



**European Women's Lobby contribution to EC consultation:  
"Freedom, Security and Justice: What will be the future?",  
consultation on priorities for the next five years (2010-2014)**

*The European Women's Lobby (EWL) is the largest alliance of women's nongovernmental organisations in the European Union with thousands of member organisations. The EWL currently comprises 30 national co-ordinations in EU Member States and accession countries and 20 European-wide member organisations. The EWL's mission is to work to achieve equality between women and men, to promote women's empowerment in all spheres of public and private life and to eliminate all forms of violence against women.*

## **Introduction**

The European Women's Lobby (EWL) is closely following many of the policy areas that have been included in the consultation on the future of the area of freedom, security and justice, including: fundamental rights, trafficking, violence against women, political participation, immigration and asylum policies. The EWL has focused its work on analysing and monitoring the situation regarding women's specific situation relating to these different areas and have strived to ensure that a rights-based approach will be at the heart of the policies conducted in these areas. As we believe that effective and real civil society consultation should be a key principle in the development of these policies, the EWL welcomes the European Commission Consultation paper on the future of the area of justice, freedom and security and hope that our contribution will be taken into account in the drafting of the post-Hague programme. Given that an online consultation mainly made of closed questions (Yes/No) might not be the most appropriate mean to interact with NGOs, EWL attached to the consultation a letter on the process and decided to introduce in the questionnaire itself explanatory notes and proposals.

In our answer to the questionnaire that is to be found below, we have restricted our contribution to the policy areas that EWL has been following closely and actively for many years.

## **1. Improve the protection of fundamental rights**

### **1.1. Do you think that the EU should promote respect of Fundamental Rights in Europe in addition to the activities of the Member States?**

**EWL answer: YES**

**Why?**



As the EU is expanding, geographically and politically, the EU has to take responsibility for human rights including women's human rights consequences and concerns in the Union. Human Rights have come to play a large role in the EU. In order to avoid double standards as regards human rights policy externally and internally, the EU must look at fundamental rights issues within the EU. The main European institutions, the Council of European Union, the Commission and the Parliament, all must continue address the issue of human rights. Other institutional mechanisms such as the Council of Europe and the EU Fundamental Rights Agency are also important actors that must promote and respect Fundamental Rights within Europe.

The EWL support the introduction of the current draft of the Report on fundamental rights in the European Union 2004-2007 (2007/2145(INI)) that states that "the effective protection and the promotion of fundamental rights form the basis of democracy in Europe and are prerequisites for the consolidation of the European area of freedom, security and justice" and share the concern that Member States continue to refuse European scrutiny of their own human rights policies.

### **EWL proposals**

- European Union institutions should actively promote and safeguard fundamental rights in all European policies, including within the EU, and take full account of them when drafting and adopting legislation.
- Fundamental rights are not gender neutral. Instead, to have the perception of, access to and enjoyment of rights, gendered aspects must be taken into account in protection and promotion of fundamental rights. As strongly emphasised at international level, women's rights are human rights, and a strong gender perspective must be mainstreamed in all fundamental rights policies, while gender specific measures are necessary to tackle specific violation of women's human rights to reach equality in the enjoyment of fundamental rights for women and men.

### **1.2. Do you think that EU legislation promoting the implementation of fundamental rights such as data protection and fight against xenophobia and racism should be improved?**

**EWL answer:** YES

#### **Why?**

Legislation is an important measure to promote the implementation of fundamental rights, including the fight against racism and xenophobia and has therefore to be developed to ensure that all individuals have the same opportunities. The EWL believes that there should be in this regard no hierarchy of rights between the different grounds of discrimination and support therefore the new anti-discrimination directive that has been proposed by the European Commission on 2 July 2008 (we have in this regard contributed to the Social



Platform consolidated proposal for amendments of 5 December 2008<sup>1</sup>). However, the EWL calls on the European Commission to level-up gender equality legislation by 2010 to ensure the same level of protection for sex based discrimination as for all other Article 13 grounds. Furthermore, the European Commission should develop mechanisms to tackle multiple discrimination (the different anti-discrimination networks, including EWL, proposed in this regard the introduction of different clauses to tackle multiple discrimination in the proposed directive on anti-discrimination of 2 of July, see Social Platform proposed amendments of 5 December 2008).

While legislation is key in promoting fundamental rights, the EWL believes that other measures must be developed and implemented alongside such legislation, for example awareness raising measures and policy developments. Implementation of legislation and policies have to be as well closely monitored by the European Commission.

### **EWL proposals**

- The European Commission should level up gender equality legislation by 2010 to ensure that sex-based discrimination will benefit from the same level of protection as the other Article 13 grounds.
- The European Commission and Member States to develop mechanisms to tackle multiple discrimination by for example make available legal procedures to deal with situations of multiple discrimination, that is where discrimination occurs on two or more grounds listed in Articles 12 and 13 EC. In particular national legal procedures shall ensure that a complainant can raise all aspects of a multiple discrimination claim in a single procedure.
- The European Commission and Member States should facilitate access of all women and men, including undocumented migrants, to courts to ensure the effective application of their fundamental rights, including through awareness raising campaigns.
- The European Commission should closely monitor the implementation of legislation and policies that aim at promoting fundamental rights, including gender equality and anti-discrimination legislation and policies.
- The European Commission and Member States should encourage the use of positive action measures as a way to tackle discrimination based on different grounds, such as sex, race, disability, age, LGBT.
- Anti-discrimination measures should use an intersectional perspective in law and policy developments, taking into account the specificities of discriminatory and persecuting acts, and the consequences such acts have on women and men.

## **2. Develop EU citizenship**

<sup>1</sup> Can be downloaded at : <http://www.socialplatform.org/News.asp?news=19794>



**2.1. To facilitate the free movement of EU citizens within the EU do you think that the EU should do more to:**

**(1) remove the remaining obstacles in the day-to-day life of EU citizens who move to another Member State?**

**EWL answer: YES**

**EWL proposals**

Despite progress in removing the barriers to mobility of workers in the EU, many obstacles persist particularly in the area of the portability of social security rights and benefits, including in the area of pensions, access to certain type of income replacement benefits, such as maternity leave and the recognition of qualifications obtained in third countries. This impact differently on women and men and disproportionately more so on women. Women's entry into the labour market represents a structural change, not a sporadic phenomenon, and therefore social protection systems need to be updated accordingly, while mobility is not uniquely determined by social security systems, they can nevertheless influence decisions to move from one Member State to another. Furthermore, current policies that promote a flexicurity model of employment, long life learning and measures to reconcile private and professional life increases the urgency to remove the barriers to social protection systems. There is a need therefore to:

- Recognise periods of time spent in another country, other than the country of residence, as accumulate time periods that are counted in the conditions of access to social protection benefits.
- In this context, access to income during maternity leave should be guaranteed to women who have worked in third countries and who, at the time of childbirth, does not meet the requirements of the country of residence regarding number of days worked to avail of income replacement benefits.
- Guarantee the individualisation of rights in social protection systems to ensure that women are not considered as “derived” or “secondary” in the rank of social protection and taxation rights.
- Guarantee transferable occupational pension schemes (second pillar) from and between different employment situations and different countries. In this context, it is necessary to move forward on the (amended proposal) on enhancing worker mobility by improving the acquisition and preservation of supplementary rights (2007).
- In a similar way to which the Member States' educational systems were brought closer to facilitate mobility of student, workers and skills, a process of recognition of the qualifications obtained in third countries must be put in place as the non-recognition of these qualifications undermine free movement within the EU and lead to exclusion.

**(2) promote participation in elections to the European Parliament and in local elections?**



**EWL answer: YES**

### **EWL proposals**

Establishing a just democracy in Europe requires the representation of all Europeans, both women and men in the making of decisions that affect their lives. The current under-representation of women in the European Parliament (70% men MEPs) and in other EU institutions contributes to the lack of democratic legitimacy of the European Union. The European Union should introduce binding measures for the equal representation of women and men in all EU institutions as a basic democratic feature. The EU should also have specific programmes directed at encouraging the active participation of women as voters and as candidates for EP and local elections.

The EU should promote participation in general but also specifically promote migrant women and men's participation in line with the Resolution 1618 (2008) of the Council of Europe on "State of democracy in Europe. Measures to improve the democratic participation of migrants" by encouraging:

- Member States to grant migrants voting rights, including the right to vote and the right to stand in local and regional elections after a residence period of five years or less.
- Member States to lift– in accordance with international standards on the right to freedom of assembly, association and expression – restrictions on the political rights of migrants to join political parties or form political associations and encourage political parties to include women and men of migrant background amongst their members.
- Member States to ensure that migrants enjoy the right to consultation through the establishment of consultative bodies, in accordance with the Convention on the Participation of Foreigners in Public Life at Local Level. These bodies should ensure they are representative of migrants and members of the local or other authorities and that women and men are represented equally. They should allow migrants and migrant associations the right to put forward candidates, have clearly defined objectives and give priority to political activities, including consultation and promotion of citizen participation. Furthermore, these bodies should have the right to be informed and consulted, to initiate consultation and to receive a response.
- Ensuring that irregular migrants are not excluded from any forms of democratic participation and that they enjoy their basic rights in accordance with Assembly Resolution 1509 (2006) on human rights of irregular migrants.

### **2.2. Do you think that the EU should do more in the field of promotion of the rights of children and the protection of women against violence?**

**EWL answer: YES**



### **Why?**

The UN Beijing Platform for Action, which has been signed by all EU Member States, recognises that: *"Violence against women is a manifestation of the historically unequal power relations between women and men, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement."* (Paragraph 118)". Over the last decade, a number of EU Presidencies have prioritized violence against women, held conferences, and adopted important recommendations, reaffirming the EU's commitment to addressing violence against women. On the basis of the Spanish Presidency's (January-July 2002) preparatory work concerning violence against women, the Danish Presidency (July-December 2002) drew up seven indicators that could facilitate achieving common goals of eliminating violence against women and supporting of victims of violence, in particular domestic violence. However, the EU has so far failed to give sufficient institutional weight to the work against violence against women within the EU (while we acknowledge the recent adoption of European guidelines on violence against women that applies to the EU external action).

However, **the legal basis prohibiting gender inequality in EC law is sufficient to introduce legislation on violence against women (VAW)**. Moreover, according to the Convention on the Elimination of all Discrimination against Women (CEDAW) that all EU Member States have ratified, VAW is explicitly interpreted as a form of gender discrimination. Gender neutral approaches to combating domestic violence or other forms of VAW (for example human trafficking) may also be considered indirect discrimination.

While migrant women should not be stigmatized as victims of violence, specific attention should be paid to enable migrant women to flee situations of violence as they might be prevented to leave because of their dependent status (tied to their spouse or to their employer) and/or their inability to access shelters for women victims of violence. Organisations that are providing support to au pairs and Migrant Domestic Workers have denounced the increased vulnerability of migrant workers tied to a specific employer, reporting various abuse. As a result, many are not leaving nor denouncing their employers and the ones who leave become undocumented. The same demand should apply to diplomatic domestic workers who have a special regime that tie them to their employer. The right to hold their own passport and residence permit should be guaranteed.

### **EWL proposals**

At this stage, the EU must recognize that violence against women is one of the main causes of gender inequality in the EU today. Therefore within the remit of the EU powers, the European Commission should step up its efforts by:

- Increasing EU financial resources to fund activities and organizations working in the field of violence against women
- Establishing a one-yearly meeting of policy-makers (EU and MS level) and NGOs to assess progress and challenges in the work against violence against women





- Declaring a European year on zero tolerance against violence against women (as called for by the European Parliament in its written declaration that is currently being issued)
- Proposing an EU Directive on violence against women, that comprises binding instrument to enhance uniformity among member states to prevent and combat gender-based violence and ensure protection of women.
- Revising the family reunification directive so that Member States grant automatically an independent resident/work permit to the spouse, independent of that of the sponsor, without conditions, as soon as the application for family reunification is accepted (see for more information EWL answer to question 14)
- Encouraging Member states not to tie work permit to a specific employer: this is specifically important for countries where you have a specific visa for au pairs and Migrant Domestic Workers.
- Encouraging Member States to grant access to shelters to all women victims of violence, independent of their legal status.

### **3. Develop a common immigration policy for Europe**

#### **3.1. Do you think that there should be a role for the EU in managing legal migration to cope with future labour and skills shortages?**

**EWL answer:** YES

##### **Why?**

The EU should broaden legal migration opportunities, however we call the EU to be very cautious with the language used that is currently very negative (even interculturality is seen as a potential source of problem in the Vichy Declaration of the 4<sup>th</sup> of November) and when positive based on an instrumentalisation of migrants. EWL believes that we can only advance the economic needs and interests of the EU and of migrant workers through a recognition of individual human rights, our shared responsibilities and our common values. Along with a rights-based approach, it is needed to develop a positive approach to migration, that recognize migrant women and men's economic, social and cultural contribution to European societies. EWL is very concerned by current EU directives proposals (high-skilled migration, seasonal workers, socio-economic rights) that legitimate a differentiation of rights depending on the migrant's category of entry in the EU.

##### **EWL proposals**

- All women and men residing within the EU, be they documented or undocumented migrants, should have the same fundamental rights. As stated by the Commission, the Common European Immigration Policy *"should build on universal values of human dignity, freedom, equality and solidarity espoused by the EU, including full respect of the Charter of Fundamental Rights and the European Convention of Human Rights"*.



- Fundamental social rights of all migrants should be strengthened. This includes the right to work, to business support, to housing, to health, to social assistance and services of general interest. Particular attention should also be paid to ensure access to these rights to migrant women workers who work in sectors which are traditionally not recognized as “work” such as domestic and care work. Particular attention should also be paid to ensure migrant women have access to safe, equal, and culturally sensitive health services and rights, in particular, sexual and reproductive rights.
- Migrant women should be granted an independent legal status, whatever the reasons or their stay, in accordance with the Resolution 1478 (2006) of the Parliamentary Assembly of the Council of Europe (see more information in EWL answer to question 14).
- The EWL urges EU Member States to ratify the International Convention on the Protection of the Rights of All migrants Workers and Members of Their Families. EWL recalls that the UN International Convention on the Protection of the Rights of All migrants Workers and Members of Their Families (18/12/90) seeks to establish minimum standards of protection in legal, political, economic, civil, social and cultural rights for migrant workers and members of their families, while enabling States that desire so to provide additional protection in specific areas. It seeks to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families throughout the entire migration process.

### **3.2. Do you think integration of legal immigrants should be further strengthened and that the EU could help Member States, for example by sharing information?**

**EWL answer:** YES

#### **Why?**

The integration of immigrant people should be further strengthened based on the Common Basic Principles on Integration that have been adopted by the EU in 2004. EWL is concerned that recent measures adopted as integration measures are taking a one-sided approach increasing the duties of migrants while not facilitating their access to fundamental rights. EWL call the EU to ensure that Member States adopt integration measures that are a two-way process and do not contravene the fundamental rights of migrants.

EWL believes therefore that the capacity to integrate should not be a condition to enter the territory of the EU as it contradicts the Common Basic Principles. The European Commission should ensure mandatory integration measures (including language tests abroad) are not in contradiction with article 13 EC: an impact assessment that should look at the impact of these measures on direct and indirect discrimination should be carried out as soon as possible. When evaluation of integration are carried on, particular attention should be paid to ensure that migrant women will not be discriminated from such measures (e.g. any evaluation of the knowledge of the country should take into account the fact that women's literacy in many societies is still very low).





Moreover, as stated by the EC Communication on “A Common Agenda for Integration: Framework for the Integration of third-Country Nationals in the European Union”, COM (2005) 389 final, a gender perspective needs to be incorporated into all relevant actions. However, EWL has seen that the rights and concerns of immigrant women in the measures promoting the integration of immigrants in the EU and more generally in the development of a European immigration policy are not taken into account when integration policies are put into place.

### **EWL proposals**

- The European Commission to identify in consultation with migrant women's organization's best practices that have been supporting migrant women's integration in EU Member States.
- The European Commission to ensure that mandatory integration measures (including language tests abroad) are not in contradiction with article 13 EC and the right to family life.
- When providing immigrants with opportunities to participate in society, particular attention should be paid to tackling discrimination, including multiple discrimination, with effective legal measures.
- Particular attention should be paid to facilitate migrant women access to employment. This especially requires recognising professional qualification acquired abroad, providing services such as language and literacy courses but also the availability, accessibility and affordability of care services for dependants and people with additional support needs (children, older people, people with disabilities, etc.).
- The European Commission and Member States should commit to supporting civil society initiative for and by migrants, including migrant women's organizations, with specific funding lines.

### **3.3. Do you think that the EU should step coordination to curb illegal immigration into the EU?**

**EWL answer:** NO

#### **Why?**

The EWL is concerned by the demand made to Member States and the European Commission in the European Pact on Immigration and Asylum to increase the amount of funding devoted to border control whilst neglecting to safeguard a balanced approach to migration which ensures legal migration opportunities and access for asylum seekers. As it is stated in the preamble of the European Pact on Immigration and Asylum, ‘international migration is a reality that will persist as long as there are differentials of wealth and developments between the various regions of the world.’ Therefore given the current imbalances, rather than decreasing the flow, these policies would lead to:



- an increase in the number of death and violation of people trying to reach European borders by boat or by foot, with the routes becoming more and more dangerous
- the increasing vulnerability of migrant women and men who indebt themselves to pay smugglers and traffickers to reach Europe.

In order to avoid those situations, what is needed is a coherent rights-based approach to migration and asylum.

#### 4. Further develop a Common European Asylum System

##### 4.2. Do you think a Common European Asylum System with higher common standards of protection should be developed?

**EWL answer:** YES

##### **EWL proposals**

EWL thinks that a Common European Asylum System (CEAS) with higher common standards of protections should be developed. At the same time, the EWL believes on the necessity to ensure a strong gender perspective in the CEAS. The EWL states the following needs:

- The creation of a **Gender Unit within the European Asylum Support Office:** specific issues within the broader asylum support system. Some of the areas of responsibility include: sharing practices and expertise on mainstreaming a gender perspective in asylum policies; compiling models of good practice on gender related asylum claims with the view to informing EU policy and future legislative measures and reforms of the existing Directives; establishing gender-sensitive training for asylum determination authorities, including the identification of vulnerable groups and those with special needs; examining gender sensitive asylum guidelines.
- **Gender sensitive asylum guidelines:** It is crucial in the framework of a European common asylum system that women's experience of persecution in all of the EU Member States is linked to the criteria of the Geneva Convention and to **Article 9 (f) "acts of a gender-specific or child-specific nature"** of the Qualifications Directive. In order to ensure a gender-sensitive harmonisation process, guidelines are called for on the basis of the UNHCR Guidelines on International Protection<sup>2</sup>. Within the framework of Practical Co-operation, the EWL calls for an EU **ad-hoc gender expert group** to examine EU gender-sensitive asylum guidelines with the aim of assisting asylum determination authorities in interpreting gender-specific asylum claims. Gender sensitive asylum guidelines are needed as an overarching tool

<sup>2</sup> 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 (2002). <http://www.unhcr.org/publ/PUBL/3d58ddef4.pdf>



that will ensure that women, on the basis of their own experience of persecution, have equal access to the determination process failing which effective international protection for women will not be guaranteed. Guidelines, rather than new legislation measures are favoured precisely because protection from gender-based persecution is already provided for in the law, more precisely in the qualification directive.

- **Gender-disaggregated data and studies:** The lack of disaggregated data and statistics impede upon determining the numbers of women who seek asylum and the reasons thereof particularly relating to gender-specific persecution. This in turn makes it difficult to determine the status in which gender-related claims are examined, i.e. refugee status or subsidiary protection as well as the outcomes of the claims procedure. Criteria for determining refusals, when claims are deemed to be 'unfounded', are equally crucial particularly in the context of gender-specific asylum claims. This type of data would also assist in determining criteria for the identification of particularly vulnerable asylum seeking women and also in relation to women (and men) victims of severe forms of torture. It is particularly urgent to **undertake a study on the disparities between Member States concerning the grant of protection on the basis of gender-based persecution and the forms this protection takes.**
- **Country of origin information (COI):** As a standard practice, all COI must include information regarding the status of women<sup>2</sup> in countries of origin. Moreover, it is important to stress that asylum is an individual right and therefore, the concept of "safe country" or region is in total contradiction with this right. This is particularly the case with regards to women as no country or region can be deemed "safe" given that violence against women and gender based persecution occur in all countries of the world.

## 5. Strengthen the protection of external borders through an integrated border management system and a common visa policy

### 5.1. Do you think that European level should increase its support to Member States?

EWL answer: NO

Why?

See 3.3.

### 5.2. Do you think modern technologies should be used more than today in order to reinforce border controls and check identity and travel documents?

EWL answer: NO

Why?

See 3.3.



## 6. Develop and promote a coherent judicial area for civil matters

**6.1. Do you think that the EU should ensure mutual recognition between Member States**

**(1) in respect of marriage, civil partnerships and civil status (names, marital status, descendants) (e.g. recognition of a family name or children's names in whichever European Union state you are living)?**

**EWL answer: YES**

**Why?**

The diversity of family models and couples is a European-wide reality, including an increasing number of recomposed families, single parent families, and LGBT (Lesbian, Gays, Bisexual and Transgender/sexual) families. Discrimination against and non-recognition of these couples and family forms is common. However, some Member States have more advanced legislation and regulations that recognize the diversity of families, and ensure them the same level of protection and rights as the classical 'by marriage constituted heterosexual nuclear family'. Therefore, there should be a guarantee that a civil partnership, marriage, or other matters (names etc) related to civil status obtained in one Members State, must also be recognized by another EU Member States if the persons are residents and/or travelling there. The European fundamental principle of free movement is heavily constrained by the absence of mutual recognition in this respect and the rights of the women and men concerned are therefore limited.

**EWL proposals**

- Member States should guarantee that a civil partnership, marriage, or other matters (names etc) related to civil status obtained in one Members State, must also be recognized by another EU Member States if the persons are residents and/or travelling there.
- Migrant women should be granted an independent legal status, whatever the reasons of their stay, in accordance with the Resolution 1478 (2006) of the Parliamentary Assembly of the Council of Europe.

**(2) of administrative documents, civil partnerships, registers of marriages, births and deaths (to be able to have one's birth or marriage certificate or other documents easily recognised in any other Member State)?**

**EWL answer: YES**

## 7. Develop and promote a coherent judicial area for criminal matters

**7.3. Should the EU do more against trafficking in human beings?**



**EWL answer:** YES

**Why?**

The EU should ensure a continuous fight against trafficking at regional level, against trafficking in human beings internally and externally. Focus must be directed at trafficking in women for sexual exploitation, which is the main form of trafficking in human beings. Especially should the EU do more to prevent trafficking in women, including addressing root causes as gender inequality, poverty, and the demand for commercial sexual services.

**EWL proposals**

- The EU should ensure the right to assistance and support for all victims of trafficking, regardless of the victim's nationality, and regardless of the victim's cooperation with law enforcements authorities.
- Funds must be made accessible for shelter structures and NGOs who work with victims of trafficking.
- The European Community must ratify the Council of Europe Convention on Action against Trafficking in Human Beings, to ensure its minimum level of protection for victims of trafficking and to bridge gaps between the protection provided for in this Convention and existing EU and national legislation.

**7.4. Do you think that the EU should harmonise criminal sanctions for cross-border crimes such as trafficking in human beings, sexual exploitation of children or environmental crime?**

**EWL answer:** YES

**Why?**

The EU should do more, especially in the area of trafficking in human beings. The *Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings* sets the level for a maximum penalty at no less than eight years imprisonment.

**EWL proposals**

- A common level for minimum penalty should be developed for the crime of trafficking, of two years imprisonment.
- In all criminal sanctions developments, the definition of the crime trafficking in human beings must correspond to the definition in art. 3 of *the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*.

**12. Develop the area of Freedom, Security and Justice in a globalized world**



**12.1 In which of the following areas do you think that cooperation with third countries is very important?**

- Protection of fundamental rights
- Protection of children
- Rule of law
- Immigration
- Asylum
- Border policy
- Fight against terrorism and against organised crime
- Police cooperation
- Exchange of information
- Data protection
- Judicial cooperation
- Fight against drugs
- Economic and financial crime
- Cyber crime
- Fight against trafficking in human beings

**EWL proposal**

- Cooperation with third countries have to be developed to ensure the protection of the fundamental rights of migrants.
- EWL urge the European Commission to ensure that discussions regarding development are never held hostage by a third country's ability to 'manage' or control migration flows and that development aid budget is strictly separated from border control budget (including the information center for potential migrants in the countries of origin).
- The European Commission and Member States should develop mechanisms to involve civil society in both origin and host countries to discuss immigration measures (including migration and development).

**13. Which (maximum five) areas or actions should in your opinion definitely be a priority for 2010-2014 in the area of Freedom, Security and Justice? Why?**

EWL identifies the five following areas that should be seen as a priority in the area of Freedom, Security and Justice:

**1. Combating violence against women**

(see EWL justification and proposals in 2.2.)

**2. Respecting human dignity and fundamental rights**

(see EWL justification and proposals in 1 and 3)





**3. Providing immigrants with opportunities to participate in society**

(see EWL justification and proposals in 2.1.(2))

**4. Develop higher standards of protection for asylum and ensure the access to the EU to asylum-seekers**

(see EWL justification and proposals in 4.2.)

**5. Working in partnership with civil society on immigration policies, in origin and host countries**

**Why?** Real and effective mechanisms of civil society dialogue need to be put into place, both in countries of origin and destination at local, national and European level. The future European Forum on Integration represents in this regard a key opportunity for civil society to engage with policy-makers. However, appropriate and regular mechanisms of consultation should be put into place for immigration and asylum policies.

**14. How do you think existing legislation in the area of Freedom, Security and Justice can be improved or simplified? Please, give (maximum five) examples? For what reasons?**

**EWL proposals**

**1. Gender sensitive asylum guidelines should be adopted to interpret existing Qualification and Reception directives.**

It is crucial in the framework of a European common asylum system that women's experience of persecution in all of the EU Member States is linked to the criteria of the Geneva Convention and to Article 9 (f) "acts of a gender-specific or child-specific nature" of the Qualifications Directive. In order to ensure a gender-sensitive harmonisation process, guidelines are called for on the basis of the UNHCR Guidelines on International Protection<sup>3</sup>. Within the framework of Practical Co-operation, the EWL calls for an EU ad-hoc gender expert group to examine EU gender-sensitive asylum guidelines with the aim of assisting asylum determination authorities in interpreting gender-specific asylum claims.

**Why?**

Gender sensitive asylum guidelines are needed as an overarching tool that will ensure that women, on the basis of their own experience of persecution, have equal access to the determination process failing which effective international protection for women will not be guaranteed. Guidelines, rather than new legislation measures are favoured precisely because protection from gender-based persecution is already provided for in the law, more precisely in the qualification directive.

<sup>3</sup> 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 (2002). <http://www.unhcr.org/publ/PUBL/3d58ddef4.pdf>



2. **Regarding the family reunification directive (Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification)**, EWL calls the European Commission:

- **To encourage Member States to grant automatically an autonomous residence and work permit to the spouse**, independent of that of the sponsor, without conditions, as soon as the application for family reunification is accepted.

The following minimum requirements should be guaranteed:

- a. The residence permit of the spouse should be independent of that of the sponsor as soon as the application for family reunification is accepted;
- b. It would be relevant to include domestic violence as a “particularly difficult situation”, guaranteeing an independent residency permit to the spouse (article 15.3).

**Why?**

Migrant women are in the large majority the ones joining the sponsor in the context of a family reunification. As women joining their partners do not have an independent resident/work permit once arrived in the host country, the sponsor's spouse is mostly confined in childcare / domestic activities in the private sphere, depending financially and socially on her husband. This precarious situation often makes integration in the host country challenging and can lead to serious difficulties in case of widowhood, divorce or separation. In situation of domestic violence by the husband, the spouse may be hesitant or may not want to turn to the law for protection, for fear of being returned to her country of origin. Furthermore, their dependent status and lack of financial means can compel some migrant women to turn to undeclared work, mostly domestic work, with working conditions that are often exploitative.

- **To ensure that the right to family reunion in Europe is effectively guaranteed.**  
**Why?**

Despite the political commitment since the 90s of the EU to facilitate family reunion as a vital means of promoting the integration of immigrants, the enormous margin of appreciation left to Member States in the directive have led to lower the standards in Europe. EWL is very concerned by the recently adopted French Pact on Immigration and Asylum that would lead to further lower integration standards in almost every Member States and even limit Member States ability to adopt more inclusive policies. By calling all Member States “to regulate family reunification more effectively by inviting them to take into consideration its own reception capacities and families capacities to integrate, as evaluated by their resources and accommodation in the country of destination and, for example, their knowledge of that country's language”, the Pact puts forward three new conditions and one new ground for rejection<sup>4</sup>. We believe at EWL that this will have an indirect discriminatory effect on women as they are the ones most benefiting from family

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<sup>4</sup> See for more information : MIPEX Policy Impact Assessment « What future for Immigrant Families in Europe? », that can be downloaded at: <http://www.migpolgroup.com/news/4214.html>



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reunification and we call for studies to be conducted to ensure this will not be contrary to article 13 EC and the right to family life.