by state authorities and civil society, that TPOs are rarely issued because of reluctance to do so on the part of the magistrates. Magistrates appear to be very cautious in evicting perpetrators from their homes because of the pending constitutional review of the instrument. Furthermore, some magistrates have expressed the opinion that risk assessments conducted in cases of domestic

⁸⁶. See for more information “[Emergency barring orders in situations of domestic violence: Article 52 of the Istanbul Convention](https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6)”, *Collection of papers on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* available at <https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6>.

violence are too skewed in favour of the victim and that, more generally, arresting and arraigning is the preferred option in serious cases of domestic violence. In this respect, however, GREVIO notes that, in practice, perpetrators of domestic violence are rarely arrested and kept in pretrial detention, thus no measure is used in practice to ensure the safety of victims. Finally, due to the dual reporting phenomenon referred to under this chapter, GREVIO has also been informed that victims can also find themselves served with a TPO.

221. GREVIO urges the Maltese authorities to take the legislative and or policy measures needed to bring the Maltese legal framework and practice in line with Article 52 of the Istanbul Convention, notably by:

- a. **ensuring that:**
 - **TPOs are time-bound and non-renewable, with the possibility of securing longer-term protection through a protection order;**
 - **TPOs can be issued quickly in situations of immediate danger without lengthy proceedings;**
 - **the alleged perpetrator is removed from the residence, rather than the victim;**
- b. **setting up a centralised system that will record the issue of TPOs as well as any breaches of such orders;**
- c. **stepping up efforts to promote, monitor and enforce TPOs, including through protocols/regulation and technical means such as electronic tagging;**
- d. **ensuring that sanctions for breaching protection orders are effectively applied in practice.**

D. Protection orders (Article 53)

222. Protection orders (POs) are provided under Article 412C of the Criminal Code. They are issued during criminal proceedings when a perpetrator has been accused of or charged with a crime with a view to ensuring the safety of the victim. They can be issued either immediately, *ex officio* or at the request of any party to the proceedings. Where it is requested by a party, the hearing must be listed within seven days.⁸⁷ Under this provision a protection order should always be granted where the risk assessment has determined that a victim is at high risk. Under Article 37, paragraph 2, of the Civil Code, POs can also be issued in the context of separation proceedings or where there are children involved.

223. At the outset, GREVIO recalls that under Article 53 of the convention, victims should be able to obtain a protection order irrespective of or in addition to other legal proceedings. POs should thus be available to the victim under civil law, whether or not they choose to set in motion any other legal proceedings (whether criminal or divorce proceedings, for instance) and regardless of whether they are married or have children. Research has shown in fact that many victims who would like to apply for a protection order may not be prepared to press criminal charges.⁸⁸ Moreover, women may not be in a position to institute divorce proceedings because of financial reasons or as a result of years of victimisation. The relevant provisions therefore leave substantive gaps in the protection of many women given that POs can only be obtained in the context of criminal proceedings and in the context of divorce proceedings or where children are involved. By way of example, the current legal framework fails to protect women who initially benefit from a TPO, where criminal proceedings are not instituted or are discontinued; or to protect women who are not married to their abusers and have no children, including in cases of stalking.

224. Furthermore, information obtained from women's rights groups points to systemic failure of the Maltese authorities to ensure the recording, monitoring and enforcement of protection orders (much like TPOs). GREVIO refers to the landmark case of X brought before the Constitutional Court against the Maltese state in which the court found a violation of the state's positive obligation to

⁸⁷. Under Article 540A, paragraph 7, pending this seven-day period, where a TPO has been issued to ensure the victim's safety, the competent court can renew/extend the TPO until the protection order is issued.

⁸⁸. See the Istanbul Convention Explanatory Report, pp. 115-116.

ensure immediate and effective protection of victims under Articles 3 and 8 of the European Convention of Human Rights (obligation of due diligence). In this case, the victim had filed 60 reports of domestic violence with the police over a period of four years – with many reports initially having been ignored. The perpetrator was eventually arrested and arraigned in court multiple times and served with a protection order. However, each time he was arrested he was granted bail⁸⁹ and resumed his abusive behaviour. Information provided by civil society indicates that each time the victim filed a report she was asked to provide proof that the perpetrator had been served with a protection order. Furthermore, during the proceedings, it emerged that the assistant police commissioner was unaware of any procedure in place to enforce protection orders.⁹⁰

225. GREVIO is extremely concerned that the systematic granting of bail,⁹¹ coupled with the lack of monitoring/enforcement of protection orders by the Maltese state sends a strong signal that domestic violence is tolerated. As referred to previously in this chapter, this state of affairs is paradoxically leading judges to acquit perpetrators, out of fear that criminal proceedings will further antagonise perpetrators and ultimately increase violence towards victims. GREVIO is also concerned of reports that victims are not informed when perpetrators served with a protection order are released on bail. Moreover, there have also been cases of victims being served with protection orders due to the phenomenon of dual reporting.

226. Under Article 412C of the Criminal Code, breach of a PO is sanctioned either with a fine of up to €7 000 or a term of up to two years of imprisonment or a combination of both sanctions. Due to the above-mentioned systemic failure of the Maltese authorities to ensure the recording, monitoring and enforcement of protection orders, GREVIO is not aware of any instances in which sanctions have been imposed due to a breach of a PO.

227. **GREVIO urges the Maltese authorities to take the legislative and or policy measures needed to bring the Maltese legal framework and practice in line with Article 53 of the Istanbul Convention, notably by:**

- a. **ensuring that protection orders are available under civil law for women, irrespective of or in addition to other legal proceedings;**
- b. **setting up a centralised system that will record the issue of protection orders as well as any breaches of such orders;**
- c. **stepping up efforts to monitor and enforce protection orders, including through protocols/regulation and technical means such as electronic tagging;**
- d. **ensuring that victims are promptly informed when perpetrators served with a protection order are released on bail;**
- e. **ensuring that sanctions for breaching protection orders are effectively applied in practice.**

E. Measures of protection (Article 56)

228. Malta has transposed into its legal framework the Victims of Crime Directive and in 2017 set up the police's Victim Support Unit as a single point of contact for vulnerable victims of crime (see Immediate response, prevention and protection).

229. GREVIO notes from the outset that owing to the lack of protective measures in place as well as a lack of monitoring and enforcement of TPOs and POs, women are often subject to intimidation by the perpetrator and at the institutional level. Reports also indicate that repeat victimisation through the justice system is alarmingly common due to the insensitivity and lack of training of criminal justice actors, and because there are no measures in place to prevent

⁸⁹. Bail was also granted following an incident in which he pointed a gun at the victim.

⁹⁰. See the written NGO submission, pp. 8-9.

⁹¹. It was reported to GREVIO that bail was given pending an appeal to a perpetrator who had kidnapped a child.

perpetrators from using the justice system to continue to exert their control over the victim.⁹² By way of example, all of the stakeholders GREVIO has consulted with have indicated that there are no separate waiting areas at the courts for victims and perpetrators. Moreover, victims who lodge a report at police stations are not always interviewed in a private room, separate from the alleged perpetrator (see Chapter VI, Immediate response, prevention and protection). Finally, although videoconferencing material is available and can be used for the purpose of giving testimony, reports and civil society indicate that victims are often required to be present in court in order to identify the perpetrator. When victims are legally assisted and their lawyers request the use of such material, it appears to be generally accepted. However, courts do not usually act of their own motion and magistrates have, on occasion, categorically refused to allow its use.⁹³ GREVIO also notes that due to the structure of the criminal justice system women often have to repeat their stories multiple times (at the police stations and several times during the trial).

230. Although the Victims of Crime Act provides that victims must be informed by the authorities when the perpetrator is released or has escaped, this unfortunately is not always the case. This shortcoming appears to be due to the absence of a centralised tracking system between the police and the courts. GREVIO has also been informed that not all police stations and courtrooms are accessible for victims of violence with disabilities and that specific measures allowing victims with developmental disabilities to understand the proceedings and enabling them to testify in a dignified manner are not in place (see Chapter I, Fundamental rights, equality and non-discrimination).

231. GREVIO strongly encourages the Maltese authorities to take measures to reduce the risk of secondary victimisation of victims of violence against women and to protect the rights and interests of victims, notably by:

- a. **ensuring that courts have separate waiting areas for victims and perpetrators and that police officers implement in practice their obligation to interview the victim in a private room, separate from the alleged perpetrator;**
- b. **systematically giving victims the option to testify in the courtroom without being present or without the presence of the perpetrator, through the use of teleconferencing material;**
- c. **ensuring that the victim is informed when the perpetrator is released or has escaped, including by setting up appropriate channels of communication between the courts and the police, including through a computerised system;**
- d. **ensuring that police stations and courts are equipped and cater to the special needs of women with disabilities, whether these are physical or developmental;**
- e. **collecting data on a regular basis and carrying out research, including from a victim's perspective, on the effectiveness of the measures in place to avoid repeat victimisation through the justice system.**

F. Legal aid (Article 57)

232. Legal Aid Malta was created in 2014 and is regulated by Order S.L. 497.11 of the Laws of Malta. It is reportedly staffed with one full-time lawyer plus 18 freelance lawyers. The right to legal aid in criminal matters is provided under Article 570 of the Criminal Code and is in principle not subject to either means or merit testing.

233. Legal aid is provided in civil proceedings under Article 912 of the Code of Organisation and Civil Procedure (Cap. 12 of the Laws of Malta) and is subject both to merit and means testing. In order to qualify under the merits criteria, Legal Aid Malta must conclude that there is a probable cause for litigation. The criteria adopted in this assessment are unclear, as they are not contained in either the code or in any other guidelines or regulations. To qualify under the means criteria, applicants must prove that they do not have sufficient financial means to afford a private lawyer and

⁹² Full Cooperation: Zero Violence – Barriers to help-seeking in gender-based violence against women: a research study, Marceline Naudi, Marilyn Clark and Holger Saliba, p. 37.

⁹³ Ibid., p. 89.

demonstrate that in the past year their income did not exceed the national minimum wage and total assets did not exceed €6 988.12.⁹⁴ GREVIO notes that these two requirements, especially given Malta's high cost of living, can place legal services outside the reach of many women, particularly those with children. In addition, GREVIO notes that legal aid provided in civil proceedings only applies to civil litigation and not to prelitigation legal advice.

234. In addition to Legal Aid Malta, victims of violence against women are also referred to NGOs providing legal services. Moreover, Agenzija Appogg employs one lawyer that advises victims of domestic violence.

235. GREVIO has received reports indicating that there are long waiting lists to access legal aid lawyers because Legal Aid Malta is understaffed.⁹⁵ It further notes that there are some concerns about the adequacy of legal aid provision for women victims of violence, including as a result of insufficient training on matters relating to violence against women. The statistics provided to GREVIO confirm that few victims of violence against women are assisted by Legal Aid Malta. Between 2017 and 2020, Legal Aid dealt with 11 cases exclusively related to domestic violence (no cases were received in 2018).

236. GREVIO encourages the Maltese authorities to ensure that legal aid in civil proceedings is more accessible for victims of violence against women, notably by adapting the threshold that bars victims' access to legal aid to the high cost of living in Malta and extending legal aid to assistance before the first court hearing. GREVIO further encourages the Maltese authorities to ensure adequate staffing of Legal Aid Malta.

94. See Access to Legal Assistance in Malta, Aditus Foundation, p. 31.

95. See the written NGO submission, p. 38.

VII. Migration and asylum

237. In the area of migration and asylum, the main requirement of the Istanbul Convention is to ensure that residence status laws and asylum procedures do not turn a blind eye to the realities of women living in abusive relationships or who are subjected to sexual violence and exploitation and other forms of gender-based violence. Residence status laws shall provide for the possibility of obtaining autonomous residence permits for women in specific circumstances (Article 59). Asylum procedures, on the other hand, must be gender-sensitive and allow women to disclose their stories in full, and grounds for persecution shall be interpreted in a gender-sensitive manner. This can only be achieved if, in turn, reception procedures and support services for asylum seekers are sensitive to the needs of women victims or those at risk of violence (Article 60).

A. Residence status (Article 59)

238. GREVIO welcomes the fact that following the expiry of the reservation to Article 59 by the Maltese authorities in 2018 it is now possible for migrant women to obtain a residence permit or extension of stay in the event of separation from the sponsoring spouse or partner for reasons of domestic violence. Although Section 4 of the Immigration Act⁹⁶ requires third-country nationals to remain married for five years before obtaining an independent residence permit, a discretionary decision by the Principal Immigration Officer or the relevant minister can enable migrant women to remain in Malta upon separating from an abusive sponsoring Maltese national.⁹⁷ While GREVIO notes with regret that there are no statistics relating to the granting or refusal of such residence permits or extensions of stay, GREVIO notes that the authorities were not aware of a case where a marriage had broken down owing to domestic violence where such a request had been turned down.

239. Subsidiary legislation passed in Malta in implementation of the European Union Directive 2003/86 on the Right to Family Reunification enables the spouse and minor children of both EU and third-country nationals to enter and reside in Malta, providing certain conditions are met.⁹⁸ GREVIO notes with satisfaction that this legislation also explicitly provides for an autonomous residence permit valid for one year and renewable to be granted in particularly difficult circumstances following a breakdown of the marriage and other similar difficult circumstances such as domestic violence against spouses and children, forced marriages and the forced return by the sponsor of family members to the country of origin.⁹⁹

240. Despite the above, GREVIO notes that concerns arise over the application in practice. First, owing to the lack of information that is publicly available or provided directly to migrant women in Malta, it appears that some women in abusive relationships are unaware that they can apply for their own residence permit. Second, it is unclear what forms need to be filled in and what evidence submitted. This lack of knowledge and available information means that even experienced lawyers do not know what tests are applied by the authorities or what documents they must submit. In practice, this can result in women remaining in abusive relationships. GREVIO also understands that some abused women experienced difficulties in providing evidence of their residence in Malta and welcomes the attempts to remedy this via the Private Residential Leases Act 2020.

⁹⁶. Available at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1.

⁹⁷. See Sections 6 and 7 of the Immigration Act.

⁹⁸. See Subsidiary Legislation 460.17, section 5(3), available at:

www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11755&l=1; and Subsidiary Legislation 217.06 - Family Reunion Regulations, available at:

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9561&l=1>.

⁹⁹. See Section 17 (2) of the Family Reunion Regulations, Subsidiary Legislation 217.06.

241. **GREVIO invites the Maltese authorities to:**

- a. **raise awareness among migrant women entering Malta on the basis of a family reunification scheme or upon marriage with a Maltese national of the possibility to obtain an autonomous residence permit on the grounds of being a victim of abuse irrespective of the duration of the relationship;**
- b. **publish information and guidelines for migrant women victims of domestic violence and their legal representatives on the information and evidence required to obtain an autonomous residence permit on the grounds of being a victim of abuse.**

B. Gender-based asylum claims (Article 60)

1. Gender-sensitive asylum determination procedure

242. Malta received 2 045 applications for asylum in 2018, rising to 3 215 in the first 10 months of 2019. Women comprised 12% of those claiming asylum and were 250 in number. A further 159 applications from girls were recorded. The principal countries of origin for all asylum applicants were Libya, Syria, Somalia, Sudan and Eritrea. Initial decisions are made by the Office of the Refugee Commissioner (REFCOM) and any appeal is made to the Refugee Appeals Board, which is an independent, autonomous decision-making body.

243. Article 2 of the Refugee Act defines persecution as including acts of physical or mental violence, including acts of sexual violence and acts of a gender-specific nature. Subsidiary Legislation 420.07 on Procedural Standards for Granting and Withdrawing International Protection Regulations transposed the requirements of the EU Asylum Qualification Directive 2011/95/EU, including the requirement to give due consideration to “sexual orientation”, “gender” and “gender identity” for the purposes of determining membership of a particular social group or identifying a characteristic of such a group in the assessment of reasons for persecution. It also establishes procedural guarantees for particularly vulnerable applicants and disappplies accelerated procedures for victims of rape or other serious forms of psychological, physical or sexual violence. GREVIO welcomes the explicit reference to gender in both the Refugee Act and Subsidiary Legislation 420.07 and the procedural guarantees.

244. Migrants rescued at sea are given basic information in respect of asylum procedures by NGOs while on their way to the initial reception centre. GREVIO notes with concern that this is not a systematic process and is insufficient to enable women to understand what constitutes a claim for asylum, what gender-based harm is, that it constitutes a breach of human rights or that they are entitled to claim asylum in their own right based on their own experiences or fears. Disembarkation points are not set up to process arrivals to screen for and identify special protection needs and vulnerabilities. Without such screening and subsequent referral to women’s specialist services that offer a sensitive and trauma-informed setting to disclose their experiences of violence, GREVIO notes that many women will remain unwilling to speak of such traumatic experiences – although women arriving in Malta as part of a family group are required to make their own claim for asylum and are thus given the opportunity to express their fear of persecution. Without the necessary support and counselling, however, they are likely to remain unaware of the fact that experiences of gender-based violence such as FGM or sexual violence can constitute a basis to claim asylum and are thus important to indicate. Good practice from other countries indicates that asylum procedures may be suspended while the case is reviewed by specialist women-to-women support services.

245. Moreover, GREVIO notes with concern that there is no legal aid for first-instance procedures. This means that many asylum-seeking women go through the procedure without any advice as to how to make their case, which compounds the absence of information on the fact that gender-based violence may give rise to international protection. An inability to express their claim or put forward relevant evidence in respect of gender-based persecution could result in particularly harsh consequences for women and girls. In addition, insufficient care seems to be taken to ensure women are properly informed about the confidentiality of their claims. Moreover, the small number of female

interpreters makes it difficult to accommodate requests for interviewers and interpreters of the same gender, although this is in principle possible and REFCOM will try and accommodate such requests, which GREVIO welcomes.

246. According to the statistics provided by REFCOM, no decisions to grant refugee status were made to women or girls on the grounds of particular social group. The vast majority of women receiving a positive decision were granted humanitarian protection. This status does not entitle them to family reunification, resulting in children being left behind. Moreover, it is not full recognition of the rights of a refugee. GREVIO is thus concerned that gender-based violence is either not being identified or not sufficiently recognised during the refugee status determination process.

247. Where decisions by REFCOM are appealed against by applicants, they are rarely overturned, and the procedures and practice vary from chamber to chamber. There is no right to an oral hearing. Instead, this is at the discretion of the relevant judge or chamber. Legal aid lawyers assisting asylum seekers are not adequately remunerated and the likelihood of success at the appeal stage depends largely on the lawyer who may lack knowledge or training in assisting with asylum claims based on experiences of gender-based persecution. In some cases, the applicant does not receive the written submission of REFCOM until after the hearing and cannot make submissions in response. According to information provided to GREVIO, specific forms of gender-based violence are not properly understood by adjudicators who are not sufficiently trained and have no policy guidelines to assist their decision making. GREVIO has been informed by the authorities that they are working towards introducing minimum mandatory training on violence against women as a basis to claim asylum for REFCOM case workers, which GREVIO encourages. While NGOs have been asked to train refugee lawyers, they seem to currently lack the capacity to do so. Moreover, examination of the protection claim is rarely tailored to the profile of the applicant. With little chances of success at the appeal stage, the first decision by REFCOM is therefore particularly important for an applicant and GREVIO is concerned about the lack of legal assistance at first instance.

248. **GREVIO strongly encourages the Maltese authorities to:**

- a. **introduce systematic vulnerability screening for women and girls upon arrival in order to identify international protection needs and make referrals to specialist services with a view to enabling women to disclose experiences of gender-based persecution, as well as to pay due attention to country-specific reasons that might have prevented women from reporting to authorities in their countries of origin the experiences with violence;**
- b. **guarantee that adequate information is provided, in all phases of reception, asylum determination and appeal processes, to all women seeking asylum with the aim of increasing their awareness of their vulnerabilities and their rights and facilitating their access to general and specialist protection and support services;**
- c. **ensure the adequate quality of legal representation for women asylum seekers throughout the asylum application process, starting from the first interview;**
- d. **ensure that lawyers, decision makers and judges have access to gender guidelines and are trained in respect of a gender-sensitive application of the definitions of both persecution and refugee grounds to women's claims for protection under the 1951 Refugee Convention;**
- e. **introduce standardised procedures and adopt gender-sensitive guidelines to assist adjudicators to apply a gender-sensitive approach to determining claims for asylum;**
- f. **take measures to ensure the availability of trained same-sex interviewers and interpreters.**

2. Reception and accommodation facilities

249. On arrival, migrants rescued at sea are detained on grounds of public health at the initial reception centre in Marsa (the IRC) by the Ministry of Health, in accordance with Regulation 6A of the Reception Regulation and health regulations. GREVIO understands that health regulations limit detention on such grounds to 10 weeks. The Maltese authorities have informed GREVIO that although health screening is usually completed within days, detention at the IRC on public health

grounds lasts for a maximum of two weeks. Information provided by civil society, however, indicates that such detention can last up to four or even six months, and sometimes longer, as reception facilities do not offer sufficient alternatives. The Maltese courts have ruled indefinite detention on public health grounds unlawful on multiple occasions. GREVIO understands that under health regulations, migrants/asylum seekers are not issued with a detention order by a judicial authority when detained on public health grounds and thus cannot benefit from effective remedies, such as an appeal against the relevant decision.¹⁰⁰

250. Under Article 14, paragraph 3, of the Reception Regulations, if the vulnerability of an asylum seeker is ascertained, detention should not be ordered and/or should be revoked. GREVIO notes, however, that the initial medical screening and interview do not seem to include any specific screening for experiences of sexual and gender-based violence or risk thereof. Indeed, AWAS is generally required to identify persons with special reception needs among those arriving. While transfers of unaccompanied children and single women can be arranged, there are no protocols or procedures in place to identify vulnerable individuals on arrival and during detention, nor are there procedures enabling asylum seekers to self-identify.¹⁰¹ Instead, identification remains ad hoc based on NGO or AWAS observation. A semi-structured psychosocial assessment is conducted by the therapeutic unit of AWAS and includes questions designed to identify gender-based abuse both before and after flight, including on the journey. However, screening from the therapeutic unit takes place after about a month in detention unless there is an acute referral. GREVIO further notes that where identification of vulnerable individuals does take place, it does not lead necessarily to their swift release from detention, owing to lack of space in open centres or other alternatives to detention.¹⁰² GREVIO notes with grave concern that the above presents serious risks to women and girls who have experienced gender-based violence and may expose them to further violence. GREVIO further recalls that, as a rule, vulnerable people – such as victims of gender-based violence against women – should not be placed in detention.¹⁰³ Some efforts are being made to mitigate the situation, and the Trauma Centre in Marsa has developed SOPs¹⁰⁴ and trains staff and interpreters to provide a culturally appropriate trauma service where women victims of sexual and gender-based persecution have been referred to them.

251. Although single women and men are generally detained separately from one another, information made available to GREVIO indicates that recent overcrowding seems to have resulted in mixed-sex accommodation. Initial accommodation in Marsa comprises blocks of around 20 bunkbeds with a shared bathroom. One block is reserved for single women, couples and families. This results in women and girls being accommodated in open accommodation that includes men they are not related to. This is a serious ground for concern as it exposes women and girls to a risk of rape, sexual assault and other forms of gender-based violence. Difficult conditions such as limited access to shared washing and hygiene facilities have been reported,¹⁰⁵ raising additional concerns about women and girls' safety. AWAS have attempted to mitigate the risk with hourly patrols and the provision of female security guards.

252. Open reception facilities for asylum seekers exist as well and efforts are made to accommodate families and single women separately from men. However, as most seem to be reaching their maximum capacity, mixed-sex accommodation is being reported, and single women as well as unaccompanied children have been accommodated in the Hal Far Tent Village, the main

¹⁰⁰. Under Article 5.4 of the European Convention of Human Rights any person who is detained must have an adequate remedy to challenge the lawfulness of his/her detention.

¹⁰¹. Asylum in Europe, Country Report on Malta, last updated on 24 April 2020; available at www.asylumineurope.org/reports/country/malta/reception-conditions/access-forms-reception-conditions/addressing-special.

¹⁰². As regards the concept of alternatives to detention, please see [Legal and practical aspects of effective alternatives to detention in the context of migration, Analysis of the Steering Committee for Human Rights \(CDDH\), Adopted on 7 December 2017](#), paragraphs 17-20.

¹⁰³. See Resolution 1707 (2010), [Detention of asylum seekers and irregular migrants in Europe](#) of the Parliamentary Assembly of the Council of Europe.

¹⁰⁴. Standard Operating Procedures for Prevention and Response to Sexual and Gender Based Violence (SGBV), Adult Referral Assessment Tool.

¹⁰⁵. *Ibid.*, Detention of Asylum Seekers, available at www.asylumineurope.org/reports/country/malta/detention-asylum-seekers/detention-conditions/conditions-detention-facilities.

reception facility in Malta.¹⁰⁶ Little to no dedicated reception facilities exist for vulnerable asylum seekers such as women who have experienced gender-based persecution, and their access to specialist support services for such experiences is extremely limited.

253. GREVIO urges the Maltese authorities to:

- a. ensure that women asylum seekers are screened upon or swiftly after arrival for vulnerabilities such as experiences or risk of gender-based violence that would require safe accommodation and/or special support services and counselling with a view to ensuring their swift transfer to open reception facilities;**
- b. ensure that women and girls are not placed in mixed-sex reception facilities or immigration detention facilities, including while in asylum detention.**

C. Non-refoulement (Article 61)

254. Article 61 of the convention entails the obligation under international law for states to respect the principle of *non-refoulement* in relation to victims of gender-based violence who have a well-founded fear of persecution if returned. According to this principle, states shall not expel or return an asylum seeker or refugee to any country where their life or freedom would be threatened. Articles 2 and 3 of the European Convention of Human Rights also prohibit that a person is returned to a place where their lives would be at risk and/or they would be at real risk of being subjected to torture or inhuman or degrading treatment or punishment. The *non-refoulement* principle also includes not prohibiting access to the territory of a country to asylum seekers who have arrived at its borders or who are prevented from accessing its borders.¹⁰⁷ States should refrain from any practices that might be tantamount to direct or indirect *refoulement*, including on the high seas, in keeping with the UNHCR's interpretation of the extraterritorial application of that principle and with the relevant judgments of the European Court of Human Rights.¹⁰⁸ The obligation to respect the *non-refoulement* principle applies equally to victims of violence against women who are in need of protection, irrespective of the status or residence of the women concerned.¹⁰⁹

255. GREVIO is fully aware of the overwhelmingly disproportionate burden that Malta faces as a state of first arrival and trusts that the Maltese authorities will continue to work co-operatively with other European countries to find a solution to this issue. GREVIO commends Malta for the efforts it has made in saving lives at sea and in receiving asylum seekers and migrants arriving on its shores over the years. However, GREVIO notes that any practices of abandoning search-and-rescue operations together with the closure of Maltese ports to boats carrying rescued migrants poses a serious risk of *refoulement* of women asylum seekers who have experienced violence and who have

¹⁰⁶. Asylum in Europe, Country Report on Malta, last updated on 24 April 2020; p. 57; available at www.asylumineurope.org/sites/default/files/report-download/aida_mt_2019update.pdf.

¹⁰⁷. See the Explanatory Report to the convention, paragraph 320. See also [UNHCR, Executive Committee of the High Commissioner's Programme \(ExCom\) Conclusion No. 6 \(XXVIII\)](#), 1977, para. (c); [ExCom Conclusion No. 22 \(XXXII\)](#), 1981, para. II.A.2; [ExCom Conclusion No. 81 45 \(XLVIII\)](#), 1997, para. (h); [ExCom Conclusion No. 82 \(XLVIII\)](#), 1997, para. (d)(iii); [ExCom Conclusion No. 85 \(XLIX\)](#), 1998, para. (q). See also [UN High Commissioner for Refugees \(UNHCR\), Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations](#) under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007.

¹⁰⁸. See in this respect [Resolution 1821 \(2011\) of the Parliamentary Assembly of the Council of Europe on the interception and rescue at sea of asylum seekers, refugees and irregular migrants](#) and the landmark case of the European Court of Human Rights [Hirsi Jamaa and Others v. Italy, Application no. 27765/09](#). This judgment found a violation of Article 4, Protocol No. 4 to the European Convention on Human Rights (prohibition of collective expulsion of aliens) in the context of interceptions of migrants on the high seas and their transfer to Libyan authorities because individualised asylum determination procedures, as well as the presence of interpreters and legal advisers, had not been ensured. It also found a violation of Article 3 of the Convention because the transfer of the migrants/asylum seekers to Libya exposed them to the risk of arbitrary repatriation. This judgment highlights the extraterritorial application of the *non-refoulement* principle under the European Convention of Human Rights, including in cases in which migrants/asylum seekers are at sea, where a state exercises *de jure* and *de facto* authority over them.

¹⁰⁹. See the Explanatory Report to the convention, paragraph 322. See also [UNHCR, Guidelines on International Protection: Gender-related persecution within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002, paras 9 et seq.](#)

a right to claim asylum.¹¹⁰ Moreover, the practice of relinquishing responsibility for search-and-rescue operations to authorities that appear unwilling or unable to protect rescued migrants from torture or inhuman or degrading treatment or are themselves in a state of civil war can be seen as abusing the right to *non-refoulement* and places women asylum seekers and migrants at serious risk of re-victimisation.¹¹¹ GREVIO thus shares the concerns and recommendations expressed by the Council of Europe Commissioner for Human Rights in relation to the need to ensure effective search-and-rescue operations at sea and the swift disembarkation of asylum seekers and migrants rescued at sea.¹¹²

256. GREVIO urges the Maltese authorities to uphold their obligation to respect the principle of *non-refoulement* of victims of violence against women, including by ensuring that the human rights of victims rescued at sea are never put at risk because of disagreements about disembarkation.

¹¹⁰. GREVIO refers, by way of example, to the [episode of 22 December 2018](https://www.bbc.com/news/world-europe-46808509), in which the vessel Sea-Watch 3, carrying 32 migrants on board was denied permission to enter Maltese ports, available at <https://www.bbc.com/news/world-europe-46808509>. GREVIO further refers to the [Maltese authorities' recent declaration](https://timesofmalta.com/articles/view/malta-says-it-cannot-guarantee-migrant-rescues.784571) that they are not in a position to guarantee the rescue of migrants and will therefore not allow any further disembarkation of rescued persons, due to the COVID-19 pandemic, available at <https://timesofmalta.com/articles/view/malta-says-it-cannot-guarantee-migrant-rescues.784571>. GREVIO further refers to information indicating that the [Maltese authorities are holding on tourist ships just outside their territorial waters migrants](https://www.maltatoday.com.mt/news/national/102618/army_rescues_75_migrants_fourth_tourist_boat_chartered_to_host_them_outside_maltese_waters#.X7Of6-XduUI) who have been rescued at sea, until an EU-wide relocation agreement has been secured, available at

https://www.maltatoday.com.mt/news/national/102618/army_rescues_75_migrants_fourth_tourist_boat_chartered_to_host_them_outside_maltese_waters#.X7Of6-XduUI. See also [Press release: UNHCR and IOM](https://www.unhcr.org/mt/13951-unhcr-iom-urge-european-states-to-disembark-rescued-migrants-and-refugees-on-board-the-captain-morgan-vessels.html), urge European states to disembark rescued migrants and refugees on board the Captain Morgan vessels, 21 May 2020, available at <https://www.unhcr.org/mt/13951-unhcr-iom-urge-european-states-to-disembark-rescued-migrants-and-refugees-on-board-the-captain-morgan-vessels.html>.

¹¹¹. See, for example, the article from the [Times of Malta](https://www.maltatoday.com.mt/news/national/100529/neville_gaf_reveals_controversial_secret_migration_pact_with_libya#.X7OgvOXduUI), available at https://www.maltatoday.com.mt/news/national/100529/neville_gaf_reveals_controversial_secret_migration_pact_with_libya#.X7OgvOXduUI

¹¹². Lives saved. Rights protected. Bridging the protection gaps for refugees and migrants in the Mediterranean (2019), Council of Europe Commissioner for Human Rights. See also [letter addressed by the Commissioner of Human Rights to the Prime Minister of Malta](https://www.coe.int/en/web/commissioner/-/commissioner-urges-malta-to-meet-its-obligations-to-save-lives-at-sea-ensure-prompt-and-safe-disembarkation-and-investigate-allegations-of-delay-or-no), Robert Abela, available at <https://www.coe.int/en/web/commissioner/-/commissioner-urges-malta-to-meet-its-obligations-to-save-lives-at-sea-ensure-prompt-and-safe-disembarkation-and-investigate-allegations-of-delay-or-no> and the Commissioner for Human Rights' [Statement on Immediate action needed to disembark migrants held on ships off Malta's coast](https://www.coe.int/en/web/commissioner/-/immediate-action-needed-to-disembark-migrants-held-on-ships-off-malta-s-coast), available at <https://www.coe.int/en/web/commissioner/-/immediate-action-needed-to-disembark-migrants-held-on-ships-off-malta-s-coast>.

Concluding remarks

257. Malta has taken a range of measures to implement the Istanbul Convention. This attests to the political commitment to move towards the convention's full implementation, which GREVIO welcomes. A national action plan and strategy in the area of violence against women and a fully institutionalised co-ordination body provide a solid base to prevent and combat violence against women. GREVIO acknowledges, in particular, the efforts made to incorporate the concepts and the definitions of the convention into its legal framework. It welcomes the definition of rape being modified in line with the requirements of the convention so that it is now based on lack of consent rather than on proof of violence. While insufficient training of law-enforcement officials with respect to violence against women has been observed, GREVIO has also noted niches of excellence in the provision of protection and support, for example by the Victim Support Unit, which facilitates referrals to support services, provides crisis counselling and provides information to victims.

258. GREVIO's review of existing policy approaches to and discourse around violence against women in Malta has revealed, however, the need to enhance the application of a gender perspective and to significantly reinforce initial and in-service training for all professionals that interact with victims of violence against women. Moreover, the evaluation has shown the need to strengthen multi-agency co-operation across the boundaries of professions. Responses to individual cases, ranging from risk assessment to the provision of timely and adequate support services, as well as accommodation and long-term housing, can be enhanced if social services, law-enforcement agencies and women's specialist services work hand in hand.

259. The report also shows that temporary protection orders, as they are now conceived, do not constitute a quick tool for preventing a crime. If at all, they are issued only after a thorough risk assessment and a preliminary investigation has been carried out, thus putting evidentiary requirements before the safety of the victim. Moreover, the burden of leaving the household falls on the victim and her children. Because there is no centralised system to record the issue/breach of TPOs, the burden of proving that a TPO has been issued falls on the victim, thus exposing her to re-victimisation. As regards protection orders, these can be obtained only in the context of criminal proceedings and/or in the context of divorce proceedings or where children are involved – while the convention requires that these should be available irrespective or in addition to other legal proceedings.

260. With the present report, GREVIO wishes to support the Maltese authorities in this endeavour and invites them to keep it regularly informed of developments with regard to the implementation of the Istanbul Convention. GREVIO looks forward to continuing its fruitful co-operation with the country authorities.

261. With a view to facilitating the implementation of its suggestions and proposals, GREVIO requests the national authorities to translate this report into their official national language(s) and to ensure that it is widely disseminated, not only to the relevant state institutions at all levels (national, regional and local), in particular to the government, the ministries and the judiciary, but also to NGOs and other civil society organisations that work in the field of violence against women.

Appendix I

List of proposals and suggestions by GREVIO

I. Purposes, definitions, equality and non-discrimination, general obligations

A. General Principles of the convention

1. With a view to ensuring clarity of the legal provisions in force, GREVIO encourages the Maltese authorities to amend national laws where inconsistencies persist between the Istanbul Convention and national law, and the latter does not offer a higher degree of protection (paragraph 7).

B. Scope of application of the convention and definitions (Articles 2 and 3)

2. GREVIO urges the authorities to enhance the implementation of the Istanbul Convention in relation to all forms of violence against women, beyond domestic violence, which are currently less addressed by policies, programmes and services, notably, rape and sexual violence, FGM, forced marriage, forced abortion, forced sterilisation and stalking. GREVIO furthermore recalls that Article 2, paragraph 1, of the Istanbul Convention affirms that all forms of violence against women, including domestic violence, affect women disproportionately and are a form of discrimination against women. It therefore strongly encourages the Maltese authorities to ensure that both national legislation and policies reflect this fundamental principle of the Istanbul Convention (paragraph 13).

C. Fundamental rights, equality and non-discrimination (Article 4)

2. Intersectional discrimination

3. GREVIO strongly encourages the Maltese authorities to address intersectional discrimination in its Strategy on Violence against Women and, in particular, to (paragraph 21):

- a. carry out studies examining the incidence of violence against women experienced by women belonging to specific vulnerable categories, such as women with disabilities, women in prostitution and migrant/asylum-seeking women;
- b. include in policies specific measures aimed at preventing, protecting and prosecuting violence committed against particular vulnerable categories of women who are subject to multiple discrimination.

II. Integrated policies and data collection

A. Comprehensive and co-ordinated policies (Article 7)

4. GREVIO encourages the Maltese authorities to address at the policy level the significant barriers and difficulties encountered by victims who are in Gozo in the area of protection and support, as well as investigation and prosecution. GREVIO further strongly encourages the Maltese authorities to ensure that the Interministerial Committee holds regular consultations with civil society and that, more generally, the Maltese authorities support co-operation with all non-governmental actors and ensure their participation in the design of policies, legislative changes and programmes (paragraph 29).

B. Financial resources (Article 8)

5. GREVIO encourages the Maltese authorities to increase funding for activities to prevent and combat violence against women and include measures that target all forms of violence against women, beyond domestic violence. GREVIO, furthermore, encourages the Maltese authorities to ensure that sums disbursed to NGOs providing services in the area of violence against women under a public social partnership agreement, enable them to fully meet the needs of all victims in a sustainable manner and on a long-term basis (paragraph 32).

C. Non-governmental organisations and civil society (Article 9)

6. GREVIO strongly encourages the Maltese authorities to put in place a dedicated, transparent and accountable public procedure under which all NGOs that provide specialist support services to victims of all forms of violence against women and their children, can compete for and request sustainable and long-term funding. Such procedure should place due emphasis on their experience and track record in providing such services. GREVIO further strongly encourages the Maltese authorities to remove mandatory referrals from Agenzija Appogg to access domestic violence shelters, including by offering women victims of domestic violence the opportunity to self-refer (paragraph 38).

D. Co-ordinating body (Article 10)

7. GREVIO encourages the Maltese authorities to set up separate bodies, on one hand for the co-ordination and implementation of policies and measures, and on the other hand for their monitoring and evaluation, in order to ensure objectivity. It further encourages the Maltese authorities to increase the funding available to the Commission on Gender-Based Violence and Domestic Violence and provide for budgets with a longer time frame than is currently the case, to enable the commission to plan its activities in a more sustainable and effective manner (paragraph 44).

E. Data collection and research (Article 11)**1. Administrative data collection**

8. GREVIO strongly encourages the Maltese authorities to ensure the comprehensive collection of disaggregated data in relation to all forms of violence covered by the Istanbul Convention at all stages of criminal justice (from reporting, to investigation, to the opening of criminal proceedings and their outcome), disaggregated by sex, age, type of violence and the relationship of the perpetrator to the victim. Such data should be co-ordinated and comparable so that cases can be tracked at all stages of the law-enforcement and judicial proceedings. To this end, GREVIO encourages the Maltese authorities to issue guidelines on data collection for the police and justice sectors. Such steps would allow the Maltese authorities to assess the effectiveness of the criminal justice system and to study the factors that lead to low prosecution and conviction rates and to take legislative and policy measures to address these (paragraph 52).

9. GREVIO further strongly encourages the Maltese authorities to collect disaggregated data on (paragraph 53):

- a. the number of protection orders issued in the context of civil proceedings;
- b. the number of temporary protection orders issued, their violations and the sanctions imposed as a result of such violations in cases of violence against women;
- c. the number of protection orders issued in the context of criminal proceedings, including the number of violations and sanctions imposed as a result of such breaches and the number of cases where the woman was re-victimised or murdered because of such breaches;
- d. data on the number of decisions on custody/visitation/residence of children that have expressly taken into account reports of domestic violence;

- e. whether victims of all forms of violence use the remedies available to address authorities' failure to diligently prevent, investigate and punish acts of violence covered by the scope of the Istanbul Convention;
- f. the number of cases in which women victims of violence have claimed and have obtained compensation either from the perpetrator or the state for offences covered by the Istanbul Convention;
- g. access to social services and to health care with respect to other forms of violence against women under the convention, other than domestic violence.

2. Population-based surveys

10. GREVIO encourages the Maltese authorities to carry out dedicated surveys on all forms of violence against women at regular intervals. All surveys should be conducted with the use of methods that allow women to feel safe and free to disclose incidents of violence (paragraph 55).

3. Research

11. GREVIO encourages the Maltese authorities to step up their support for academic research into issues related to violence against women, including by financially encouraging research into these areas. When designing policies and laws that aim to prevent and combat violence against women, GREVIO invites the authorities to draw from the expertise and the findings of research in the area of violence against women. GREVIO further encourages the Maltese authorities to evaluate existing policies and legislative measures and assess their level of implementation, efficacy and victim satisfaction, also in light of research in the area of violence against women (paragraph 59).

12. GREVIO, moreover, encourages the authorities to support research on all forms of violence against women and on violence that affects specific groups of victims, such as women from ethnic minorities (paragraph 60).

III. Prevention

A. Awareness raising (Article 13)

13. GREVIO strongly encourages the Maltese authorities to promote on a regular basis awareness-raising campaigns to increase awareness among the general public of the different manifestations of all forms of violence covered by the scope of the Istanbul Convention, beyond domestic violence. The Maltese authorities should in particular (paragraph 65):

- a. ensure that sufficient and sustainable funding is made available for awareness raising campaigns, including, for this purpose, to women's support services and women's NGOs;
- b. carry out research on the impact that awareness-raising campaigns have had on the Maltese population and the way they perceive sexism, gender equality and gender-based violence.

B. Education (Article 14)

14. GREVIO encourages the Maltese authorities to strengthen the teaching of all of the different forms of gender-based violence against women, including the provision of more in-depth information on the characteristics and dynamics of domestic violence and the specific vulnerability of women at the intersection of discrimination, at all levels of education, adapted to the evolving capacity of learners (paragraph 70).

C. Training of professionals (Article 15)

15. GREVIO urges the Maltese authorities to equip the police with the knowledge and powers to respond promptly and appropriately to all forms of violence against women covered by the Istanbul Convention. In particular, the Maltese authorities should (paragraph 78):

- a. step up initial and in-service training on all forms of violence against women for all police officers who directly or indirectly receive/investigate such offences. Training should in particular:
 - address all forms of violence against women covered by the Istanbul Convention;
 - address the concept of power and control and the need to adequately record patterns of abuse in the context of domestic violence;
 - instruct on how and where to receive reports and interview the victims in a manner that prevents secondary victimisation;
 - sensitise and prepare police officers to deal with reports from women who are in a particularly vulnerable situation such as women with disabilities and women in prostitution;
- b. provide guidelines/protocols specifying how to proceed in cases of domestic violence, including cases of psychological violence and other forms of violence against women. Such protocols/guidelines should in particular address how to build a case fit for prosecution and cover, *inter alia*, how to comprehensively collect all relevant evidence in addition to the victim's statement or, in cases of rape, in addition to the forensic evidence lifted from the victim.

16. With a view to curbing the alarmingly low level of prosecutions and convictions of all forms of violence against women, GREVIO urges the Maltese authorities to provide robust training on violence against women to members of the Attorney General's office, the police (given their prosecutorial role) and judges, as well as guidelines or protocols. These should in particular address (paragraph 79):

- a. domestic violence, including the concept of power and control and the need to take into account patterns of abusive behaviour;
- b. the dissuasive and re-victimising effect that impunity for violence against women has on victims;
- c. the implications of the new provision on rape based on lack of consent, including the shift of the onus onto the perpetrator to ensure that all sexual acts are engaged in voluntarily. Training on how to collect evidence and assess "the surrounding circumstances, including the state of that person at the time amongst other considerations" in rape cases will enable prosecutors and judges to evaluate whether consent was present.

17. GREVIO further urges the Maltese authorities to step up the training of judges on the role of temporary protection orders and protection orders in breaking the cycle of violence in cases of domestic violence, as well as on the importance and preventive role of perpetrator programmes (paragraph 80).

18. GREVIO strongly encourages the Maltese authorities to introduce systematic and mandatory initial and in-service training for the relevant professionals who deal with victims or perpetrators of all acts of violence, in line with the requirements of the Istanbul Convention. It strongly encourages the Maltese authorities, in particular, to ensure initial and in-service training for health professionals that will enable them to identify all forms of violence against women, refer victims to specialist support services and bring their skills and responses – including with respect to sexual violence and FGM – up to the required standards (paragraph 81).

19. GREVIO strongly encourages the Maltese authorities to introduce in education establishments dedicated guidelines/protocols that lay out the preventive action to be undertaken where indications of violence against women exist or there is a risk thereof, including, in particular, in cases of forced marriage and FGM. In this connection, dedicated training for teachers on all of the forms of violence against women should be envisaged and strengthened (paragraph 82).

D. Preventive intervention and treatment programmes (Article 16)

1. Programmes for perpetrators of domestic violence

20. GREVIO strongly encourages Malta to introduce perpetrator programmes in custodial settings. It further strongly encourages the Maltese authorities to use all available means to ensure that perpetrator programmes are widely attended, including by incorporating them into the criminal justice system as a tool to reduce recidivism and to also ensure attendance also by convicted perpetrators in prison. The authorities are also encouraged to increase the human resources within the DAIP programme and initiate scientific outcome studies (evaluation) of the programmes to assess, among other aspects, the risk of reoffending, in order to ensure higher levels of safety and protection for victims (paragraph 87).

E. Participation of the private sector and the media (Article 17)

21. In light of the important role played by the media and the private sector in shaping and changing attitudes to the status and role of women in society and the level of acceptance of violence against women, GREVIO encourages the Maltese authorities to promote the development and monitoring of self-regulatory standards, and training in those standards, in relation to the non-stereotypical and non-sexist portrayal of women in the media, including in the context of reporting on violence they have suffered (paragraph 92).

IV. Protection and support

A. General obligations (Article 18)

22. GREVIO strongly encourages the Maltese authorities to set up institutionalised structures for co-ordination and co-operation among all of the different governmental and non-governmental agencies and service providers to ensure multi-agency co-operation based on a gendered understanding of violence against women and domestic violence and focusing on the human rights and safety of victims, as well as on their empowerment and economic independence. Such structures for co-ordination and co-operation should address all forms of violence against women, beyond domestic violence. This should include guidelines and co-operation procedures/protocols for authorities dealing with violence against women, as well as a system for sharing expertise and experience in handling such cases, such as the MARAM. GREVIO strongly encourages the inclusion of specialist women's support services run by NGOs in any formal and informal co-operation structures. Finally, GREVIO encourages the Maltese authorities to ensure that protection and support services are made available as much as possible on the same premises (paragraph 98).

B. Information (Article 19)

23. GREVIO encourages the Maltese authorities to ensure that victims receive adequate and timely information on available support services and legal measures for all forms of violence against women, in a language they understand (paragraph 101).

C. General support services (Article 20)

1. Social services

24. GREVIO strongly encourages the Maltese authorities to set up dedicated programmes that cater to the specific needs of victims of violence against women in the areas of financial assistance, training, employment and housing, thus ensuring their recovery, as well as their economic independence and empowerment, in particular by pursuing their efforts to strengthen housing and training schemes for women victims of violence as set out in the national strategy and action plan (paragraph 104).

2. Health care

25. GREVIO encourages the Maltese authorities to introduce adequate protocols and standards that address all forms of violence against women. GREVIO, in particular, strongly encourages the Maltese authorities to develop and implement protocols that may be followed in situations where FGM or the risk thereof is identified, both for the victim and any young/child female family member of the victim that may be at risk of FGM (paragraph 106).

D. Specialist support services (Article 22)

26. GREVIO strongly encourages the Maltese authorities to ensure the provision of immediate short- and long-term specialist support services to victims of all forms of violence against women, beyond domestic violence. Prompt provision of psychological and legal counselling should be particularly increased, with systematic referrals, where necessary, to specialist women's organisations with in-depth knowledge of gender-based violence. GREVIO also strongly encourages the Maltese authorities to ensure that Aġenzija Appogg is given sufficient resources to respond promptly to victim's requests in a way that minimises re-victimisation, including by looking into ways to ensure that support services are located on the same premises. Attention should furthermore be given to strengthening interpretation services and providing appropriate support services in Gozo (paragraph 114).

E. Shelters (Article 23)

27. GREVIO strongly encourages the Maltese authorities to ensure that the number and capacity of specialist women's shelters meets the growing demand, including in Gozo, without resorting to general shelters such as those for the homeless that do not provide the necessary support or services to victims of domestic violence. It further strongly encourages the Maltese authorities to ensure that shelters are sufficiently equipped to welcome women with different needs such as women with disabilities and that solutions are also found for women with problems of substance abuse. Finally, GREVIO strongly encourages the Maltese authorities to ensure access to domestic violence shelters irrespective of women victims' residence status and without conditions that may be prohibitive (paragraph 118).

F. Telephone helplines (Article 24)

28. GREVIO strongly encourages the Maltese authorities to set up a state-wide, round-the-clock helpline dedicated to all forms of violence against women capable of providing counselling to victims, with due respect for the confidentiality and anonymity of all callers and operated by trained staff (paragraph 121).

G. Support services for victims of sexual violence (Article 25)

29. GREVIO urges the Maltese authorities to (paragraph 130):

- a. ensure the availability of dedicated rape crisis and/or sexual violence referral centres in Malta and Gozo equipped with trained specialist staff, providing a response to sexual violence and rape with a victim-centred approach, on a one-stop-shop basis;
- b. ensure the prompt and efficient co-ordination between health professionals and other stakeholders involved in the area of sexual violence and rape, including to ensure prompt referrals;
- c. take additional measures to guarantee all victims of sexual violence access to the above services, as well as longer-term psychological support, ensuring that the reproductive choices of women victims of rape do not constitute a barrier to their access.

30. GREVIO also strongly encourages the Maltese authorities to ensure that forensic examinations are carried out in line with internationally recognised standards and that samples are stored with the consent of the victims, regardless of whether the matter has been reported to the

police. GREVIO further strongly encourages the Maltese authorities to ensure that protocols/guidelines and training are made available on the management of cases of sexual violence and rape in other clinics and hospitals and that support is made available to victims of sexual violence who are above 16 and under 18 (paragraph 131).

H. Protection and support for child witnesses (Article 26)

31. GREVIO strongly encourages the Maltese authorities to introduce dedicated services for children who are victims or witnesses of all forms of violence against women, such as age-appropriate psychosocial counselling and experts trained in interviewing children, providing due regard to the best interests of the child (paragraph 137).

I. Reporting by professionals (Article 28)

32. Recalling the principle of women's empowerment mainstreamed throughout the convention, GREVIO strongly encourages the Maltese authorities to ensure that the duty to report imposed on professionals is tempered by full and sensitive information being provided to the victim to allow her to make an informed decision herself and maintain autonomy. To this end, GREVIO strongly encourages the Maltese authorities to review the obligation for professionals to report cases of violence against women and their children, other than in situations in which there are reasonable grounds to believe that a serious act of violence covered by the scope of the convention has been committed and further serious acts are to be expected. This may well require making the obligation to report contingent upon the prior consent of the victim, unless the victim is a child or is unable to protect her/himself because of disabilities (paragraph 140).

V. Substantive law

A. Civil law

1. Civil remedies against the state – ensuring due diligence (Article 29)

33. GREVIO strongly encourages the authorities to include elements regarding the civil responsibility of public officials in information provided to victims in pursuance of Article 19 of the Istanbul Convention and monitor progress in this area by keeping data on the numbers of civil claims and their outcomes. GREVIO, furthermore, encourages the Maltese authorities to make available at police stations across the country written information on redress mechanisms against the police for any negligent or intentional violation of their public duties and for failure to prevent and investigate acts of violence. GREVIO further encourages the Maltese authorities to collect data on whether victims of all forms of violence use the remedies available to address authorities' failure to diligently prevent, investigate and punish acts of violence covered by the scope of the Istanbul Convention (paragraph 146).

2. Compensation (Article 30)

34. GREVIO invites the Maltese authorities to collect data on the number of cases in which women victims of violence have claimed and have obtained compensation either by the perpetrator or the state for offences covered by the Istanbul Convention (paragraph 149).

35. GREVIO notes that under Article 79, paragraph 3, of the Istanbul Convention, the Maltese authorities will be required to provide GREVIO with an explanation of the grounds for the reservation entered in relation to state compensation (Article 30, paragraph 2) upon expiry of its period of validity and prior to its renewal (paragraph 150).

3. Custody and visitation rights (Article 31)

36. GREVIO urges the Maltese authorities to take a number of priority actions in the area of custody and visitation rights to ensure the safety of victims and their children and to break the cycle of power and abuse exercised by the perpetrator, notably to (paragraph 159):

- a. explicitly provide in the law that incidents of domestic violence shall be considered as a cause for forfeiture of visitation rights of the perpetrator in all cases;
- b. take measures to ensure that the exemption from mediation in proceedings dealing with separation, custody and visitation rights in cases of violence, including domestic violence, is implemented in practice and that hearings for interim injunctions/protection orders are heard swiftly;
- c. ensure that mediators receive robust training on violence against women and issue guidelines on their obligations with respect to cases of domestic violence;
- d. ensure an adequate number of judges in family courts that are trained in the area of domestic violence and provide them with guidelines shedding light on the level of violence required and/or what tests should be applied by judges in reaching a decision on custody and visitation rights;
- e. ensure that family courts take into account any episodes of violence, including by consulting with all relevant professionals;
- f. ensure that the number of professionals employed by the Court Services of the Agenzija Appogg to issue recommendations in the course of separation proceedings, including where there is suspicion of domestic violence, as well as the Children's Advocates, are sufficient in numbers as well as trained in domestic violence;
- g. ensure a sufficient number of professionals trained in violence against women to accompany the supervised access visits;
- h. ensure that both in the context of supervised visitation and during meetings with the Child Advocate, the mother of the child does not have to meet face to face with the perpetrator.

B. Criminal law

1. Domestic violence, including psychological violence (Article 33)

37. GREVIO strongly encourages the Maltese authorities to ensure, either through legislative amendments or through guidelines issued to the police or the judiciary, that the offence of private violence can be applied in practice. This would require that (paragraph 165):

- a. the constitutive elements of psychological violence are defined;
- b. that the required threshold, notably whether an abusive pattern of behaviour is needed, is clarified, in line with the Istanbul Convention.

2. Stalking (Article 34)

38. GREVIO encourages the Maltese authorities to conduct specialist training on the gendered and serious nature of stalking and to ensure the application of preventive operational measures to avoid reoffending. It further encourages the authorities to improve the collection of data on stalking, particularly on the number of cases that proceed to trial and final convictions (paragraph 168).

3. Sexual violence and rape (Article 36)

39. While welcoming the alignment of Malta's rape provision with the Istanbul Convention, GREVIO strongly encourages the Maltese authorities to monitor its implementation in practice, in particular by collecting statistics on the number of reports lodged, investigations opened, prosecutions and final convictions in respect of rape and other sexual offences with the aim of identifying and addressing possible shortcomings in implementation (paragraph 172).

4. Forced marriage (Article 37)

40. GREVIO strongly encourages the Maltese authorities to take appropriate measures, including issuing protocols and training to the police, prosecutors, judges and other relevant professionals to ensure that both traditional forced marriages of children and adults and the conduct of luring fall within the scope of Articles 251G and 251 GA and do not remain unpunished (paragraph 176).

5. Female genital mutilation (Article 38)

41. GREVIO strongly encourages the Maltese authorities to raise awareness and provide training and guidelines to all professionals who may be in contact with women and girls at risk of FGM (paragraph 181).

7. Sexual harassment (Article 40)

42. GREVIO strongly encourages the Maltese authorities to take appropriate measures to investigate, prosecute and punish acts of sexual harassment and to ensure the collection of data in order to assess the effectiveness of the response of the criminal justice system in this area, relying on proposals made in this report under Article 11 (paragraph 185).

9. Prohibition of mandatory alternative dispute resolution processes or sentencing (Article 48)

43. GREVIO encourages the Maltese authorities to look into ways to address and eliminate practices that result in the discontinuation of prosecution/criminal proceedings against the perpetrator. More specifically, training and protocols for lawyers should address the existing practice to negotiate a “deal” between the parties so that the victim does not testify in criminal proceedings in exchange for a favourable civil settlement (where there are concurrent civil/family proceedings). In particular, such training and protocols should address the likeliness for such practice to interfere and prevent the dissuasive effect of criminal punishment, leading ultimately to repeated violence and impunity of perpetrators (paragraph 189).

VI. Investigation, prosecution, procedural law and protective measures

A. Immediate response, prevention and protection (Article 50)

1. Reporting to and investigations by law-enforcement agencies

44. GREVIO urges the Maltese authorities to equip the police with the knowledge and powers to respond promptly and appropriately to all forms of violence against women covered by the Istanbul Convention. In particular, the Maltese authorities should (paragraph 200):

- a. pursue plans to set up a specialist unit on domestic violence, extending its remit where possible to other forms of violence against women such as FGM and forced marriage;
- b. remind police officers of their due diligence obligation to immediately respond to, prevent and protect women from all forms of violence covered by the Istanbul Convention and apply the related sanctions for failure to do so;
- c. secure innovative ways to eliminate the substantial barriers to reporting encountered in Gozo;
- d. take measures to ensure that the prosecutorial competence of the police does not represent in practice a barrier to reporting for victims.

45. Moreover, GREVIO urges the Maltese authorities to take robust measures aimed at removing the obstacles to the effective implementation of criminal provisions on rape and other sexual offences, notably by ensuring that forensic medical evidence may be lifted from victims should they

so wish, whenever they seek medical assistance, regardless of whether they have filed a report to the police (paragraph 201).

2. The role of the prosecution services and conviction rates

46. GREVIO strongly encourages the Maltese authorities to step up efforts to end impunity for acts of violence against women, in particular domestic violence. To this extent, the Maltese authorities should explore mechanisms and procedures, including through legal amendments, that will remove the centrality of the victim's statement in criminal proceedings for intimate partner violence and sexual violence. GREVIO strongly encourages the Maltese authorities to swiftly identify and address any/all legislative and procedural factors that contribute to the low levels of conviction in relation to all forms of violence against women (paragraph 207).

B. Risk assessment and risk management (Article 51)

47. GREVIO strongly encourages the Maltese authorities to improve their practices of risk assessment and risk management for all forms of violence against women, including domestic violence, by (paragraph 214):

- a. ensuring that in cases of domestic violence, an assessment of the victim's risk is carried out systematically and speedily by all relevant authorities in co-operation, providing co-ordinated protection and support;
- b. ensuring that risk assessments are carried out and systematically maintaining all records of reports of violence to allow the evaluation of the risk of repeat and escalating violence while ensuring respect for the principles of personal data protection;
- c. considering setting up a system, such as a domestic homicide review mechanism, to analyse all cases of gender-based killings of women, with a view to preventing them in the future and resolving any systemic shortcoming in the risk assessment process;
- d. ensuring that there are mechanisms to implement the safety plan, including, for instance, through panic buttons and monitoring of the offender through tagging.

C. Emergency barring orders (Articles 52)

48. GREVIO urges the Maltese authorities to take the legislative and or policy measures needed to bring the Maltese legal framework and practice in line with Article 52 of the Istanbul Convention, notably by (paragraph 221):

- a. ensuring that:
 - TPOs are time-bound and non-renewable, with the possibility of securing longer-term protection through a protection order;
 - TPOs can be issued quickly in situations of immediate danger without lengthy proceedings;
 - the alleged perpetrator is removed from the residence, rather than the victim;
- b. setting up a centralised system that will record the issue of TPOs as well as any breaches of such orders;
- c. stepping up efforts to promote, monitor and enforce TPOs, including through protocols/regulation and technical means such as electronic tagging;
- d. ensuring that sanctions for breaching protection orders are effectively applied in practice.

D. Protection orders (Article 53)

49. GREVIO urges the Maltese authorities to take the legislative and or policy measures needed to bring the Maltese legal framework and practice in line with Article 53 of the Istanbul Convention, notably by (paragraph 227):

- a. ensuring that protection orders are available under civil law for women, irrespective of or in addition to other legal proceedings;
- b. setting up a centralised system that will record the issue of protection orders as well as any breaches of such orders;
- c. stepping up efforts to monitor and enforce protection orders, including through protocols/regulation and technical means such as electronic tagging;
- d. ensuring that victims are promptly informed when perpetrators served with a protection order are released on bail;
- e. ensuring that sanctions for breaching protection orders are effectively applied in practice.

E. Measures of protection (Article 56)

50. GREVIO strongly encourages the Maltese authorities to take measures to reduce the risk of secondary victimisation of victims of violence against women and to protect the rights and interests of victims, notably by (paragraph 231):

- a. ensuring that courts have separate waiting areas for victims and perpetrators and that police officers implement in practice their obligation to interview the victim in a private room, separate from the alleged perpetrator;
- b. systematically giving victims the option to testify in the courtroom without being present or without the presence of the perpetrator, through the use of tele-conferencing material;
- c. ensuring that the victim is informed when the perpetrator is released or has escaped, including by setting up appropriate channels of communication between the courts and the police, including through a computerised system;
- d. ensuring that police stations and courts are equipped and cater to the special needs of women with disabilities, whether these are physical or developmental;
- e. collecting data on a regular basis and carrying out research, including from a victim's perspective, on the effectiveness of the measures in place to avoid repeat victimisation through the justice system.

F. Legal aid (Article 57)

51. GREVIO encourages the Maltese authorities to ensure that legal aid in civil proceedings is more accessible for victims of violence against women, notably by adapting the threshold that bars victims' access to legal aid to the high cost of living in Malta and extending legal aid to assistance before the first court hearing. GREVIO further encourages the Maltese authorities to ensure adequate staffing of Legal Aid Malta (paragraph 236).

VII. Migration and asylum

A. Residence status (Article 59)

52. GREVIO invites the Maltese authorities to (paragraph 241):

- a. raise awareness among migrant women entering Malta on the basis of a family reunification scheme or upon marriage with a Maltese national of the possibility to obtain an autonomous residence permit on the grounds of being a victim of abuse irrespective of the duration of the relationship;
- b. publish information and guidelines for migrant women victims of domestic violence and their legal representatives on the information and evidence required to obtain an autonomous residence permit on the grounds of being a victim of abuse.

B. Gender-based asylum claims (Article 60)**1. Gender-sensitive asylum determination procedure**

53. GREVIO strongly encourages the Maltese authorities to (paragraph 248):

- a. introduce systematic vulnerability screening for women and girls upon arrival in order to identify international protection needs and make referrals to specialist services with a view to enabling women to disclose experiences of gender-based persecution, as well as to pay due attention to country-specific reasons that might have prevented women from reporting to authorities in their countries of origin the experiences with violence;
- b. guarantee that adequate information is provided, in all phases of reception, asylum determination and appeal processes, to all women seeking asylum with the aim of increasing their awareness of their vulnerabilities and their rights and facilitating their access to general and specialist protection and support services;
- c. ensure the adequate quality of legal representation for women asylum seekers throughout the asylum application process, starting from the first interview;
- d. ensure that lawyers, decision makers and judges have access to gender guidelines and are trained in respect of a gender-sensitive application of the definitions of both persecution and refugee grounds to women's claims for protection under the 1951 Refugee Convention;
- e. introduce standardised procedures and adopt gender-sensitive guidelines to assist adjudicators to apply a gender-sensitive approach to determining claims for asylum;
- f. take measures to ensure the availability of trained same-sex interviewers and interpreters.

2. Reception and accommodation facilities

54. GREVIO urges the Maltese authorities to (paragraph 253):

- a. ensure that women asylum seekers are screened upon or swiftly after arrival for vulnerabilities such as experiences or risk of gender-based violence that would require safe accommodation and/or special support services and counselling with a view to ensuring their swift transfer to open reception facilities;
- b. ensure that women and girls are not placed in mixed-sex reception facilities or immigration detention facilities, including while in asylum detention.

C. Non-refoulement (Article 61)

55. GREVIO urges the Maltese authorities to uphold their obligation to respect the principle of *non-refoulement* of victims of violence against women, including by ensuring that the human rights of victims rescued at sea are never put at risk because of disagreements about disembarkation (paragraph 256).

Appendix II

List of the national authorities, other public bodies, non-governmental organisations and civil society organisations with which GREVIO held consultations

Ministries

Ministry for Foreign and European Affairs
Ministry for the Family, Children's Rights and Social Security
Ministry for Education and Employment
Ministry for Home Affairs, National Security and Law Enforcement
Ministry for Justice, Equality and Governance
Office of the Deputy Prime Minister and Ministry for Health

National entities

Commission on Gender-Based Violence and Domestic Violence
National Commission for the Promotion of Equality
Foundation for Social Welfare Services (Agenzija Appogg)
Agency for the Welfare of Asylum Seekers
Housing Authority
Broadcasting Authority
National Statistics Office

Church-run organisation

Secretariat for Catholic Education

Non-governmental organisations

Victim Support Malta
Malta Confederation of Women's NGOs
National Council of Women
Network Forum Malta
Women's Rights Foundation
The Good Shepherd Sisters – Dar Merhba Bik Foundation
Shelter Fondazzjoni Sebh
Shelter Suriel il-bniedem
Shelter Teresa Spinelli
SOAR
Association for Equality (A4E)
Migrant Women's Association Malta
Aditus Foundation

Experts

Anna Maria Vella, academic
Amy Camilleri Zahra, Assistant Lecturer, Department of Disability Studies, Faculty for Social Wellbeing, University of Malta

GREVIO, the *Group of Experts on Action against Violence against Women and Domestic Violence*, is an independent human rights monitoring body mandated to monitor the implementation of the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Istanbul Convention) by the Parties.

The Istanbul Convention is the most far-reaching international treaty to tackle violence against women and domestic violence. Its comprehensive set of provisions spans far-ranging preventive and protective measures as well as a number of obligations to ensure an adequate criminal justice response to such serious violations of human rights.

This report contains an overall analysis of the implementation of the provisions of the Istanbul Convention. It highlights positive initiatives in preventing and combating all forms of violence against women at national level and provides suggestions and proposals to improve the situation of women facing such violence.

www.coe.int/conventionviolence

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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