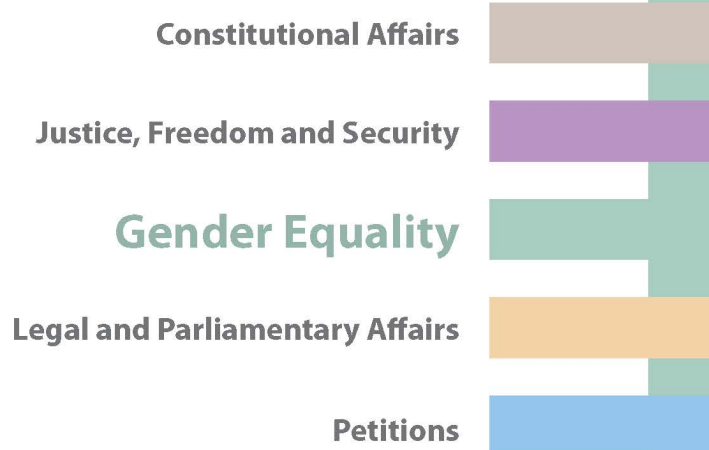


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **C**  
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



# Sexual exploitation and prostitution and its impact on gender equality

STUDY







**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**GENDER EQUALITY**

# **Sexual exploitation and prostitution and its impact on gender equality**

**STUDY**

**Abstract**

The objective of this briefing paper is to provide background information drawn from the international literature on sexual exploitation and prostitution and its impact on gender equality in relation to the report of the Women's Rights and Gender Equality Committee. The study concentrates on the debate on whether prostitution could be voluntary or has rather to be regarded in any case as a violation of women's human rights. It also presents an overview of the policies on prostitution in the Member States as well as four case studies: Germany, the Netherlands, Spain, and Sweden. Conclusions are presented with the view to enhance the debate.

This document was requested by the European Parliament's Committee on Women's Rights and Gender Equality

## **AUTHORS**

Erika Schulze  
Sandra Isabel Novo Canto, Research Assistant  
Peter Mason, Research Assistant  
Maria Skalin, Research Assistant

## **RESPONSIBLE ADMINISTRATOR**

Erika Schulze  
Policy Department C: Citizens' Rights and Constitutional Affairs  
European Parliament  
B-1047 Brussels  
E-mail: [poldep-citizens@ep.europa.eu](mailto:poldep-citizens@ep.europa.eu)

## **LINGUISTIC VERSIONS**

Original: EN  
Translation: FR

## **ABOUT THE EDITOR**

To contact the Policy Department or to subscribe to its monthly newsletter please write to:  
[poldep-citizens@ep.europa.eu](mailto:poldep-citizens@ep.europa.eu)

European Parliament, manuscript completed in January 2014.  
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# CONTENTS

<b>LIST OF ABBREVIATIONS</b>	<b>5</b>
<b>EXECUTIVE SUMMARY</b>	<b>6</b>
<b>INTRODUCTION</b>	<b>12</b>
<b>1. THE DEBATE</b>	<b>13</b>
<b>1.1. The core of the debate</b>	13
<b>1.2. The abolitionist approach</b>	14
1.2.1. Violence	14
1.2.3. Poverty and vulnerability	17
1.2.4. Health and access to social security and health insurance	18
1.2.5. Prostitution and gender equality	19
<b>1.3. The regulatory approach</b>	20
1.3.1. Organisations representing prostitutes	21
1.3.2. The sex industry	21
1.3.3. Prostitution and law enforcement	23
1.3.4. The issue of consent	24
1.3.5. The myth of trafficking	24
<b>1.4. Conclusions regarding the debate</b>	24
<b>2. OTHER BACKGROUND INFORMATION ON RELEVANT ELEMENTS OF THE DEBATE</b>	<b>27</b>
2.1.1. Migration	27
2.1.2. Increasing demand for young women and child prostitution	29
2.1.3. Experiences of transgender prostitutes	29
2.1.4. The clients of prostitution	29
<b>3. LEGAL APPROACHES TO PROSTITUTION IN EU MEMBER STATES: OVERVIEW AND FOUR CASE STUDIES</b>	<b>31</b>
<b>3.1. General overview</b>	31
3.1.1. Reducing the demand	32
<b>3.2. The regulatory model in the Netherlands</b>	33
3.2.1. The new bill of 2000: the decriminalization of exploitation of prostitution	33
3.2.2. Outcomes of the legislation: the Government's evaluation	34
3.2.3. Overall impact	37
3.2.4. Towards a new policy on prostitution	38
<b>3.3. The regulatory model in Germany</b>	40
3.3.1. The new bill of 2002: from immoral activity to legal business	40
3.3.2. Outcomes of the legislation: the Government's evaluation	41
3.3.3. Overall impact	43

<b>3.4. The abolitionist model in Spain</b>	<b>45</b>
3.4.1. Legislation: from decriminalization to abolitionism	45
3.4.2. Outcomes of the legislation: legal gaps and obstacles to enforce the law	46
3.4.3. Overall impact	48
3.4.4. The political debate on prostitution	50
<b>3.5. The abolitionist model in Sweden</b>	<b>51</b>
3.5.1. The neo-abolitionist approach of the Law of 1999: tackling the demand	51
3.5.2. Outcomes of the legislation – the Government Report	52
3.5.3. Overall impact	55
<b>REFERENCES</b>	<b>56</b>
<b>ANNEX I: OVERVIEW OF THE INTERNATIONAL LEGAL FRAMEWORK ON SEXUAL EXPLOITATION</b>	<b>69</b>
<b>I. United Nations</b>	69
<b>II. Council of Europe</b>	72
<b>III. The gender dimension of sexual exploitation</b>	75
<b>ANNEX II: DEFINITIONS RELATED TO SEXUAL EXPLOITATION AND PROSTITUTION AND THEIR IMPACT ON GENDER EQUALITY</b>	<b>76</b>
<b>ANNEX III: THE ACTION OF THE EUROPEAN UNION ON SEXUAL EXPLOITATION AND VIOLENCE AGAINST WOMEN</b>	<b>78</b>
<b>ANNEX IV: ACTIVITIES OF THE EUROPEAN PARLIAMENT ON SEXUAL EXPLOITATION AND PROSTITUTION</b>	<b>84</b>

## LIST OF ABBREVIATIONS

- APRAMP** Spanish Association for the Prevention, Reinsertion and Attention to Prostituted Women
- BMFSFJ** German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth
- BRA** Swedish National Council for Crime Prevention
- CEDAW** Convention on the Elimination of All forms of Discrimination against Women
- CoE** Council of Europe
- CRC** Convention on the Rights of the Child
- DEVAW** Declaration on the Elimination of Violence against Women
- ECOSOC** UN Economic and Social Council
- EU** European Union
- HIV/AIDS** Human immunodeficiency virus/acquired immunodeficiency syndrome
- ILO** International Labour Organization
- PTSD** Post-traumatic stress disorder
- STD** Sexually Transmitted Diseases
- TAMPEP** European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers
- UN** United Nations
- UNAIDS** Joint United Nations Programme on HIV/AIDS
- UNICEF** United Nations Children's Fund
- UNODC** United Nations Office on Drugs and Crime
- US** United States
- WODC** Research and Documentation Centre of the Dutch Ministry of Justice

## EXECUTIVE SUMMARY

### The debate

This Briefing Note summarises the recent literature on prostitution, sexual exploitation and its impact on gender equality for the corresponding own-initiative report of the Committee on Women's Rights and Gender Equality (FEMM). Generally, it can be said that, in international law and in the literature, **prostitution** is hardly separated from **sexual exploitation** and **trafficking in human beings**, while some of the recent literature points to the complexity of the issue with prostitution taking place at the intersection of culture, power, and difference.

Historically, the views on prostitution and sexual exploitation have been discussed widely and with different focuses in politics, by civil society organisations, and by academics. Women's rights groups, feminists, and so-called 'sex feminists' have argued about the right approach, i.e. whether a difference can be made between voluntary and forced prostitution. The voices of women working in the sex industry are equally differing. While many complain about the bad working conditions and report serious violent incidents, others feel that they are not being heard nor taken seriously because of **stereotypical thinking** about prostitutes, or through fear of being seen as vulnerable victims or as dependent advocates of pimps and brothel owners.

The lack of reliable data - the latest data available for Germany and the Netherlands are from 2007 - hinders this debate as it keeps the prostitution market opaque. There is no clear picture of the number of prostitutes and their clients, and their revenue and profits (including for the pimps). Therefore, both the debate and political decision-making depend on estimations.

### Estimations

Havocscope indicated that prostitution revenue can be estimated at **around \$186.00 billion per year worldwide**. According to a report published in 2012 by Fondation Scelles, prostitution has a global dimension, involving around 40-42 million people worldwide, of which 90% are dependent on a procurer. **75% of them are between 13 and 25 years old**.

The most conservative official statistics suggest that **1 in 7 prostitutes in Europe are victims of trafficking**, while some Member States estimate that between 60% and 90% of those in their respective national prostitution markets have been trafficked. Moreover, the data available confirm that **most trafficking in Europe is for the purposes of sexual exploitation, principally** of women and girls.

### Sexual exploitation

International and European legislators have recently stepped up their efforts to fight this "modern slavery". On international level, the **Palermo Protocol** (2000) provided an agreed definition of trafficking and initiated a number of further activities, like the **Council of Europe** Convention against trafficking in human beings (2005) and most recently **Directive 2011/36/EU**, laying down minimum sanctions for traffickers as well as minimum support measures for victims. It also establishes the office of the **anti-trafficking coordinator**, which published its first action plan in June 2012.



The first ever Eurostat report with official data on trafficking in the EU between 2008 and 2010 was published in April 2013.

It should be noted that, given the links between prostitution, sexual exploitation and trafficking, there are some calls for a European framework to regulate the exploitation of prostitutes, in order to enhance the legal instruments available to combat human trafficking and the sexual exploitation of children which otherwise risks not being fully utilised.

Victims of trafficking are also protected by **Directive 2012/29/EU**, which requests the Member States to establish minimum standards on the rights, support and the protection of victims of crime.

### **The issue of consent**

The question whether prostitution is delivered as a sex service or under conditions of coercion or force is qualified as the criterion to **distinguish between prostitution and sexual exploitation**. While some argue that the number of those entering the prostitution business deliberately is higher than assumed, it is mostly supposed that women would avoid the abuse of their bodies if they had a valid alternative. In this sense, poverty and bad economic and employment situations are seen as strong push-factors forcing women into prostitution, and which call into question whether their consent can be assumed to have been voluntarily given.

Overall, it can be concluded that the question of whether sex services are consensually delivered is **very difficult to prove**, and therefore laws criminalising the use of services without the consent of the victim face serious difficulties in implementation and cannot be effectively implemented.

### **Vulnerability**

Trafficking is linked to the abuse of people in vulnerable situations, which is defined in international and European law. It highlights the **lack of alternatives for a victim** when submitting to the abuse. Thus the Council of Europe advocates that the notion of vulnerability is treated in a wide sense by including situations of poverty and economic deprivation.

### **Legislation**

The regulation of prostitution is a competence of national parliaments, though some regulations are devolved to regional or local authorities, such as, for instance, the districts in which street prostitution is allowed.

**In the EU Member States, different legislative approaches to prostitution coexist, each with national particularities.**

Since the late 1990s, some Member States, like **the Netherlands** and **Germany**, introduced new legislation to legalise prostitution and to enable prostitutes to work as service providers (known as the **regulatory approach**). The access of prostitutes to social security systems and their registration as tax payers should enhance the social recognition of "sex workers" and reduce the vulnerability of prostitutes to exploitation. Several studies made in recent years suggest, indeed, that the legislation on prostitution increases the flow of trafficking for sexual exploitation, while the working conditions of prostitutes and the level of violence have not improved – according to government reports.

On the other hand, the **abolitionist** approach, which is based on the criminalization of all activities related to prostitution, has been adopted in **Spain** and **Sweden** but with a different focus. It seems that the **Swedish** legislation, which targets the buyer (mostly men) and thus criminalises the demand side instead of the prostitutes themselves, is the only one which successfully criminalises men buying women. According to official evaluations, this seems to have effectively reduced demand and deterred traffickers.

In the other three Member States examined, the limited evidence suggests prostitution is increasing both on the supply and demand sides. This being the case, trafficking for sexual exploitation in order to satisfy the demand seems unavoidable, certainly when considering the high profit rates for legal pimps and brothel owners, which have to be considered being even higher for those acting illegally.

Some Member States, such as the **United Kingdom**, have criminalised the use of prostitution services if they are delivered under coercion or force. In other Member States, clients are called upon to indicate possible victims of trafficking to the police, like in **the Netherlands**. However, it has proven difficult for clients to correctly distinguish women providing the services voluntarily from those who are forced into prostitution.

### **Sex work – an alternative profession?**

Reportedly, there are men, women and transgender people who consider working in the sex industry as a viable choice of job, pointing to the fact that prostitution is far from being the only job that entails high risks and poor working conditions. Some women even argue that prostitution gives them the chance to earn more and in a more flexible way. In **the Netherlands**, sex workers even visit schools to talk about their profession as a job alternative.

It should be noted that organisations of prostitutes, such as the German Hydra, see the **Swedish** law as depriving them of the chance to make a living for themselves, although the law provides support to enable prostitutes to leave the business (i.e. have developed exit strategies) and find alternative jobs.

### **Violence**

Several studies prove that prostitutes are at a heightened risk of violence, escalating to lethal violence. Therefore some women's rights groups take the view that all **prostitution should be regarded as a form of gender based violence**. Women's rights organisations, among them the European Women's Lobby, are campaigning for prostitution to be banned. The European Parliament, in its resolution of 5 April 2011, agreed with this approach and in October 2013 about 50 MEPs publicly joined the EWL campaign 'Together for a Europe free from prostitution'.

Additionally, prostitutes also report violence by police and law enforcement agents, as well as other forms of degrading treatment by the authorities.

### **Migration**

According to prostitution organisations, most women working in the prostitution business are migrants; equally, data and estimations on victims of trafficking for sexual exploitation indicate that most of them are migrants. As prostitution and pornography are transnational businesses, a victim of trafficking might have to cross borders many times to provide sex services in different countries.

**Directive 2004/81/EC** consequently obliged Member States to introduce minimum standards for residence permits for victims of trafficking if they cooperate with the authorities to identify criminal networks.

It is worth noting that in Member States in which prostitution is legalised, a residence and a work permit cannot be issued to persons entering the Member States with a view to working in prostitution. Pro-prostitution organisations are therefore advocating a system of "green cards" for prostitutes.

## Gender equality

Prostitution and sexual exploitation are **highly gendered issues** with in most cases women and girls selling their body, either by coercion or consent, to men or boys who pay for this service. Accordingly, the majority of those trafficked for sexual exploitation are women and girls.

While there is consensus that sexual exploitation should be eradicated, the concept is gaining ground that **prostitution cannot be supported as a legitimate business because it is contrary to the principles enshrined in the Charter of Fundamental Rights**, among which is gender equality. This concept was also at the basis of the **Swedish** law which criminalised the purchase of sexual services. Some forms of legalised prostitution, like day-long sexual services for a lump sum of 100 Euros, as offered by certain brothels in Germany, have provoked discussion of whether these constitute violations of dignity and human rights of women.

Feminist theories, however, disagree on the approach to take. Some highlight the discrepancy in the debate between the emphasis on women's right to **self-determination** over their own bodies and the wish to control women who use their body to make a living or to enjoy their sexuality. Others rather focus on **the objectification of women's bodies** and question the normalisation of the idea that men can make use of female bodies for their sexual desires whenever they feel the need to do so.

Many studies explicitly recognise that the debate takes place in a society in which men possess greater economic and political power than women. They argue that given this **imbalance of power**, the idea that sex workers should stand up for sexual equality or even strive for reversing sexual domination in favour of women, is rather theoretical.

## Conclusions regarding the debate

- The debate does not put into question that trafficking for sexual exploitation and violence against women should be eliminated. On the international, European and national level, a broad range of legislation exists which qualifies sexual exploitation as a criminal offense. European Directive 2011/36/EU furthermore urges Member States to consider criminalising the known use of services of objects of exploitation, and specifically the buyers of sexual services from trafficked persons."
- As well as the abolitionist as well as the regulatory approach are both of a normative nature and present ideas on how selling and buying sex should be treated in the framework of society as a whole. They have both attempted to use evaluations and research to support their approach and their objectives.

- There is a lot of literature drawing pictures of disastrous conditions under which women selling sex have to work, in the first place regarding high levels of violence. The figures, however, on how many women are actually exploited, are estimations in which official national figures are usually lower than estimations of women's rights organisations or international organisations. All figures should therefore be treated with care. The broad range of qualitative social research is, however, often biased towards either the abolitionist or the regulatory approach. Very few scientists make an effort to find their way between or independent from these categories, among them, for example, Liz Kelly et al in her comparative analysis of 9 countries. She confirms that "the knowledge base for evidence based policies on prostitution is weak".
- Regarding the evidence base, it has to be noted that the approach of the abolitionists to blur the distinction between women selling sex and women sexually exploited does not seem to be helpful. The problem is that sexual exploitation by third parties is no longer separated from violence inflicted by clients. It is, however, not possible in the framework of this note to find out whether this is because the evidence base is so small or whether this approach contributes to the lack of evidence. Nevertheless, qualitative studies exploring clients' attitudes report a higher readiness of men buying sex to use violence than other parts of the population.
- Regarding men buying women overall, the evidence base is equally scarce. The estimations on the number of men using sexual services compared with the male population range from "few" to "one third" but agree, however, that it is a minority of men which disqualifies in a way the assumption that prostitution was needed to satisfy an irresistible sexual desire inherent to men.
- In this respect, it could be useful to have more insight into the dynamics of the prostitution market. Abolitionists put forward that the offer is driven by demand and that the growth rates in the liberalised prostitution markets are attributed to the "untamed" demand which can only be satisfied through forcing women into prostitution. In this respect it has to be noted that experts have found a relation between the liberalisation of prostitution and increasing numbers of trafficking in human beings.
- The regulatory approach, on the contrary, rather aims at clearing the way for women selling sex based on the assumption of the ability of adults to organise their sex life on the basis of mutual consent. Experts however, also those who distance themselves from the abolitionist approach, point to the lack of gender-sensitivity of the regulatory approach. The gender-neutral language used in this approach fails to recognise that for an overwhelming majority it is women selling sex and men buying sex. Therefore, the regulatory approach is criticised for ignoring the effects of gender inequalities in society, ranging from the disadvantaged economic position of women, in particular the higher female poverty rates, over the discrimination of women on the labour market (of which in the regulatory approach prostitution is a part) to the high level of domestic and sexual violence against women in society as a whole.
- Regarding the fight against trafficking in human beings for sexual exploitation, it should be noted that it takes place to a greater and lesser extent in all Member States. Although, as this note shows, women are sexually exploited in a complex

legal, social and political environment, it is however astonishing that the literature rarely examines the role of law enforcement, i.e. the police. From countries where prostitution is liberalised it is known that the police tends to complain about their lack of possibilities to act, while the police is rather accused of violent acts against women selling sex, mostly in regimes where prostitution is prohibited. For the rest, academics seem not to be interested so far of how Member States organise the implementation of the laws against sexual exploitation. While there is a call for a more **victim centred approach**, it seems worrying that the Dutch anti-trafficking rapporteur is afraid that the police might not have the appropriate training and capacities to address sexual exploitation on the Dutch prostitution market, a resource question which might be true for other Member States as well. Again, Liz Kelly can be cited who examined prostitution regimes in 9 countries: "Regulation is invariably under-enforced and under-resourced, with a lack of clarity in law and policy as to who is responsible. This has led, in many regimes, to unchecked growth in illegal sectors and/or a failure to police the exploitations of prostitution offences. Both create disincentives for the licensed sector to comply with policy goals."

Finally, it can be said that the Member States implement different prostitution regimes which can be sorted according to the abolitionist and regulatory approach opposed in the debate. However, it is questionable if this categorisation is really helpful to evaluate their success in fighting trafficking for sexual exploitation.

## INTRODUCTION

This Briefing Note has been requested by the Committee on Women's rights and Gender Equality to support the drafting of the own-initiative report on "Sexual exploitation and prostitution and its impact on gender equality".

The literature overview and the four case studies show that sexual exploitation and prostitution are highly **gender-sensitive** and **inter-related issues**.

Sexual exploitation is closely linked to trafficking in human beings. Forced prostitution which includes a factor of vulnerability qualifies according to international and European law as trafficking in human beings.

There is a wide range of international law aiming at eliminating sexual exploitation through Conventions addressing violence against women, trafficking in human beings and forced labour. These provisions prove that there is **broad international agreement** that violence against women, sexual exploitation, and trafficking of human beings should be eliminated.

The role of prostitution in relation to sexual exploitation is, however, subject of discussion of civil society, academics and politicians. This note presents the main arguments of this **debate** which divides feminists, scholars and the public opinion as well as some background information to these arguments. Four case studies attempt to draw a picture of the situation in four Member States with each a different legal approach to prostitution within the broad lines of the abolitionist or regulatory approaches.

## 1. THE DEBATE

### KEY FINDINGS

- The debate takes place, roughly speaking, between two approaches: a) the regulatory approach assumes that prostitution and the related activities should be legal and regulated; b) under the abolitionist approach, activities related to prostitution should be criminalised but do not necessarily have to be illegal. Within the latter model, the neo-abolitionist approach criminalises all the activities related to prostitution, including the purchase of sexual services, while prostitution in itself is not illegal and not penalised.
- Both approaches aim at eliminating trafficking in human beings for sexual exploitation. While the abolitionist model could be described as refusing to make a difference between selling sex and sexual exploitation, the regulatory approach builds on this difference and seeks to empower women selling sex by removing the stigma and to qualify selling sex as a normal economic activity.
- Several conclusions have been drawn from the analysis of the literature for further discussion in relation to “the debate”, among which attention is drawn to the scarcity of the knowledge of the prostitution business for evidence-based policy making, the tendency of over-victimisation of women selling sex under the abolitionist approach and the lack of gender-sensitivity under the regulatory approach.

### 1.1. The core of the debate

A fierce debate can presently be observed among civil society organisations, academics, politicians and public opinion makers worldwide about the “right way” to regulate the prostitution business, or, more clearly: women selling and men buying sex<sup>1</sup>.

The answer to the question what could be the “right way” turns at this stage in the first place around the question whether a difference can be made between women selling and men buying sex and men exploiting women’s bodies to satisfy their sexual desires. The latter is closely related to the so called abolitionist approach, while the former is understood to be the regulatory approach.

Although some experts point to the fact that categorizing prostitution regimes might not be helpful in looking for the “right way”, it facilitates understanding the debate and is consequently applied here.

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<sup>1</sup> In line with the practice of the study *Shifting Sands: A comparison of prostitution regimes across 9 countries*. Child & Woman Abuse Studies Unit (CWASU), London Metropolitan University, 2007, the wording of “women selling sex and men buying sex will be used throughout this paper rather than sex worker or prostitute with the intention to avoid categorisation.

## 1.2. The abolitionist approach

The abolitionist approach criminalises the prostitution business or parts of it. Most of the Member States can be subsumed under this model albeit with a wide range of differences in the implementation. Two of these models have been examined more in detail in chapter 2: Sweden and Spain.

The abolitionist model has historically been the first one seeking to put an end to the prostitution business. From the 19<sup>th</sup> century until after World War II, European countries adopted legislation declaring selling and buying sex, as well as all related activities such as running brothels, pandering and procuring, as illegal because of religious and moral attitudes. Today, the abolitionist approach refers to the close relationship between trafficking in human beings for sexual exploitation and prostitution, the high level of violence experienced by women selling sex as well as, in recent times, the fact that gender equality and human rights principles are incompatible with men buying sexual services from women. This approach, which can also be called the neo-abolitionist approach, encourages governments to take steps to penalise demand. So far, only Sweden has put this approach into practice in 1999 but other countries have shown interest in following this example, like France and Ireland.

The abolitionist approach is supported in many Member States by women's rights groups who underline the violations of human rights occurring in prostitution and qualify prostitution as contrary to the principle of gender equality. As an example, the German feminist Alice Schwarzer can be mentioned who is campaigning, not only through her feminist magazine "EMMA", but also in other public for a for more than 40 years for the abolition of prostitution<sup>2</sup>.

### 1.2.1. Violence

In relation to violence, the reasoning of abolitionists refers to extensive research carried out in different countries all over the world evidencing that persons in prostitution are exposed to high risks of suffering severe physical and psychological violence and even great risks of death<sup>3</sup>. While drug use and violence were identified by US researchers in 2003 as the main reasons for death amongst prostitutes, the number of homicides among prostitutes was also considerable.<sup>4</sup>

With regard to the difference between outdoor and indoor prostitution, different studies found that the **level of violence** is comparable, and in some cases is **greater indoors** than outdoors<sup>5</sup>.

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<sup>2</sup> <http://www.emma.de/thema/der-appell-gegen-prostitution-111249>.

<sup>3</sup> Canadian Special Committee on Pornography and Prostitution (1985). Quoted in Farley, M. (2004), «Bad for the Body, Bad for the Heart: Prostitution Harms Women Even if Legalized or Decriminalized», *Violence Against Women*, Vol. 10 No. 10, 2004, pp. 1087-1125 (p. 1097); attention is drawn to the fact that figures are not only outdated but also stemming from North-America and are not necessarily comparable with the situation in Europe today.

p.12

<sup>4</sup> Potterat, J. et al. (2004), « Mortality in a Long-term Open Cohort of Prostitute Women », *American Journal of Epidemiology*, Vol. 159, No. 8, 2004, pp.778-785 (p 783)

<sup>5</sup> Vid. Transcrime (2005), *National Legislation on Prostitution and the Trafficking in Women and Children* (p. 141). Available at <http://transcrime.cs.unitn.it/tc/412.php>; Farley, M. (2004), «Bad for the Body, Bad for the Heart»; Farley, M. et al. (2003), « Prostitution and Trafficking in Nine Countries...



M. Farley's study carried out across nine countries in 2003 showed that a majority of prostitutes had experienced severe forms of violence, including sexual assault and rape. In most of the cases, they experienced various types of repeated violence. A large proportion (68%) had suffered from **Post-traumatic Stress Disorder (PTSD)**, with a level of severity comparable to that experienced by Vietnam War veterans, as well as psychological dissociation<sup>6</sup>.

In addition to the violence experienced in the context of prostitution, 43% to 69% of women selling sex have suffered **sexual abuse in childhood**.

Furthermore, it has to be mentioned that a link has been made between **intimate partner violence** and sexual exploitation, certainly as far as (undocumented) migrant women are concerned. The EP study on "Access to shelters of undocumented migrant women fleeing domestic violence: the legal and practical situation in the Member States"<sup>7</sup> concludes that the EU anti-trafficking policy framework should incorporate and take into consideration the potential links between domestic violence and trafficking in human beings, by placing victims at the heart of the framework and ensuring their respective needs are catered for.

The high level of violence experienced by women selling sex has considerably influenced the present debate. While violence used to sexually exploit women is criminalised on all levels and in all Member States of the EU, the interpretation on how to deal with violence experienced by women selling sex through clients differs. While some argue that legalisation of prostitution aims at improving the **working conditions** of women selling sex and should enable them to bring violent clients to court, the experiences in the two Member States which have fully liberalised the prostitution business prove that the situation has not changed<sup>8</sup>. It is, however, not clear from the different studies whether the experienced violence was related to sexual exploitation or violence inflicted by clients.

Qualitative research exploring the **behaviour of clients** (for more information regarding research on clients, please see chapter 2) has been carried out, among others, by M. Farley, who showed in her publications of 2008 and 2011 that men buying sex were more likely to commit sexually coercive acts against women<sup>9</sup> and other acts of violence against women, and often presented misogynist attitudes. More than a fifth of them reported enjoying the feeling of power over the prostitute and believed that once the customer had paid, he could do whatever he wanted with the women he bought (22%)<sup>10</sup>. They also used pornography to a greater extent than non-buyers and reported that even their sexual preferences changed because of the continuous use of pornography and prostitution.<sup>11</sup>

<sup>6</sup> Farley, M. et al. (2003), « Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder», *Journal of Trauma Practice*, Vol. 2, No. 3/4, 2003, pp. 33-74:

<http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>

<sup>7</sup> PE 493.027: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493027/IPOL-FEMM\\_ET\(2013\)493027\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493027/IPOL-FEMM_ET(2013)493027_EN.pdf)

<sup>8</sup> German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2007), Health, Well-Being and Personal Safety of Women in Germany. A Representative Study of Violence against Women in Germany, (pp. 24-25) (EN):

[http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationsliste\\_did=93194.html](http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationsliste_did=93194.html)

<sup>9</sup> Around 10% of the men interviewed stated that **they would rape a woman** if they could be assured that they would not be caught. See Farley, M. et al (2008) "Challenging Men's Demand for Prostitution in Scotland", *Women's Support Project* (p.15)

<sup>10</sup> Farley M. et al. (2011), "Attitudes and Social Characteristics of Men Who Buy Sex in Scotland", *Psychological Trauma: Theory, Research, Practice and Policy*, March 2011

<sup>11</sup> Farley, M. et al. (2011), "Comparing Sex Buyers with Men Who Don't Buy Sex", Psychologists for Social Responsibility Annual Meeting, July 15, 2011.

For the so called new-abolitionists, the widespread violence experienced in prostitution leads to the conclusion that **prostitution constitutes a particular form of violence** against women and should be eliminated. The European Women's Lobby started a campaign in 2011 for a Europe free of prostitution<sup>12</sup> which is on-going. Recently, among others, Members of the European Parliament signed the corresponding "Brussels' Call"<sup>13</sup>.

Equally, the European Parliament stated in its Resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women (2010/2209(INI))<sup>14</sup> that prostitution is a form of gender-based violence.

### 1.2.2. The links between prostitution and trafficking for sexual exploitation

For a better understanding of the abolitionist approach, it has to be noted that in relation to the high levels of violence experienced by women selling sex, international law provisions laid down in different instruments adopted since World War II on United Nations (UN), International Labour Organisation (ILO), Council of Europe (CoE), and since the entering to force of the Amsterdam Treaty, also on the European level, indicate that the dividing line between prostitution and sexual exploitation is very thin.

In this sense, paragraph 84 of the Explanatory Report on CoE's Convention on Trafficking in Human Beings highlights: "A wide range of means therefore has to be contemplated (to evaluate a situation of vulnerability): abduction of women for sexual exploitation, enticement of children for use in paedophile or prostitution rings, violence by pimps to keep prostitutes under their thumb, taking advantage of an adolescent's or adult's vulnerability, whether or not resulting from sexual assault, or abusing the economic insecurity or poverty of an adult hoping to better their own and their family's lot. However, these various cases **reflect differences of degree rather than any difference in the nature of the phenomenon**, which in each case can be classed as trafficking and is based on use of such methods".

Taking the thin dividing line into account and in the absence of reliable data, estimates about the extent of trafficking in human beings for sexual exploitation vary greatly and have been put into question by associations of women selling sex and protagonists of the regulatory approach. Worldwide, it has been assumed that trafficking for sexual exploitation accounts for 58% of all trafficking cases<sup>15</sup>. In the **EU**, 62% of victims of trafficking have been identified as victims of sexual exploitation<sup>16</sup>. According to UNODC, there are around 140,000 victims of human trafficking for sexual exploitation, and up to 1 in 7 persons engaged in prostitution are trafficked in Europe<sup>17</sup>, but other sources suggest 70%-90% of prostitutes have been forced into prostitution by criminal groups<sup>18</sup>.

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<sup>12</sup> <http://www.womenlobby.org/spip.php?rubrique187>

<sup>13</sup> MEPs call for a Europe free of prostitution and support the Brussels' call signed by 200 NGOs, 2 October 2013; <http://www.womenlobby.org/s-impliquer/campagnes-et-actions-du-lef/together-for-a-europe-free-from/actualites-de-la-campagne/at-the-eu-level/?lang=en>

<sup>14</sup> P7\_TA(2011)0127 : See Chapter 3.2

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2011-0127&language=EN>

<sup>15</sup> UNODC (2012), *Global Report on Trafficking in Persons 2012*. Available at: <http://www.unodc.org/unodc/data-and-analysis/glotip.html>

<sup>16</sup> EUROSTAT, *Trafficking in Human Beings 2013*, figures to be treated with caution but however the only ones based on official figures from Member States.

<sup>17</sup> UNODC (2010), "Trafficking in Persons to Europe for Sexual Exploitation", Chapter extracted from *The Globalization of Crime. A Transnational Organized Crime Threat Assessment* (p.7)

<sup>18</sup> See chapter 3 of this document.

In the same sense, the **UN Special Rapporteur on Trafficking in persons** stated: "For the most part, prostitution as actually practised in the world usually does satisfy the elements of trafficking (...). Thus, States Parties with legalized prostitution industries have a heavy responsibility to ensure (...) that their **legalized prostitution** regimes are not simply perpetuating widespread and systematic trafficking. As current conditions throughout the world attest, States Parties that maintain legalized prostitution are far from satisfying this obligation"<sup>19</sup>. Her statement regarding the danger inherent to legalised prostitution systems to enhance trafficking in human beings has been confirmed by recent studies<sup>20</sup>.

At EU level, it has therefore been suggested that there is a need to regulate not only the fight against trafficking in human beings, but also prostitution, as the former cannot be effective without the latter. In any case, it can be observed that one of the major arguments today in the debate is that the abolition of prostitution would help to deter traffickers for human beings as it would "dry out the market", as stated in the official evaluation report of 2011 of the Swedish anti-prostitution legislation. However, this report has been criticised by stakeholders for drawing too far-reaching conclusions. It has been pointed out that trafficking in human beings for sexual exploitation was still taking place in Sweden. In this respect, a decision has been taken recently to implement a new evaluation report which looks much more into the effects of the legislation on women selling sex than the previous ones. So far, research shows that where prostitution and related activities are legal, there are higher inflows of trafficking into the sex market<sup>21</sup>.

Besides, one of the main problems of the Member States which adopted the regulatory approach is the control of the sex industry. Authorities are hampered either by a lack of resources or flawed legislation. Consequently, the operations to check the illegal sector remain marginal and official data on the prostitution sector and trafficking in human beings for sexual exploitation remain scares.

### 1.2.3. Poverty and vulnerability

The reasons for entering prostitution are diverse but women selling sex belong often to vulnerable groups of society, like immigrants or the Roma minority, and the lack of alternatives to gain a living is recognised by experts and international agencies as a strong driver to enter prostitution.

In the face of a lack of education and employment opportunities, and discrimination against women on the labour market, the decision to start selling sex may have economic drivers. In fact, according to the literature and the international documents consulted, **homelessness<sup>22</sup>, economic urgent need and lack of sufficient resources** are the

<sup>19</sup> Report of the UN Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda (E/CN.4/2006/62), par. 42-43:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/109/64/PDF/G0610964.pdf?OpenElement>

<sup>20</sup> Cho, S., Dreher, A., Neumayer, E. (2013), «Does Legalized Prostitution Increase Human Trafficking?», *World Development*, Vol. 41 No. 1, 2013, pp. 67-82; Jakobsson, N., Kotsadam, A. (2013), «The law and economics of international sex slavery : prostitution laws and trafficking for sexual exploitation », *European Journal of Law & Economics*, Vol. 35 No. 1, pp. 87-107.

<sup>21</sup> Cho, S., Dreher, A., Neumayer, E. (2013), «Does Legalized Prostitution Increase Human Trafficking?», *World Development*, Vol. 41 No. 1, 2013, pp. 67-82; Jakobsson, N., Kotsadam, A. (2013), «The law and economics of international sex slavery : prostitution laws and trafficking for sexual exploitation », *European Journal of Law & Economics*, Vol. 35 No. 1, pp. 87-107.

<sup>22</sup> Among 854 persons in prostitution interviewed, 75% had been homeless at some point in their lives. See Farley, M. et al. (2003), « Prostitution and Trafficking in Nine Countries... ».

primary causes for people to enter prostitution<sup>23</sup>. Women in such situations are more likely to become victim of sexual exploitation. M. Farley's interviews with 785 people in prostitution in nine countries showed that 89% of them wanted to escape prostitution but had **no other options for survival**<sup>24</sup>.

In the framework of the abolitionist approach, the lack of alternative experienced by women having difficulties in earning their living is, among other aspects, captured in the notion of **vulnerability** which has been included in all legal texts seeking the elimination of trafficking for sexual exploitation since the so called Palermo Protocol<sup>25</sup>. Consequently, in addition to the violence experienced by women selling sex, the notion of vulnerability based on poverty has facilitated the look at women in prostitution as victims. In the debate, some argue therefore that most, if not all, women selling sex were in need of protection, because they were either forced into prostitution violently, or because of the lack of income alternatives.

#### 1.2.4. Health and access to social security and health insurance

The first attempts at regulating prostitution by law in the 19<sup>th</sup> century sought to ensure the health of the clients against sexually transmitted diseases as these were identified as damaging to the health of the troops. So called Contagious Diseases Acts (CDAs in the UK and other European countries<sup>26</sup>) led to ill-treatment and arrest of women selling sex by the police and doctors. These laws were finally withdrawn under the pressure created notably in the UK by Josephine Butler<sup>27</sup>, who is also regarded as the founder of the international abolitionists' movement.

After World War II, the attention shifted from the clients' health towards the health of women selling sex.

For example, a survey carried out by the German government in 2007 showed a range of mental health problems among women selling sex. "Around half of the interviewees showed symptoms of depression; a quarter had frequent or occasional thoughts of suicide; almost one third had anxiety and panic attacks, and about 1 in 7 had had the intention of self-injuring in the last 12 months". These symptoms could be related to the working conditions and the high level of violence.

As far as physical health is concerned and on a worldwide scale, the risk of becoming infected by HIV is 13.5 times higher for women selling sex than for the general population<sup>28</sup>. In addition, there are other serious health problems that often affect women selling sex such as major risks of other sexually transmitted diseases (STDs), cervical

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<sup>23</sup> For example, the CEDAW Committee, in its General Recommendation no. 19 (11<sup>th</sup> Session, 1992), recognizes that poverty and unemployment increase opportunities for trafficking in women and force many women, including young girls into prostitution. The Beijing Platform for Action (1995) recalls the phenomenon of the feminization of poverty, which increases the vulnerability of women and girls to sexual exploitation.

<sup>24</sup> Farley M., et al. (2003), « Prostitution and Trafficking in Nine Countries...

<sup>25</sup> For more detailed information on the Palermo Protocol and the subsequent international and European law see Annex I.

<sup>26</sup> Liz Kelly et al, 2010.

<sup>27</sup> <http://www.josephinebutler.org.uk/a-brief-introduction-to-the-life-of-josephine-butler/>.

<sup>28</sup> UNAIDS (2012), *World AIDS Day Report 2012*, p. 36:

[http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2012/gr2012/JC2434\\_WorldAIDSday\\_results\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2012/gr2012/JC2434_WorldAIDSday_results_en.pdf)

cancer, unwanted pregnancies, reproductive and genital problems, insomnia, and eating disorders<sup>29</sup>.

With respect to health, the regulatory approach has the objective of providing women selling sex with access to social insurance systems, including health insurance, and of enabling women to bring clients to court when they do not abide by the rules, for example when they refuse to use a condom.

### 1.2.5. Prostitution and gender equality

The above mentioned reasoning about situations of vulnerability lead some experts to the question why men are hardly found in the prostitution business, although they can also suffer from similar situations of vulnerability<sup>30</sup>. On the contrary, poor men can also be found among those buying sexual services from women.

In this respect, some authors drew attention to the fact that the debate takes place in a society with **unbalanced power relations** between men and women, notably regarding financial and economic resources. These power relations continue to affect men and women's sexuality and perpetuate images of men buying sex from women. Prostitution is therefore not only perceived as reinforcing gender stereotypes but also as an expression of the idea of men's unlimited access to women's bodies and sexuality in accordance with their economic power<sup>31</sup>. It also entails the assumption that sexual needs are a kind of right that every (male) individual is entitled to<sup>32</sup>.

According to abolitionists, prostitution can therefore be regarded as contrary to the dignity of women<sup>33</sup>, their human rights and to gender equality. Prostitution should consequently be abolished. This was one of the main reasons for the Swedish legislator to introduce the penalisation of the purchase of sexual services at the end of the 1990.

Going even further but in the same sense, prostitution has been qualified as a space where men can buy the sexual abuse of women. Accordingly, prostitution has been defined as "paid rape"<sup>34</sup>. In fact, research in the US thinks to have established a positive association between legalised prostitution and elevated rape rates<sup>35</sup>.

<sup>29</sup> Farley, M. (2004), «Bad for the Body, Bad for the Heart...»

<sup>30</sup> The Rose Alliance carried out surveys among young lesbian and gay people in Sweden. According to these surveys, more young men than young women had experiences with paid sex.

<sup>31</sup> De Miguel, A. (2012), "La prostitucion de mujeres, una escuela de desigualdad humana", *Revista Europea de Derechos Fundamentales*, No. 19, Vol. 1, 2012, pp. 49-74 (p. 58) (ES).

<sup>32</sup> "This has been discussed in relation to sexual services offered to disabled men. "Deprived of sexual gratification, people do not suffer in the same way they do when other basic bodily needs are denied or when medical attention is refused (...) There is no biological imperative to orgasm any set number of times a day, week, or year (...) the absence of a sexual partner to bring them to orgasm does not actually threaten their physical survival (...) Our erotic life is grounded in the ideas we use to categorize, interpret, and give meaning to human experience and sociality, and specific sexual desires do not, therefore, directly express some fundamental, timeless, or general human need for sex. To treat them as if they do is hugely problematic.

What follows from the assertion that every individual is entitled to satisfy their exact erotic "requirements?", in O'Connell, J. (2002), "The Rights and Wrongs of Prostitution", *Hypatia*, Vol. 17, no. 2 (Spring 2002), pp. 84-98 (p. 90). Available at: <http://muse.jhu.edu/journals/hyp/toc/hyp17.2.html>

<sup>33</sup> In Germany, government officials regarding the purchase of sexual services from women for a lump sum of 50 Euros per day.

<sup>34</sup> Among others Ekberg, G.; Farley, M.; MacKinnon, C. A.; Raymond, J.; Giobbe, E.

<sup>35</sup> According to the rape rate statistics from the Federal Bureau of Investigation (2004), the rape rates in Nevada, where prostitution is legalised, were significantly higher than the average in US and higher than in States such as New York, Los Angeles and San Francisco. Quoted in Farley, M. et al. (2011) "Attitudes and Social Characteristics of Men Who Buy Sex in Scotland", *Psychological Trauma: Theory, Research, Practice, and Policy*, Advance online publication, March 28, 2011.

### 1.3. The regulatory approach

Contrary to the abolitionists, the regulatory approach does not want to end prostitution but to recognise selling and buying sex as an economic activity with offer and demand regulated through the price on the prostitution market which is regulated by law. This approach is therefore also known as legalising and liberalising prostitution.

Liz Kelly et al<sup>36</sup> stipulate in their comparative study of 9 prostitution regimes that the idea that selling sex could in fact be “a legitimate form of employment” emerged in the 1980s in opposition to the Convention on the elimination of all forms of discrimination against women (CEDAW) which called upon States Parties to combat trafficking in human beings and the exploitation of prostitution. As Kate Butcher put it in *The Lancet* in 2003, “millions of women have made the decision to sell sex, usually, but not always, on economic grounds. Selling sex is a pragmatic response to a limited range of options. If you can earn the equivalent of 100GBP in a night, why knit sweaters or sweep floors to earn the same money in a month?”<sup>37</sup>

This idea entailed also the distinction between voluntary and forced prostitution which is the main subject of the fierce debate today. Legalising prostitution can therefore be seen as an attempt to separate selling sex from sexual exploitation.

From the background of the laws regulating prostitution in the two Member States selected for this study, it can be concluded that the objective of their change in legislation was to protect women from exploitation – in the Netherlands by providing them with a status of independent worker, and in Germany by enabling selling sex with an employment contract. For the latter, this meant also that the trade union for services, VERDI, opened their membership to women selling sex<sup>38</sup>. The objective was to empower women entering the prostitution business by recognising legally and politically their way of working and earning money, to end stigmatisation and to improve the working conditions of women selling sex.

As it was already visible from the statement of the UN Special Rapporteur on Trafficking in Human Beings mentioned above, these objectives have not been reached. Even organisations representing women selling sex, while rejecting the allegation that all women would be exploited in prostitution, admit that the working conditions are still very bad.

Nevertheless, there is support from women’s rights groups and feminists for this approach. As an example, the French feminist Elisabeth Badinter can be mentioned, who opposes the abolition of prostitution by underlining that the state could not declare illegal what consenting adults have agreed upon. She insists that selling sex should be kept separated from sexual exploitation<sup>39</sup>.

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<sup>36</sup> Liz Kelly et al, *Shifting Sands*, A comparison of 9 prostitution regimes across 9 countries, Child & Woman Abuse Studies Unit (CWASU), London Metropolitan University, no date but probably 2010. Funded by the UK Home Office.

<sup>37</sup> Butcher, Kate, *Confusion between prostitution and sex trafficking*, *The Lancet*, Vol 361, June 7, 2003 • [www.thelancet.com](http://www.thelancet.com)

<sup>38</sup> It has to be noted that there are no employment contracts. In fact, today, the German system resembles rather the Dutch mode.

<sup>39</sup> Among other occasions: Elisabeth Badinter, philosophe, and others (Régine Deforges, écrivain, Caroline Eliacheff, pédopsychiatre, Elisabeth de Fontenay, philosophe, Claude Habib, professeur de littérature (Sorbonne-Nouvelle), Nathalie Heinrich, sociologue (CNRS), Claude Lanzmann, écrivain et cinéaste, William Marx, professeur de littérature (Paris-Ouest), Véronique Nahoum-Grappe, anthropologue (EHESS), Philippe Raynaud, professeur de science politique (Panthéon-Assas), Céline Spector, philosophe (Bordeaux-3), Georges Vigarello, historien (EHESS)) in *Tribune*, *Nouvel observateur*, 23 August 2013.

### 1.3.1. Organisations representing prostitutes

There are many organisations on the national level in Europe which were set up to represent the social and political interests of sex workers, as they usually identify themselves. On the one hand, they offer general support services like counselling for prostitutes, for example for those with migrant background, information on health issues, on taking up the profession of a sex worker or on exploring job alternatives. Some of them joined one of the international umbrella organisations, like the "International Union of Sex Workers"<sup>40</sup> (IUSW) or "The Global Network of Sex Work Projects"<sup>41</sup>. The former has links to some of these international organisations<sup>42</sup>. Some organisations receive financial support from governments, for example in Germany<sup>43</sup>.

According to the IUSW website, the common objectives of sex workers' organisations are not only to have sex work recognised as an individual choice to earn one's living but also to insist on the right of women to dispose of their own body and to exercise the profession without inference by the state (no raids) and free from violence.

Sex workers' organisations argue that putting prostitution and trafficking in human beings on the same footing is unjustified, and they refuse a stronger regulation of the prostitution business. According to them, statistical data are manipulated and misused to discredit the profession. Such regulations with a view to abolish prostitution would rather deprive prostitutes of the means to earn their living and this is why the Swedish law banning purchase of sexual services is seen as disastrous. They request that prostitution is considered apart from trafficking in human beings and that it is recognised as a myth that most of the prostitutes are lured into prostitution under duress or false pretences.

The organisations usually present themselves as grassroots organisations; however, the IUSW represents also brothels and pornographic film makers.

### 1.3.2. The sex industry

As said above, one of the objectives of the regulatory approach has been to liberalise the prostitution market with the aim of empowering women selling sex and to make them less vulnerable to sexual exploitation. However, the literature shows that the sex industry is a transnational and multi-billion Euro market, and reinforcing the status of women selling sex in the prostitution business does not seem evident given the unbalanced power relations.

The sex industry is not limited to prostitution but includes a wide range of activities such as pornography, Internet sex, phone sex, strip clubs, and other related sexual services. However, pornography and prostitution are considered the most profitable businesses within the market. M Farley's study across nine countries showed a strong bi-directional link between pornography and prostitution<sup>44</sup>.

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<sup>40</sup> <http://www.bayswan.org/orgs.html>

<sup>41</sup> <http://www.nswp.org/>

<sup>42</sup> <http://www.iusw.org/partners/non-uk-based-sex-work/>

<sup>43</sup> Madonna e.V: [http://www.madonna-ev.de/index.php?option=com\\_frontpage&Itemid=1](http://www.madonna-ev.de/index.php?option=com_frontpage&Itemid=1)

<sup>44</sup> Farley, M., et al. (2003), « Prostitution and Trafficking in Nine Countries... » (pp. 44-46)

**Box 1: The prostitution market**

It is not easy to find data regarding the scale of the prostitution market, but estimations from Havocscope indicated that prostitution revenue can be estimated around \$186.00 billion worldwide<sup>45</sup>. In Germany, the trade union Ver.di estimates it is worth €14.5 billion per year nationally<sup>46</sup>, in the Netherlands the numbers range between €400 and €600 million<sup>47</sup>, and in Spain around €18 billion per year<sup>48</sup>.

According to a report published in 2012<sup>49</sup>, prostitution is a global phenomenon and involves around 40-42 million people of which 90% are dependent on a procurer. 75% of them are between 13 and 25 years old<sup>50</sup>. The prostitution market is a highly globalized and "industrialized" phenomenon where millions of women and children from deprived backgrounds all over the world are bought and sold by criminal circles to macro brothels which can exploit hundreds of victims at once<sup>51</sup>.

Human trafficking for sexual exploitation is considered one of the most lucrative illicit businesses in Europe, with criminal groups making about \$3 billion from it per year<sup>52</sup>. Human trafficking for sexual exploitation includes exploitation in prostitution and in pornography.

With regard to **pornography**, the Internet has enabled the market to expand significantly. According to statistics produced by the technology media company TechMedia Network, 12% of all websites are pornographic websites and every month around 72 million Internet users worldwide visit pornographic sites. The average age of first exposure to Internet pornography is 11 years old<sup>53</sup>.

In addition to the lack of clarity on the scale of the prostitution market among which the numbers of women selling and men buying sex, there is also no information about the dynamics of the market, whether it is demand driven – as the abolitionists state – or rather depending on the offer. The studies showing a relation between the liberalisation of the

<sup>45</sup> Havocscope is currently monitoring 50 black market products and activities around the world for which an estimated financial value is available. The data from Havocscope have been used by different organizations and publications, among which the World Economic Forum. See Havocscope' statistics on the black market of prostitution at: <http://www.havocscope.com/prostitution-revenue-by-country/>

<sup>46</sup> Estimations of the Ver.di public services union. Quoted in Der Spiegel, issue 22/2013:

<http://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html>

<sup>47</sup> CBS Statistics Netherlands (2012), *The contribution of illegal activities to national income in the Netherlands* (p. 15): <http://www.cbs.nl/NR/rdonlyres/3BDF96EA-1EE4-4987-ACA0-A769C10F2007/0/201204x10pub.pdf>

<sup>48</sup> Comisión Mixta de los Derechos de la Mujer y de la Igualdad de Oportunidades en las Cortes Generales (2007), Informe de la Ponencia sobre la situación actual de la prostitución en España (ES):

[http://www.congreso.es/public\\_oficiales/L8/CORT/BOCG/A/CG\\_A379.PDF](http://www.congreso.es/public_oficiales/L8/CORT/BOCG/A/CG_A379.PDF)

<sup>49</sup> Fondation Scelles: <http://infos.fondationscelles.org/>

<sup>50</sup> Source: « La prostitution en pleine expansion, femmes et mineurs en première ligne », *Le Monde*, 27/01/2012: [http://www.lemonde.fr/societe/article/2012/01/27/la-prostitution-en-pleine-expansion-femmes-et-mineurs-en-premiere-ligne\\_1635638\\_3224.html](http://www.lemonde.fr/societe/article/2012/01/27/la-prostitution-en-pleine-expansion-femmes-et-mineurs-en-premiere-ligne_1635638_3224.html)

<sup>51</sup> References to some famous macro brothels in the EU: « Open for business: the brothel with 1,800 prostitutes » *The Independent*, 23/10/2010: <http://www.independent.co.uk/news/world/europe/open-for-business-the-brothel-with-1800-prostitutes-2114265.html>; « Europe's brothel - in a corner of Spain », *The Guardian*, 24/06/2006: <http://www.guardian.co.uk/world/2006/jun/24/spain-gilestremlett>; « Spain police smash ring that ran six large brothels », *The Global Post*, 4/03/2013:

<http://www.globalpost.com/dispatch/news/afp/130304/spain-police-smash-ring-ran-six-large-brothels>; « Europe's biggest brothel – complete with coach parking- to open in Austria », *The Telegraph*, 05/11/2012: <http://www.telegraph.co.uk/news/worldnews/europe/austria/9655537/Europes-biggest-brothel-complete-with-coach-parking-to-open-in-Austria.html>

<sup>52</sup> UNDOC (2010), "Trafficking in Persons to Europe for Sexual Exploitation", Chapter extracted from *The Globalization of Crime. A Transnational Organized Crime Threat Assessment* (p.1):

<http://www.unodc.org/unodc/en/data-and-analysis/tocta-2010.html>

<sup>53</sup> Statistics from TechMedia Network, available at: <http://internet-filter-review.toptenreviews.com/internet-pornography-statistics.html>



market and an increase in trafficking in human beings for sexual exploitation could confirm the former assumption.

### 1.3.3. Prostitution and law enforcement

It is understood that legalizing and liberalizing the prostitution market does not facilitate the work of law enforcement in fighting trafficking in human beings. However, there are not many studies reflecting on the relation between women selling sex, men buying sex and the police. The issue seems to be, however, relevant in those countries where prostitution is **illegal**<sup>54</sup>.

However, also in countries where prostitution is legalized, the police and the judiciary are tasked with ensuring that legal provisions in relation to prostitution are implemented. This mandates them to carry out **various controls** and to issue penalties of different kinds relating to breaches of legislation on registration, work permits, safety regulations (including STDs and AIDS testing<sup>55</sup>), drugs use, etc. The relation between prostitutes and the police can consequently be characterised by mistrust, if not open hostility<sup>56</sup>.

On the other hand, law enforcement agents have also to detect women that are victims of trafficking, to free them, and to charge the perpetrators. Across all Member States, authorities agree that it is very **difficult to prove offences** related to sexual exploitation, relying mostly on the statements of the victims. The withdrawal of victims' statements is likely to impede the conviction of offenders. Thus, the burden of proof and in part of the success of the process is in fact on the victim's shoulders, although Directive 2011/36/EU obliges Member States not to rely on the statement of the victim only.

In this respect, scholars have called for the application of a "women/victim-centered approach"<sup>57</sup>, which takes the needs of the prostitute as a starting point. This approach would also open up the question of women cooperating in police investigations in exchange for a residence permit.

It should be noted that law enforcement agents are mostly male, while prostitutes are mostly female. In this respect, the assignment of female police officers can be seen as an effort to enhance cooperation.

While in many countries prostitutes report about police violence<sup>58</sup>, degrading methods of investigation and disrespectful treatment, this seems to be happening at a higher level in countries where prostitution is illegal. Therefore one of the objectives of legalizing prostitution was to decriminalize the act of selling sex with consequently less police controls and a reduced likelihood of police mistreatment.

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<sup>54</sup> SWAN, *Arrest the violence, Human Rights abuses against sex workers in Central and Eastern Europe and Central Asia*, Open Society Foundation, 2009

<sup>55</sup> For international level, see WHO, Violence against sex workers and HIV prevention, <http://www.who.int/gender/documents/sexworkers.pdf>

<sup>56</sup> The German association representing prostitutes, Hydra, has a special set of recommendations on their website on how to behave when being controlled by the police: Was tun bei einer Razzia <http://www.hydra-berlin.de/wissenswertes/informationen/>

<sup>57</sup> Joe Goodey, Sex trafficking in women from Central and East European countries: promoting a 'victim-centred' and 'woman-centred' approach to criminal justice intervention, *Feminist Review* (2004) 76, 26–45; doi: 10.1057/palgrave.fr.9400141

<sup>58</sup> SWAN, *Arrest the violence, Human Rights abuses against sex workers in Central and Eastern Europe and Central Asia*, Open Society Foundation, 2009.

#### 1.3.4. The issue of consent

The answer to the question whether voluntary and forced prostitution can be dealt with separately depends whether the respondent thinks that women would consent to sell sex without any form of coercion. While protagonists of the regulatory approach strongly insist on the ability of women to decide freely on what they want to do with their body and on their sexuality, abolitionists take the view that agreement to selling sex can never be voluntary and that, therefore, prostitution in general equals sexual exploitation.

In this latter sense, it has been noted that consent in general is regulated and limited in international and national law. There are boundaries and limitations to personal autonomy when it comes, for example, to bodily harm such as the severity of the act in question and criteria for a legally valid consent.

S.F. Schultze-Florey suggests further that taking into account that prostitution is *per se* a dangerous activity, which in most cases involves high levels of harm, the principles behind protecting individuals from **severe harm** should apply as well. "There should be legally regulated objective criteria to the severity of the harm inflicted, drawing the line for what one can consent to. Furthermore, there should be legally regulated subjective criteria to the person consenting, regulating the legal validity of consent"<sup>59</sup>.

The results of a study made in nine countries showed that 89% of 785 prostitutes interviewed wanted to escape prostitution but could not because they did not have other options for survival<sup>60</sup>.

#### 1.3.5. The myth of trafficking

In relation to the regulatory approach, there are some feminists who go further than insisting on the right of women to decide freely about their body and their sexuality or to request to maintain the dividing line between prostitution which can be regulated and trafficking in human beings which should be a criminal offense. They rather accuse the protagonists of the abolitionist approach of creating a myth about women being trafficked for sexual exploitation<sup>61</sup>. Seen the lack of data, they deny the need for action to protect women and advocate even more strongly for the state and society not wanting to prescribe how women should live. According to them, the picture of men buying women to abuse them for their sexual pleasure is exaggerated.

### 1.4. Conclusions regarding the debate

- The debate does not put into question that trafficking for sexual exploitation and violence against women should be eliminated. On the international, European and national level, a broad range of legislation exists which qualifies sexual exploitation as a criminal offense. European Directive 2011/36/EU furthermore urges Member States to consider criminalising the known use of services of objects of exploitation, and specifically the buyers of sexual services from trafficked persons."

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<sup>59</sup> Vid. Schultze-Florey, S.F. (2011), *Prostitution and the free will – a critical view on consent in prostitution*, University of Bergen (p.95). Available at : <https://bora.uib.no/handle/1956/5502>

<sup>60</sup> Farley, M. et al. (2003), « Prostitution and Trafficking in Nine Countries...

<sup>61</sup> Doezema, Joe, Loose women or lost women; Gender Issues, Vol. 18, no. 1, Winter 2000, pp. 23-50.

- As well as the abolitionist as well as the regulatory approach are both of a normative nature and present ideas on how selling and buying sex should be treated in the framework of society as a whole. They have both attempted to use evaluations and research to support their approach and their objectives.
- There is a lot of literature drawing pictures of disastrous conditions under which women selling sex have to work, in the first place regarding high levels of violence. The figures, however, on how many women are actually exploited, are estimations in which official national figures are usually lower than estimations of women's rights organisations or international organisations. All figures should therefore be treated with care. The broad range of qualitative social research is, however, often biased towards either the abolitionist or the regulatory approach. Very few scientists make an effort to find their way between or independent from these categories, among them, for example, Liz Kelly et al in her comparative analysis of 9 countries. She confirms that "the knowledge base for evidence based policies on prostitution is weak".
- Regarding the evidence base, it has to be noted that the approach of the abolitionists to blur the distinction between women selling sex and women sexually exploited does not seem to be helpful. The problem is that sexual exploitation by third parties is no longer separated from violence inflicted by clients. It is, however, not possible in the framework of this note to find out whether this is because the evidence base is so small or whether this approach contributes to the lack of evidence. Nevertheless, qualitative studies exploring clients' attitudes report a higher readiness of men buying sex to use violence than other parts of the population.
- Regarding men buying women overall, the evidence base is equally scarce. The estimations on the number of men using sexual services compared with the male population range from "few" to "one third" but agree, however, that it is a minority of men which disqualifies in a way the assumption that prostitution was needed to satisfy an irresistible sexual desire inherent to men.
- In this respect, it could be useful to have more insight into the dynamics of the prostitution market. Abolitionists put forward that the offer is driven by demand and that the growth rates in the liberalised prostitution markets are attributed to the "untamed" demand which can only be satisfied through forcing women into prostitution. In this respect it has to be noted that experts have found a relation between the liberalisation of prostitution and increasing numbers of trafficking in human beings.
- The regulatory approach, on the contrary, rather aims at clearing the way for women selling sex based on the assumption of the ability of adults to organise their sex life on the basis of mutual consent. Experts however, also those who distance themselves from the abolitionist approach, point to the lack of gender-sensitivity of the regulatory approach. The gender-neutral language used in this approach fails to recognise that for an overwhelming majority it is women selling sex and men buying sex. Therefore, the regulatory approach is criticised for ignoring the effects of gender inequalities in society, ranging from the disadvantaged economic position of women, in particular the higher female poverty rates, over the discrimination of women on the labour market (of which in the regulatory approach prostitution is a part) to the high level of domestic and sexual violence against women in society as a whole.

- Regarding the fight against trafficking in human beings for sexual exploitation, it should be noted that it takes place to a greater and lesser extent in all Member States. Although, as this note shows, women are sexually exploited in a complex legal, social and political environment, it is however astonishing that the literature rarely examines the role of law enforcement, i.e. the police. From countries where prostitution is liberalised it is known that the police tends to complain about their lack of possibilities to act, while the police is rather accused of violent acts against women selling sex, mostly in regimes where prostitution is prohibited. For the rest, academics seem not to be interested so far of how Member States organise the implementation of the laws against sexual exploitation. While there is a call for a more **victim centred approach**, it seems worrying that the Dutch anti-trafficking rapporteur is afraid that the police might not have the appropriate training and capacities to address sexual exploitation on the Dutch prostitution market, a resource question which might be true for other Member States as well. Again, Liz Kelly can be cited who examined prostitution regimes in 9 countries: "Regulation is invariably under-enforced and under-resourced, with a lack of clarity in law and policy as to who is responsible. This has led, in many regimes, to unchecked growth in illegal sectors and/or a failure to police the exploitations of prostitution offences. Both create disincentives for the licensed sector to comply with policy goals."

Finally, it can be said that the Member States implement different prostitution regimes which can be sorted according to the abolitionist and regulatory approach opposed in the debate. However, it is questionable if this categorisation is really helpful to evaluate their success in fighting trafficking for sexual exploitation.

## 2. OTHER BACKGROUND INFORMATION ON RELEVANT ELEMENTS OF THE DEBATE

### KEY FINDINGS

- On average 70% of the prostitutes in the EU are migrant women. Prostitution in the Member States is part of a globalized and transnational market.
- Men who buy sexual services can be considered a minority within the total male population, yet around 30 % of all men have paid for sex at some point in their life. Men who buy sex from prostitutes have been found to share in common a higher likelihood to commit sexual coercive acts and violence against women.
- An increased demand for young women selling sex has been observed.

The individual experience of prostitution is highly diverse and the phenomenon itself is rather complex. There is close to no data available on the number of women selling sex and research is normally either influenced by the abolitionist or the regulatory approach. However, the following issues which less mentioned in the debate but have to be considered as highly relevant can be drawn from the literature:

#### 2.1.1. Migration

According to the European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers (TAMPEP), on average approximately 70% of prostitutes in Western Europe are migrants. In fact, for migrants, the likelihood to engage in prostitution<sup>62</sup> increases compared to the general population. This has been explained with the increased vulnerability of migrant women due to racial discrimination, lack of knowledge of the language, administrative barriers derived from strict migration policies, and labour segregation which drive migrants to informal labour markets and increase the risk of suffering poverty and marginalisation.

Furthermore, a demand for "exotic" prostitutes with a particular racial or ethnic identity<sup>63</sup> is perceived.

However, there is no possibility to enter a Member State legally to work in the prostitution business.

In Europe, the main **region of origin** of migrants engaged in prostitution is Central and Eastern Europe, including the Baltic and Balkan States, which together account for around 70%. 32% are from recent EU accession States (EU 8), and 37% from non-EU States in Eastern Europe and the Balkans. Other places of origin are Africa (12%), Latin America and the Caribbean (11%), Asia-Pacific (4%), and other EU countries (4%)<sup>64</sup>.

<sup>62</sup> The Beijing Platform for Action (1995) draws attention to the fact that globalization and global migration patterns have unequal consequences for women and men, and could lead, in many cases to the sexual exploitation of women.

<sup>63</sup> Di Nicola, A. et al. (2009), Prostitution and Human Trafficking: Focus on Clients, Springer, 2009

<sup>64</sup> Idem p. 18

Apart from the global migration patterns, prostitution in itself has also a transnational dimension. Given the **strong mobility in the activity**, a significant part of prostitutes have engaged in prostitution in more than one country and this is even more frequent in cross-border areas<sup>65</sup>. The Swedish and British police, for example, have found the same prostitutes are being sold or 'offered' on websites in both countries<sup>66</sup>.

Europe is also the main destination for victims of international trafficking for sexual exploitation. According to UNODC, a greater variety of nationalities among human trafficking victims has been found in Western and Central Europe than in any other part of the world. Most of these victims (84%) were trafficked for the purpose of sexual exploitation<sup>67</sup>. The following map<sup>68</sup> shows the transnational flows in trafficking for sexual exploitation. Trafficking in human beings very clearly follows an economic pattern; people from poor countries and regions are trafficked to more affluent countries.



<sup>65</sup> Siegel, D. (2012), "Mobility of Sex Workers in European Cities", *European Journal of Criminal Policy and Research*, Vol. 18, 2012, pp. 255-258.

<sup>66</sup> Swedish Police, ABC News, Swedish Public Broadcasting (S TV) 29 October 2013.

<sup>67</sup> UNODC (2010), "Trafficking in Persons to Europe for Sexual Exploitation", Chapter extracted from *The Globalization of Crime. A Transnational Organized Crime Threat Assessment* (p.2): <http://www.unodc.org/unodc/en/data-and-analysis/tocta-2010.html>

<sup>68</sup> Idem.

### 2.1.2. Increasing demand for young women and child prostitution

Furthermore, up to half of the women start selling sex when they are young, often below majority age. This is a global pattern, also present in Western EU countries. Surveys conducted in the Netherlands showed that 5% of prostitutes in the licensed sector had started before the age of 18. In the escort sector, more than 10% were actually underage, and more than 50% started when they were younger than 20 years old<sup>69</sup>. This could be connected to the increasing demand for young women and child prostitution.

### 2.1.3. Experiences of transgender prostitutes

Although prostitution and sexual exploitation affect mainly “cisgendered” women and girls, attention should be paid to **transgender** people in prostitution as well. Though marginal compared with the number of “cisgendered” women, transgender prostitutes are **overrepresented** as a gender minority; depending on the country, the proportion of transgender prostitutes is between 5%-25%<sup>70</sup>. Transgender people are highly discriminated in their access to employment and **severely ostracized** due to their **gender identity**. This risk of marginalisation impacts on their vulnerability to engage in prostitution as the only option available. Studies show that transgender prostitutes (male to female) experience the same frequency of violence as “cisgendered” women<sup>71</sup>.

### 2.1.4. The clients of prostitution

Little is known about men buying sex. The available qualitative studies indicate that the **age** of the first experience of men buying sex could range as far as from 14 to 49 but over half of the men bought sex before they were 21 years old, and around three quarters had bought sex by the age of 25<sup>72</sup>.

Many men are of the opinion that a majority of women are lured, tricked, or trafficked into prostitution. Many of them are also aware of the possible vulnerable position of women to become a victim of trafficking for sexual exploitation because of poverty. According to M. Farley and Di Nicola, the knowledge that the women had been exploited, coerced, or trafficked **failed to deter** sex buyers from buying sex<sup>73</sup>.

In this respect, it has to be noted that **most clients are unable to identify indications of forced prostitution**<sup>74</sup>. In the Netherlands, the authorities have opened a hotline for clients (and other people) to denounce anonymously any suspect on trafficking. According

<sup>69</sup> WODC (2007), Prostitution in the Netherlands since the lifting of the brothel ban.

<sup>70</sup> TAMPEP (2009), Sex Work in Europe. A mapping of the prostitution scene in 25 European countries, (p. 14)

<sup>71</sup> Farley, M., & Barkan, H. (1998), « Prostitution, violence and posttraumatic stress disorder », *Women & Health*, Vol. 27, No. · (pp.37-49) ; Farley, M. et al. (2003), « Prostitution in Nine Countries...

<sup>72</sup> Idem

<sup>73</sup> Different studies carried out by Farley and Di Nicola point that in general buyers are not deterred from buying sex when they know the prostitute has been trafficked or exploited. However, buyers tend to minimize the phenomenon of trafficking and sexual exploitation, and ignore the signals of force and coercion they may encounter (such as marks, bruises, the presence of pimps, age, the fact that the prostitute does not speak the language, the price of the service, etc.). According to a SOAIDS survey, 90% of the clients were unable to identify indicators of forced prostitution.

<sup>74</sup> Di Nicola, A. et al. (2009), *Prostitution and Human Trafficking. Focus on Clients*, Springer, 2009. See also SOAIDS survey which found that 90% of the clients were unable to identify indicators of forced prostitution. Quoted in Di Nicola, A. et al (2009) *Prostitution and Human Trafficking...* (p.109)

to official data, on average only 3% of notifications came from individuals (which apart from the clients could be family or friends of the victim)<sup>75</sup>.

Furthermore, it has been observed that men (around 40%) justify or tolerate prostitution because they think that buying sex reduces the likelihood of rape and, if prostitution would not exist, then the number of rapes would increase<sup>76</sup>. In fact, studies from the US seem to prove the contrary (please see above, sub-chapter 1.2.5.).

Although part of men buying sex justify their behaviour with the idea of men as sexual predators, which means that by nature men have an uncontrollable sexual impulse, approximately **60% of buyers reported a feeling of guilty or shame** after buying sex<sup>77</sup>.

### ***Prostitution as entertainment***

Following a Spanish non-governmental organisation, there is a growing number of young men that buy prostitution as a form of entertainment. It is theorised that this trend, where **women and girls are treated as sexual toys**, could lead to an increase in the number of violence committed by young men against women<sup>78</sup>.

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<sup>75</sup> National Rapporteur on Trafficking in Human Beings (2010), *Human Trafficking - ten years of independent monitoring*. Available at: <http://www.dutchrapporteur.nl/reports/eighth/>

<sup>76</sup> Farley, M. et al. (2011), "Comparing Sex Buyers..."

<sup>77</sup> Farley, M. et al (2008) "Challenging Men's Demand..."

<sup>78</sup> Comision para la investigacion de malos tratos a mujeres. *El cliente de prostitucion, de invisible a responsable* (ES): <http://malostratos.org/archivos/2012/06/Cliente-web.pdf>



### 3. LEGAL APPROACHES TO PROSTITUTION IN EU MEMBER STATES: OVERVIEW AND FOUR CASE STUDIES

#### KEY FINDINGS

- The majority of EU countries follow the abolitionist model. However, as it is also the case for the regulatory approach, the laws implemented so far were neither well-formulated nor properly enforced. Consequently, they failed to effectively reduce exploitation in the sex industry.
- For the regulatory approach, this means that the laws missed their aim to improve the working conditions of prostitutes, notably regarding the level of violence experienced by women selling sex. There is research connecting the liberalisation of the prostitution market with increased trafficking for sexual exploitation.
- So far, Sweden is the only Member States where the purchase of sexual services constitutes a criminal act while offering sexual services is not illegal. Although official Swedish evaluations show a reduction in the number of persons trafficked for sexual exploitation, it has also been acknowledged that prostitution prevails in Sweden and that conclusions on the reduction of sexual exploitation might go beyond the evidence base of the evaluations. In some Member States, like France and Ireland, there is interest to follow the Swedish example, being to penalise the demand of sexual services.

#### 3.1. General overview

The regulation of and the approaches and policies addressing issues related to prostitution are uneven and vary greatly between EU Member States<sup>79</sup>, though **child prostitution is illegal** in all Member States.

Prostitution is legal and regulated in the **Netherlands, Germany, Austria, Greece<sup>80</sup>, Hungary and Latvia<sup>81</sup>**. In these Member States, prostitutes are recognised as workers; engaging in sexual activities as a legitimate profession; in this sense, prostitution is seen as an economic activity in which business can operate legally.

In some Member States, on the contrary, prostitution is outlawed (**Lithuania, Romania<sup>82</sup>**) meaning that selling and buying is illegal. In others, prostitution itself is not illegal but some related activities such as pimping, running brothels, living off the earnings of prostitution are criminal offenses (**Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Italy, Luxembourg, Malta, Poland, Portugal,**

<sup>79</sup> Part of the references on the legislative approaches of EU Member States are taken of the *Discussion Document on Future Direction of Prostitution Legislation* elaborated by the Department of Justice and Equality of the Ministry of Justice, Equality and Defence of Ireland (published on 22 June, 2012).

<sup>80</sup> In Greece, brothels must have permits. Persons engaged in prostitution must register with the authorities and carry a medical card, which is regularly updated.

<sup>81</sup> In Latvia also, prostitutes are required to carry a health card. They must undergo regular health checks. There are strict conditions attaching to how and where prostitutes can operate. While prostitution is regulated, brothels and procuring are illegal. The law prohibits any third party activity which promotes prostitution

<sup>82</sup> Earning a living by prostitution is punished by 3 months to 3 years imprisonment (art. 328 Criminal Code). Source: International Centre for Migration Policy Development (ICMPD) (2009), *Legislation and the Situation Concerning Trafficking in Human Beings for the Purpose of Sexual Exploitation in EU Member States*.

**Slovakia, Slovenia, Spain**)<sup>83</sup>. In some of them, soliciting is illegal (**Finland France, Ireland, UK**).

It is worth noting that neither in those Member States in which prostitution is totally prohibited, nor in those where it is tolerated, are clients sanctioned, while the prostitutes are fined for soliciting in Finland, France, Ireland, and the UK, or even risk imprisonment in Romania.

### 3.1.1. Reducing the demand

The only EU Member State where purchasing sexual services is considered a criminal offence punishable with up to one year of imprisonment is **Sweden**. Recently, other Nordic countries (**Norway**<sup>84</sup> and **Iceland**<sup>85</sup>) have adapted their respective law to include penalising buyers of prostitution.

**Ireland** is considering similar legislation, after a report by the Irish Parliamentary Committee on Justice<sup>86</sup> recently recommended the criminalization of the purchase of sex.

In **France**, the *Assemblée Nationale* decided on 4 December 2013 to change the existing law and to criminalise the purchase of sexual services. The decision of the *Assemblée Nationale* was taken after a report presented by a Parliamentary Mission on Prostitution<sup>87</sup> and a non-binding resolution<sup>88, 89</sup>.

In **Finland**, where a **limited criminalization** of the purchase of sexual services from victims of human trafficking and pandering was introduced in 2006, a political debate considering the wider criminalization of the purchase of sexual services is re-emerging<sup>90</sup>.

In **Scotland**, a proposal to criminalise the purchase of sexual services was launched in September 2012. The consultation carried out showed a great support for the proposal

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<sup>83</sup> Though not illegal, this does not mean that prostitution is viewed as a legal activity either.

<sup>84</sup> Schaffer, J.K. (2010), "Research on Norwegian prostitution policy", *Nordic Prostitution Policy Reform*, 17/08/2010: <http://nppr.se/2010/08/17/existing-research-on-norwegian-prostitution-policy/>

<sup>85</sup> "Iceland is determined to outlaw the world's oldest business. Can it succeed?", 20/04/2013, *The Economist*: <http://www.economist.com/news/international/21576366-iceland-determined-outlaw-worlds-oldest-business-can-it-succeed-naked-ambition> ; "Iceland: the world's most feminist country", 25/03/2010, *The Guardian*: <http://www.guardian.co.uk/lifeandstyle/2010/mar/25/iceland-most-feminist-country>

<sup>86</sup> For more information on the Irish initiative, the press release and related documents are available at: <http://www.oireachtas.ie/parliament/mediazone/pressreleases/name-17366-en.html>

<sup>87</sup> Assemblée Nationale, Bousquet, D., Geoffroy, G. (2011), Rapport d'information par la Commission des Lois Constitutionnelles, de la Législation et de l'Administration Générale de la République, en conclusion des travaux d'une mission d'information sur la prostitution en France, doc. No. 3334, 13 avril 2011. Available at: <http://www.assemblee-nationale.fr/13/pdf/rap-info/i3334.pdf>

<sup>88</sup> Assemblée Nationale (2011), Proposition de Résolution réaffirmant la position abolitionniste de la France en matière de prostitution, doc. No. 3522, 9 juin 2011. Available at: <http://www.assemblee-nationale.fr/13/propositions/pion3522.asp>

<sup>89</sup> "French prostitution policy: France symbolically reaffirms its commitment to abolitionism", 12/12/2011, *Nordic Prostitution Policy Reform*, <http://nppr.se/2011/12/12/french-prostitution-policy-france-symbolically-reaffirms-its-commitment-to-abolitionism/> ; "France is pursuing a new "abolitionism" focused on removing prostitution from society without criminalising victims of sex trade", 18/04/2013, *London School of Economics and Political Science*: <http://blogs.lse.ac.uk/europpblog/2013/04/18/france-neo-abolitionism-prostitution-swedish-model-emily-st-denny/>

<sup>90</sup> "Finnish legislation on the purchase of sexual services: potential revisions? 11/07/2011, *Nordic Prostitution Policy Reform*: <http://nppr.se/2011/11/07/finnish-legislation-on-the-purchase-of-sexual-services-expected-to-be-revised/>

among civil society organisations<sup>91</sup> but failed to achieve the necessary cross-party political support to get to the parliamentary debate stage<sup>92</sup>.

The **UK** amended its legislation in 2009 by introducing payment for sexual services from a prostitute who is subject to exploitation as a criminal offence. The purchaser can be prosecuted even if unaware of exploitation of the prostitute by a third party. The 2009 legislation also prohibits soliciting a person in a street or public place to obtain sexual services<sup>93</sup>.

It can be concluded that a number of Member States are introducing amendments into their criminal regulations to punish the clients of trafficked prostitutes. However, **most EU Member States remain reluctant** to move in the direction of criminalising the purchase of sexual services, despite persistent recommendations from the **CoE**, **UN** agencies, and more recently **Directive 2011/36/EU**, which have called upon the Member States to criminalize the known use of services of victims of exploitation, and specifically the buyers of sexual services from trafficked persons.

### 3.2. The regulatory model in the Netherlands

#### 3.2.1. The new bill of 2000: the decriminalization of exploitation of prostitution

The Netherlands became the first European country to legalize prostitution. On 1 October 2000, the lifting of the general ban on brothels came into effect. Prostitution as such has never been a criminal offence, provided that it was voluntary and that no minors were involved. Brothels, however, were illegal until the bill had passed. With this amendment of the law, "legislation has been adapted to an actually existing practice, in which the ban on brothels was not enforced, or hardly at all"<sup>94</sup>.

By lifting the ban on brothels, the government **aimed** to<sup>95</sup>:

- ❖ control and regulate the exploitation of voluntary prostitution through the introduction of a **municipal licensing system**;
- ❖ protect the position of sex workers;
- ❖ protect people from being coerced into prostitution;
- ❖ protect minors against sexual abuse;
- ❖ reduce prostitution by foreign nationals residing illegally in the Netherlands;
- ❖ and sever the links between prostitution and crime.

<sup>91</sup> Web of MSP Rhoda Grant: <http://www.himsp.org.uk/2013/05/rhoda-grant-proposed-bill-to-criminalise-the-purchase-of-sex-moves-forward/>

<sup>92</sup> More info could be found at the web of Scottish Parliament: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/54314.aspx>

<sup>93</sup> Ministry of Justice, Equality and Defence of Ireland (2012), Discussion Document on Future Direction of Prostitution Legislation.

<sup>94</sup> Research and Documentation Centre of the Ministry of Justice (WODC) (2007), *Prostitution in the Netherlands since the lifting of the brothel ban*, (249a): <https://english.wodc.nl/onderzoeksdatabase/1204e-engelse-vertaling-rapport-evaluatie-opheffing-bordeelverbod.aspx?cp=45&cs=6798>

<sup>95</sup> Dutch Ministry of Foreign Affairs (2012) *Dutch Policy on Prostitution. Questions and Answers*: [http://www.minbuza.nl/binaries/content/assets/minbuza/en/import/en/you\\_and\\_the\\_netherlands/about\\_the\\_netherlands/ethical\\_issues/faq-prostitutie-pdf--engels.pdf-2012.pdf](http://www.minbuza.nl/binaries/content/assets/minbuza/en/import/en/you_and_the_netherlands/about_the_netherlands/ethical_issues/faq-prostitutie-pdf--engels.pdf-2012.pdf)

Although the ban on brothels was lifted, no legislation governing prostitution was introduced. **It has been left to local authorities to formulate and implement policies** tailored to the circumstances prevailing in their area, so each municipality is responsible for laying down the rules in its own jurisdiction and issuing licences for sex businesses. Municipalities are not obliged to pursue a specific prostitution policy.

Main **innovations** of the bill:

- ❖ Pimping and running a brothel are no longer considered criminal activities;
- ❖ Brothels are legal as long they comply with the requirements and have a licence<sup>96</sup>;
- ❖ It is possible to conclude employment contracts between prostitutes and brothels;
- ❖ And if employed, prostitutes can gain access to the social security scheme.

### 3.2.2. Outcomes of the legislation: the Government's evaluation

The Dutch Government carried out two evaluations on the impacts of the law. The first evaluation took place during 2001 and 2002, shortly after the adoption of the law, and the last evaluation dates from 2007. No official evaluation has been undertaken since then.

Given the decentralization of prostitution policy to the local level and the absence of a national framework, **both the law and its enforcement operate unevenly and irregularly** throughout the country, with great differences between regions and even between municipalities of the same region<sup>97</sup>.

#### **Results of the 2007 government evaluation**

- ❖ Employment contracts: The overwhelming **majority of prostitutes worked without contract** (95%) and considered themselves self-employed, despite the fact that there was a high level of control of their work by brothel operators<sup>98</sup>.
- ❖ Access to social security: Given the lack of contracts, the majority of prostitutes were **not entitled to any social service benefits**.
- ❖ Working conditions: The conditions under which prostitutes worked differed widely. On the one hand, each municipality applied their own policy of either permitting or prohibiting people from **living at their workplace**, a phenomenon which is relatively common<sup>99</sup>. On the other hand, only 2% of the municipalities tolerated **streetwalking**<sup>100</sup>, which pushed the prostitutes towards brothels, windows or other indoor establishments, where they were required to pay a rent and/or part of their incomes.
- ❖ Well-being: The **emotional wellbeing of prostitutes has declined** between 2001 and 2006 according to every variable assessed, i.e. the extent of distress was higher and the use of sedatives had increased<sup>101</sup>.

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<sup>96</sup> Under the current law it is **not mandatory** for municipalities to require a special **licence** from brothels.

<sup>97</sup> WODC (2007), Prostitution in the Netherlands since the lifting of the brothel ban, (vid. supra)

<sup>98</sup> Idem (pp. 64-67)

<sup>99</sup> WODC (2007) Prostitution in the Netherlands since the lifting of the brothel ban (p. 79)

<sup>100</sup> Idem (pp. 47-48)

<sup>101</sup> Idem (p. 71)

- ❖ Exiting prostitution: Only a small minority of **municipalities (6%)** offered an **exit program** to prostitutes<sup>102</sup>.
- ❖ Legal status of brothel operators: Around **32% of local authorities** still had **not established a formal policy** concerning the provision of sexual services<sup>103</sup>. An estimated **one third of all licensed establishments** across the country **had received a sanction** in the last years. However, in the vast majority of cases, the only consequence was a formal warning. In this regard, the most important reason for issuing a sanction was the presence of **prostitutes without valid residence and/or work permits**<sup>104</sup>. The inspections were carried out mainly by the police, and consisted of evaluating the compliance with licence requirements. In three quarters of cases, **the inspections were previously announced**<sup>105</sup>.
- ❖ Status of similar services: There are concerns in relation to **escort agencies** and other **non-location-bound businesses**, which in most of the municipalities are **not required to have a licence**. In the escort sector, the **medium age of the prostitutes is much lower** than in other sectors (29% of prostitutes in escort services are aged 18 or 19)<sup>106</sup>. Furthermore, there had been an increase in establishments like couples clubs or erotic saunas where prostitution services are provided. In this regard, a **shift in demand** is reported due to the “large and varied offering of (mostly foreign) prostitutes and the conditions under which they are willing to do their job”<sup>107</sup>.
- ❖ Taxation: According to official sources, the majority of prostitutes (more than 60%) did not pay tax on the income they earned through prostitution. In the escort sector, this increased to 75%<sup>108</sup>.
- ❖ Impact on combatting crime: Pimps were still a common phenomenon. Prostitutes with pimps were primarily working behind windows, as escorts, and from home. In the context of the fight against exploitation of involuntary prostitution, there seems to be **no decrease in the number of prostitutes with pimps**<sup>109</sup>.

### ***Supervision and enforcement in the prostitution sector***

Supervision and enforcement in the prostitution sector are particularly weak. The Police Monitor showed in 2008 that the police were still not adequately controlling the licensed prostitution sector and most forces had only carried out occasional or reactive checks on the non-licensed sector<sup>110</sup>.

During inspections of licensed prostitution businesses, inspectors encountered **underage prostitutes** “only very occasionally”<sup>111</sup>. However, there are signs of girls who become active as prostitutes from the moment they turn 18. In this way, there were indications of child prostitution in the recent past, given the starting age of prostitutes. 5% of the

<sup>102</sup> DSP-groep BV & WODC (2006) Local evaluation of the lifting of the brothel ban: [www.wodc.nl/images/1204a-summary\\_tcm44-59307.pdf](http://www.wodc.nl/images/1204a-summary_tcm44-59307.pdf).

<sup>103</sup> Idem (p. 4)

<sup>104</sup> Idem (pp. 6-7)

<sup>105</sup> WODC (2007) Prostitution in the Netherlands since the lifting of the brothel ban (p. 56)

<sup>106</sup> Idem (p. 33)

<sup>107</sup> Idem (pp. 35-36)

<sup>108</sup> Idem (p. 66)

<sup>109</sup> WODC (2007) Prostitution in the Netherlands since the lifting of the brothel ban, (p. 81)

<sup>110</sup> National Rapporteur on Trafficking in Human Beings (2010), *Human Trafficking - ten years of independent monitoring*. (p.29): <http://www.dutchrapporteur.nl/reports/eighth/>

<sup>111</sup> “Yet it is not easy to get any clarity about the occurrence of prostitution by minors, since it is often difficult to estimate the age of young prostitutes”. Idem p. 86

interviewed prostitutes working in the licensed sector started when they were younger than 18. **More than half of the prostitutes who are working as escorts started when they were younger than 20, and more than 10% when they were underage**<sup>112</sup>.

**Only half of the authorities give due consideration to combatting human trafficking in their prostitution policy**<sup>113</sup>. The Police Monitor 2008 said that many forces had measures in place to ensure the investigation of human trafficking, but that nevertheless, not all forces possessed or deployed the same level of resources to carry out all the tasks related to addressing human trafficking<sup>114</sup>. The Dutch Rapporteur on Trafficking in Human Beings warned that the police were increasingly aware of trafficking offences, but unable to intervene through of a lack of capacity<sup>115</sup>.

In 2012, the government prosecuted and convicted 141 trafficking offenders, an increase from 108 in 2011. The average sentence for convicted trafficking offenders was approximately 25 months in 2011. The government did not disaggregate purposes of the trafficking cases but it is estimated that approximately three quarters of all cases involved sex trafficking. Local police reported that low sentences for traffickers continued to result in the reappearance of the same offenders and thus the **continued exploitation of trafficking victims within the regulated commercial sex sector**<sup>116</sup>.

### ***Migrant women working as prostitutes***

Apart from improving the situation of prostitutes, the bill aimed at reducing the prostitution by "irregular" migrants. However, work in prostitution is not considered as a valid occupation in order to provide **work permits**. As a consequence, non-EU nationals<sup>117</sup> were pushed into the **underground market** where almost no controls take place, with no rights or protection available, and where prostitutes are thus more vulnerable to exploitation and trafficking<sup>118</sup>.

As pointed out by the national Rapporteur on Human Trafficking, with regard to the ban on issuing work permits for prostitutes from outside the EU (while also considering Romania and Bulgaria), "(...) a lack of clarity (about conditions and possibilities) is not generally conducive to combating human trafficking but an excessively intricate system of conditions (such as those for the self-employed) might also be counterproductive because of dependence on third parties that may arise as a result"<sup>119</sup>.

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<sup>112</sup> WODC (2007) Prostitution in the Netherlands since the lifting of the brothel ban, (p. 77)

<sup>113</sup> DSP-groep BV & WODC (2006) Local evaluation of the lifting of the brothel ban

<sup>114</sup> National Rapporteur on Trafficking in Human Beings (2010), p.63

<sup>115</sup> In April 2006, the National Office of the public prosecution service and the National Criminal Intelligence Service launched the investigation codenamed Sneep. In this investigation, a number of agencies targeted a group of human traffickers who were operating at various locations in the Netherlands, and for years, had been violently exploiting more than 100 women in window prostitution. The **authorities** involved in identifying and combating human trafficking **had been aware of the group for years**. After a warning to the police in 1998, investigations had taken place in 2000 and 2003, but they had not ended the group's criminal activities. Further complaints were made in 2004 and 2005. The first arrests were made in February 2007.

<sup>116</sup> U.S. Department of State (2013), Trafficking in Persons Report 2012, Country Narratives: <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

<sup>117</sup> Except from Bulgaria and Romania. Vid. Outshoorn, J. (2012), « Policy Change in Prostitution in the Netherlands : from Legalization to Strict Control », *Sex, Research and Social Policy*, Vol. 9, pp. 233-243

<sup>118</sup> Idem.

<sup>119</sup> National Rapporteur on Trafficking in Human Beings (2010) (p. 27)

### 3.2.3. Overall impact

#### **Estimates**

According to a 2006 study, the number of licensed sex establishments in the Netherlands was estimated to have decreased between 2000 and 2006 by 17% to around 1270 establishments<sup>120</sup>. This could be explained by the worsening economic situation and the increased numbers of escort services and mobile sex companies which in general do not require licenses and are not counted in the legal estimations.

Reliable information on the **number of prostitutes** is lacking. In 2003, it was estimated that there were between 20000 and 30000 prostitutes. However, it is believed that the number decreased also as a consequence of the former economic crisis and the closure of a number of brothels. According to TAMPEP, in 2008, there were approximately 10000 to 15000 prostitutes, of which 90% were female. The **majority of female prostitutes are migrants**, mainly from Eastern Europe, although a downward trend in the number of female migrant prostitutes from 2000 (80%) to 2008 (60%)<sup>121</sup> was perceived.

Although some forms of prostitution have been legal in the Netherlands since 2000, they are not explicitly included in the Dutch national accounts yet, so the national department of statistics (CBS) included **estimated revenues of prostitution** in their reports on incomes from illegal activities. Revenues from prostitution are calculated to be between €400 and **€600 million** annually<sup>122</sup>.

#### **Risk of violence**

Between 45-50% of prostitutes state that **violence is their main concern**, making it the main vulnerability factor for them<sup>123</sup>. It is widely recognized that women in prostitution face a substantial risk of violence. A survey indicated that 22% had been subjected to assault in the course of their prostitution activities<sup>124</sup>. The fact that Dutch brothels must be equipped with "**panic buttons**"<sup>125</sup> is illustrative of the high level of risk of violence that prostitutes face.

#### **Trafficking in human beings**

According to the national Rapporteur on Human Trafficking, "there has always been **a clear relationship between human trafficking and prostitution** in the Netherlands. Human trafficking has been associated with prostitution ever since it was included in Dutch criminal law"<sup>126</sup>. In this sense, the Rapporteur drew attention to the fact that the regulation of the prostitution sector remains uneven across the country due to the system of local regulation of prostitution businesses. He consequently recommended on several occasions to develop

<sup>120</sup> DSP-groep BV & WODC (2006) Local evaluation of the lifting of the brothel ban

<sup>121</sup> TAMPEP (2009), Netherlands Country Report:

<http://tampep.eu/documents/ANNEX%204%20National%20Reports.pdf>

<sup>122</sup> CBS Statistics Netherlands (2012), *The contribution of illegal activities to national income in the Netherlands* (p. 15): <http://www.cbs.nl/NR/rdonlyres/3BDF96EA-1EE4-4987-ACA0-A769C10F2007/0/201204x10pub.pdf>

<sup>123</sup> TAMPEP (2009), Netherlands Country Report

<sup>124</sup> Survey conducted by the Intermediary Project for Prostitutes in Amsterdam. Quoted in the Report of the mission to the Netherlands by the UN Special Rapporteur on violence against women (2007), par. 70. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/89/PDF/G0710689.pdf?OpenElement>

<sup>125</sup> Ministry of Foreign Affairs (2012) Dutch Policy on Prostitution. Questions and Answers.

<sup>126</sup> National Rapporteur on Trafficking in Human Beings (2010) (p.26)

a **national framework for prostitution policy** to avoid “differences in policy [that] could create the risk of cases of human trafficking occurring not being addressed”<sup>127</sup>.

Establishing a licensing system for the prostitution sector was expected to make prostitution more manageable and lead to the eradication of abuses in the sector. However, several cases have shown that **widespread exploitation can also take place in the licensed sector**. This has influenced attitudes towards the prostitution sector over the last decade with the result that the sector is prone to human trafficking<sup>128</sup>.

As pointed out further by the national Rapporteur, “we are still a long way from reaching a situation where there is sufficient control of the Dutch prostitution sector to substantially reduce vulnerability to exploitation in the sector”<sup>129</sup>.

#### 3.2.4. Towards a new policy on prostitution

Alarmed by **persistent abuses and the presence of organised crime in the prostitution sector**<sup>130</sup>, into which it is estimated that between **60-70% of the women are forced** by criminal groups<sup>131</sup>, the Dutch authorities are considering **amending the national prostitution policy**<sup>132</sup>. To this end, a new “Act to regulate prostitution and combat abuses in the sex industry” was proposed in the Dutch Government in November 2009, which intends to provide a more comprehensive administrative framework for the sector in order to address abuses in the sex industry, to offer better protection for prostitutes, and to provide better support for combatting human trafficking, prostitution by minors, and forced prostitution.

##### ***The main innovations of the proposed bill***<sup>133</sup>:

- ❖ Raising of the legal age to engage in prostitution from 18 to 21;
- ❖ Mandatory registration of prostitutes in a national register;
- ❖ Punishing clients using illegal prostitution with a fine;<sup>134</sup>
- ❖ Fining prostitutes without registration or working in a brothel without a licence;
- ❖ Punishing unlicensed sex businesses or those violating the rules with a fine or a term of imprisonment between six months and two years for directors; and
- ❖ Requiring from brothels and other sex businesses to have a licence and a permanent address.

As pointed out by the National Rapporteur on Human Trafficking, “**the current bill still failed to provide sufficient guarantees for effective measures against human**

<sup>127</sup> Idem (pp. 26-28)

<sup>128</sup> National Rapporteur on Trafficking in Human Beings (2010) (p. 140)

<sup>129</sup> Idem (p. 143)

<sup>130</sup> “Amsterdam to cut back on brothels”, BBC News, 21/09.2007:

<http://news.bbc.co.uk/2/hi/europe/7005768.stm>

<sup>131</sup> UN Human Rights Council. Expert meeting on the prosecution of trafficking in persons. Add. To the Report of the UN Special Rapporteur on trafficking in persons (2012), A/HRC/20/18/Add.3; (par. 37). Available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/123/23/PDF/G1212323.pdf?OpenElement>

<sup>132</sup> “Labour party investigates imposing a ban on visits to a prostitute”, Dutch News, 18/02/2013: [http://www.dutchnews.nl/news/archives/2013/02/labour\\_party\\_investigates\\_impo.php](http://www.dutchnews.nl/news/archives/2013/02/labour_party_investigates_impo.php); “Dutch politicians study Swedish prostitution laws amid concern over illegal sex trade”, The Amsterdam Herald, 19/02/2013: <http://amsterdamherald.com/index.php/rss/705-20130219-dutch-politicians-study-swedish-prostitution-laws-concern-illegal-sex-trade-labour-pvda-politics-human-trafficking-netherlands-society>

<sup>133</sup> Government of the Netherlands. Press release (15/04/2010): <http://www.government.nl/documents-and-publications/press-releases/2010/04/15/legal-prostitutes-to-be-at-least-21-years-of-age.html>

<sup>134</sup> Clients will have to check via the Internet whether the registration number advertised by the prostitute exists.



**trafficking**". These comments addressed the lack of uniformity in the rules on issuing licences and the conditions to be attached to them, supervision and enforcement, the registration of sex workers and the criminalisation of prostitutes. "The [proposed] bill says nothing about a **duty on the part of the authorities** to make best efforts or about the allocation of tasks between the local authority and the police. This omission increases the risk that the rules laid down in the law will not be supervised and enforced adequately"<sup>135</sup>.

Regarding the **criminalization of clients** using illegal prostitution, the Rapporteur argued that this proposal is **based on the incorrect assumption** that victims of human trafficking can only be found among non-registered prostitutes and prostitutes who do not work for a licensed business. Recalling the CoE Convention on Action against Trafficking in Human Beings, which suggests the criminalisation of clients knowingly using victims of human trafficking, the Rapporteur criticized the proposal which "seems to have a different, mainly regulatory effect, since it proposes criminalising clients of non-registered prostitutes or prostitutes working for a business that has no permit, even though prostitutes in these situations are not by definition victims of human trafficking"<sup>136</sup>.

Moreover, the Law has led to much criticism from NGOs and to a negative opinion from the "Raad van State", the country's legal advisory institution that assesses the quality of new legislation, regarding the privacy risks relating to prostitutes' proposed registration and the infeasibility of limiting client criminalization<sup>137</sup>.

### **State of play**

Despite these critical voices, the Lower House adopted the law, but it encountered opposition in the Senate. The Government amended the proposal but again, on October 30, 2012, the Senate adjourned the draft law. On May 28 2013, the Senate, dissatisfied with the Minister's further adjustments, adjourned the law once again<sup>138</sup>.

In the meantime, **Amsterdam is taking the lead** by becoming the first municipality in the Netherlands to raise the legal age of prostitutes and to introduce a set of measures to tackle the abuse in the industry<sup>139</sup>. Apart from that, the Council of Amsterdam launched in 2008 the so called "Project 2012", with the aim of reducing crime in the central area, through which up to 200 of the 480 windows have been closed<sup>140</sup>.

<sup>135</sup> National Rapporteur on Trafficking in Human Beings (2010) pp.28-29

<sup>136</sup> Idem. P. 75

<sup>137</sup> Wagenaar, H., Altink, S., Amesberger, H. (2013), Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands, Leiden University and Universitat Wien, Platform 31, 2013

<sup>138</sup> Wagenaar, H., Altink, S., Amesberger, H. (2013), *Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands*, Leiden University and Universitat Wien, Platform 31, 2013. (p.52)

<sup>139</sup> "Amsterdam increases legal age for prostitutes", I Amsterdam, 26/02/2013:

<http://www.iamsterdam.com/legal%20age%20prostitutes%20amsterdam>; "Amsterdam raises legal age for prostitution to 21", ABS-CBN News, 27/02/2013:

<http://www.abs-cbnnews.com/global-filipino/world/02/27/13/amsterdam-raises-legal-age-prostitution-21>

<sup>140</sup> "Amsterdam: an end to the red light district?", The Telegraph, 16/12/2011:

<http://www.telegraph.co.uk/travel/travelnews/8961513/Amsterdam-an-end-to-the-red-light-district.html>

### 3.3. The regulatory model in Germany

#### 3.3.1. The new bill of 2002: from immoral activity to legal business

The Federal Act Regulating the Legal Situation of Prostitutes (Prostitution Act - *Prostitutionsgesetz*) came into force on 1 January 2002. The Act includes three sections relating to civil and social insurance and two amendments to the Criminal Code.

It was passed as a Federal Act, i.e. not affecting issues that fall under the jurisdiction of the "Länder", which means that **regions and local authorities still have regulatory powers relating to prostitution**. For example, **protection of public safety and order** is a competency of the "Länder" and each region has its own police law. **Trading law** also falls under the jurisdiction of the "Länder", which means that each region regulates licensing of prostitution businesses. Local authorities are competent for **planning law** to define exclusion zones and decide whether prostitution can be practised on certain streets or neighbourhoods.<sup>141</sup>

Before 2002, there was no specific legislation on prostitution in the Federal Republic of Germany. However, neither prostitution, nor running brothels or similar businesses were prohibited, although both were considered immoral activities.

The **political goals** of the Prostitution Act focused on<sup>142</sup>:

- ❖ improving the legal status of prostitutes;
- ❖ improving the social position of prostitutes;
- ❖ improving the working conditions of prostitutes;
- ❖ reducing crime related to prostitution;
- ❖ and support people to get out of prostitution.

Main **innovations** of the Act:

- ❖ The contractual relationship between client and prostitute is legal and prostitutes have the right to enforce payments in courts.
- ❖ It is legal to conclude employment contracts<sup>143</sup> between prostitutes and brothel operators<sup>144</sup>.
- ❖ By having an employment contract, prostitutes can gain access to the statutory social insurance system (health insurance, pension funds).

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<sup>141</sup> Kavemann, B., Rabe, H, (SoFFI K) (2007), The Act Regulating the Legal Situation of Prostitutes - implementation, impact, current developments, (p.10)

<sup>142</sup> The political goals of the Act are included in the explanatory memorandum of the Act. Sources: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) (2007), *Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes*. (p.9); SoFFI K (2007), *The Act Regulating the Legal Situation of Prostitutes - implementation, impact, current developments*, (p. 10).

<sup>143</sup> The right of the employer to give instructions is nevertheless restricted given the right to sexual self-determination of prostitutes. This relates particularly to the choice of client and type of sexual service. The employer has no right to any claims on account of "bad performance" either.

<sup>144</sup> In the Criminal Code, the term « promotion of prostitution » was replaced by « exploitation of prostitutes » which only applies in cases involving the restriction of the prostitute's personal or financial independence (Section 181a(2))

### 3.3.2. Outcomes of the legislation: the Government's evaluation

The Federal Government carried out an evaluation on the impact of the new legislation, which was published in 2007. The evaluation admits that the Prostitution Act has "**only to a limited degree achieved the goals intended by the legislator**". This conclusion was related to the fact that there were no measurable improvements, neither in prostitutes' social protection nor in their working conditions. There were no indications suggesting that the Prostitution Act had reduced crime or contributed to improving transparency in the world of prostitution<sup>145</sup>.

#### **Results from the 2007 Government evaluation**

- ❖ Employment contracts: The overwhelming **majority of prostitutes had not signed a contract of employment**, and thus continued working on a freelance basis<sup>146</sup>. Operators of brothels still acted as landlords which enabled them to continue profiteering without any employment responsibilities.
- ❖ Access to social protection and pension schemes: Since the majority of prostitutes had not signed a contract, they were **not entitled to social protection**. Nevertheless, many prostitutes had some kind of health insurance (through private insurance schemes, additional salaried employment, or as recipients of social security benefits). But only 47% had any form of pension<sup>147</sup>.
- ❖ Working conditions: The Act does not contain any regulations governing working conditions but it was expected that the legalisation of prostitution establishments would mean that occupational health and safety and accident prevention standards could be applied. However, **little had been done to improve working conditions**<sup>148</sup>.
- ❖ Exiting prostitution: In recent decades, exit support had been offered mainly from advice centres but due to the cuts on state funding, there is **only one German region still running a programme of this kind**. The public agency responsible for providing job-seeking advice to people wishing to leave prostitution is the Federal Employment Agency, and prostitutes are assumed to belong to the groups of people in need of special help to find employment (such as the long-term unemployed and unskilled jobseekers) but there is no exit programme addressed specifically at people wishing to exit prostitution<sup>149</sup>.
- ❖ Legal status of clubs and brothel operators: In Germany, the licensing law is placed within the exclusive competence of the "Länder". There are **no specific criteria** according to which brothels are licenced and operated, and there is **no statutory**

<sup>145</sup> BMFSFJ (2007), Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes. (p. 79)

<sup>146</sup> Idem (p. 17)

<sup>147</sup> SoFFI K (2007), The Act Regulating the Legal Situation of Prostitutes - implementation, impact, current developments, (pp. 17-18)

<sup>148</sup> This could be explained mainly by two factors: a) the existing mechanisms for monitoring working conditions are not applied in prostitution because they are limited to waged employment relationships, b) the different approaches applied in practice by regional supervisory authorities (planning and trading authorities) are perceived as an obstacle to homogeneous regulations regarding working conditions. Vid. BMFSFJ (2007), *Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes*. (p. 64)

<sup>149</sup> SoFFI K (2007), The Act Regulating the Legal Situation of Prostitutes - implementation, impact, current developments, (p. 30)

**obligation to hold a licence** (i.e. brothels only have to register as a business - there is no special form of licence)<sup>150</sup>.

- ❖ **Taxation:** The "Länder" are responsible for implementing business tax and in practice various procedures are applied to the taxing of income from prostitution. In order to standardise the procedure, the report suggested applying flat-rate taxation to each prostitute irrespective of actual earnings. This procedure should also be introduced to street prostitution<sup>151</sup>.
- ❖ **Monitoring of compliance with regulations:** On the one hand, **guidelines for monitoring brothels** and ensuring their compliance with the general standards on working conditions were lacking. On the other hand, "hardly any external monitoring authorities were actively involved in inspecting existing working relationships"<sup>152</sup>.
- ❖ **Impact on combating sexual exploitation and trafficking:** With the amendment of the criminal code, procurement is a punishable offence only when it is **exploitative**. The offence of promotion of prostitution as it was defined in the past provided an important way into investigating structures of organised crime. In a study commissioned by the Federal Government, authorities claim that now they need to provide evidence that prostitution is practised under coercion, which is difficult to obtain, and therefore makes the **prosecution of these offences more difficult**. 20% of police representatives perceived a **restrictive effect** on their ability to carry out **investigations** and bring **prosecutions** in the field of pimping, exploitation, and trafficking in human beings<sup>153</sup>.

### ***Prosecution and conviction of traffickers decreased***

The national statistics showed a decrease of almost 25% in the number of victims of trafficking for sexual exploitation identified between 2002 and 2010<sup>154</sup>. Law enforcement authorities repeatedly highlighted that the offences related to trafficking for sexual exploitation are difficult to prove, relying mostly on the statements of the victims. The withdrawal of victims' statements occurs often, making it **very difficult or even impossible to monitor the human trafficking offences**<sup>155</sup>. In 2010, there were 621 cases of trafficking for sexual exploitation recorded<sup>156</sup>, 470 investigations were concluded (12% less than the previous year)<sup>157</sup>. According to Eurostat, 192 traffickers were prosecuted (90% for sexual exploitation) and 131 were convicted<sup>158</sup>.

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<sup>150</sup> Idem (p.24): "a restaurant operator in Germany currently has to apply for a licence under trading law and provide proof of his or her personal reliability, whereas brothel operators simply have to register their brothels at the trade licensing office".

<sup>151</sup> BMFSFJ (2007), Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes. (pp. 71-72)

<sup>152</sup> BMFSFJ (2007), Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes. (p. 18). See also BMFSFJ (2012), Regulierung Von Prostitution und Prostitutionsstätten.

<sup>153</sup> SoFFI K (2007), The Act Regulating the Legal Situation of Prostitutes - implementation, impact, current developments, (pp. 27-29)

<sup>154</sup> Bundeskriminalamt (BKA) Annual Reports on Trafficking in Human Beings:

[http://www.bka.de/nn\\_194550/EN/SubjectsAZ/TraffickingInHumanBeings/traffickingInHumanBeings\\_node.html](http://www.bka.de/nn_194550/EN/SubjectsAZ/TraffickingInHumanBeings/traffickingInHumanBeings_node.html)

<sup>155</sup> Bundeskriminalamt (BKA) Annual Reports on Trafficking in Human Beings:

[http://www.bka.de/nn\\_194550/EN/SubjectsAZ/TraffickingInHumanBeings/traffickingInHumanBeings\\_node.html](http://www.bka.de/nn_194550/EN/SubjectsAZ/TraffickingInHumanBeings/traffickingInHumanBeings_node.html)

<sup>156</sup> BKA, Police Crime Statistics 2011:

[http://www.bka.de/nn\\_194552/EN/Publications/PoliceCrimeStatistics/policeCrimeStatistics\\_node.html?\\_nnn=tr ue](http://www.bka.de/nn_194552/EN/Publications/PoliceCrimeStatistics/policeCrimeStatistics_node.html?_nnn=tr ue)

<sup>157</sup> BKA, Annual Report on Trafficking in Human Beings 2010 (vid. supra).

<sup>158</sup> EUROSTAT (2013), Trafficking in Human Beings Report

### ***Migrant women working as prostitutes***

Even if migrant women account for two thirds of the total number of prostitutes, they are disregarded in the Act. It is not possible to obtain an entry visa for the purpose of working in the sex industry and the access of citizens of new Member States to a residence permit is limited: they are only allowed to engage in sex work if they are self-employed<sup>159</sup>.

#### 3.3.3. Overall impact

No updated official data regarding the dimensions of the sex industry or prostitution in Germany could be found.

#### ***Estimations***

The sex industry trade association "Erotik Gewerbe Deutschland (UEGD)"<sup>160</sup> estimates that there are between 3000-3500 red-light establishments in the country<sup>161</sup>. The Ver.di trade union<sup>162</sup> estimates that the annual revenues of the industry at around €14.5 Billion<sup>163</sup>.

It is calculated that in Germany there could be around 400000-450000 prostitutes, 90% of them female. The percentage of female prostitutes who are migrants has significantly increased; the last estimations show that two-thirds (65%) of prostitutes are **migrants**, mainly from Central and Eastern Europe<sup>164</sup>.

The liberalization of the sex market, the low level of requirements to operate sex-related businesses, and the difficulties surrounding implementing standardized and effective monitoring mechanisms seem to explain the **enormous success of the sex business**. Indeed, there are increasing numbers of 'macro-brothels', with hundreds of women available.

#### ***Risk of violence***

One of the main objectives of the Prostitution Act was to improve the welfare of prostitutes, but it seems that the Act has had little impact on their safety. **Women in prostitution still face an extreme high risk of violence.**

<sup>159</sup> TAMPEP (2009), Sex work, migration, health. Available at: <http://tampep.eu/documents.asp?section=reports>; this also reflects the restriction on free movement of workers applied by Germany after accessions in 2004 and 2007.

<sup>160</sup> Web: <http://www.uegd.de/>

<sup>161</sup> Quoted in *Der Spiegel*, issue 22/2013. Available at: <http://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html>

<sup>162</sup> Web: <http://www.verdi.de/>

<sup>163</sup> Quoted in *Der Spiegel*, issue 22/2013.

<sup>164</sup> TAMPEP (2009), Germany Country Report: <http://tampep.eu/documents/ANNEX%204%20National%20Reports.pdf>

## Box 2: High level of violence – results of an official German survey in 2007

A study carried out in 2007 by the Federal Ministry found that 92% of women working as prostitutes and interviewed for this survey had suffered **sexual harassment**, 87% **physical violence** and 59% **sexual violence**. 41% of prostitutes had experienced violence **in the context of performing sexual services**. Of the sample, around half of the interviewees showed symptoms of **depression**, a quarter had contemplated **suicide**, and 41% had taken **drugs** in the last year. 43% of the prostitutes surveyed had been **sexually abused in their childhood**<sup>165</sup>.

### *Trafficking in human beings*

While the investigation of sex trafficking cases decreased, as well as the convictions of trafficking offenders (see above), **Germany** is considered one of the major destinations for victims of human trafficking<sup>166</sup>. In 2011, the German authorities reported that the overwhelming majority of convicted sex trafficking offenders were still given **suspended sentences**. This practice derived from a provision in the criminal code allowing the suspension of assigned prison terms lower than two years. The reported statistics reveal that convicted traffickers frequently avoided imprisonment, creating **potential safety problems for victims** of trafficking, and a **weakened deterrence** of trafficking offenses<sup>167</sup>.

In an effort to combat sexual exploitation, and in order to implement Directive **2011/36/EU**, Germany's *Bundestag* voted in June 2013 in favour of a bill which foresees the implementation of **greater penalties for human trafficking**, as well as **stricter controls** and monitoring for sex businesses by regional labour safety authorities. However, the law still has to pass the *Bundesrat* (Upper House, representing the "Länder")<sup>168</sup>. In the meantime, the new government declared in their coalition agreement that they were planning a review of the existing provisions, namely that the use of services by victims of trafficking should be penalised. Monitoring of establishments and ensuring the application of rules should also be enhanced<sup>169</sup>.

### *Media coverage*

The topic attracts marked attention from national and international media<sup>170</sup>. While it reflects official data and evaluations, the issue is often presented in a sensationalist way.

<sup>165</sup> BMFSFJ (2007), Health, Well-Being and Personal Safety of Women in Germany:

[http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationsliste\\_did=93194.html](http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationsliste_did=93194.html)

<sup>166</sup> DIW Berlin (2012) Interview to Seo-Young Cho, *DIW Economic Bulletin*, Vol. 2, no. 11:

[http://www.diw.de/documents/publikationen/73/diw\\_01.c.411002.de/diw\\_econ\\_bull\\_2012-11-2.pdf](http://www.diw.de/documents/publikationen/73/diw_01.c.411002.de/diw_econ_bull_2012-11-2.pdf);

UNODC,

Trafficking in Persons, Global Patterns, presentation of Ms. Kristiina Kangaspunta (June 2006):

[http://www.un.org/esa/population/migration/turin/Turin\\_Statements/KANGASPUNTA.pdf](http://www.un.org/esa/population/migration/turin/Turin_Statements/KANGASPUNTA.pdf)

<sup>167</sup> U.S. Department of State (2013), Trafficking in Persons Report 2013:

<http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

<sup>168</sup> "Berlin votes for stricter controls on brothels", 28/06/2013, *Spiegel online*:

<http://www.spiegel.de/international/germany/berlin-votes-for-stricter-control-on-brothels-to-reduce-exploitation-a-908351.html>. See also Deutsche Welle TV (25/06/2013) for a discussion on the law with Ms. Kofbinger (MP Green Party), from min 17'57" onwards: <http://mediacenter.dw.de/english/video/item/1016205/Agenda/>

<sup>169</sup> Deutschlands Zukunft gestalten, Koalitionsvertrag CDU, CSU und SPD; 18. Legislaturperiode

<sup>170</sup> For example Der Spiegel has recently dedicated a spécial number to the issue of prostitution in Germany (issue 22/2013, May 26, 2013), and has created in its online version a specific topic on human trafficking: [http://www.spiegel.de/international/topic/human\\_trafficking/](http://www.spiegel.de/international/topic/human_trafficking/)

- ❖ The Guardian identified Germany as "**Europe's biggest brothel**"<sup>171</sup>.
- ❖ German press agencies and radio stations reported about the **effects of the crisis** on the prostitution business; the liberalised framework together with the financial downturn<sup>172</sup> reportedly inspired **questionable marketing strategies** such as "flat-rate sex" promotions which entitle customers to unlimited sexual services all day for a one-off entry fee (from €50 to €100). Also reportedly, this business model caused authorities to consider the **violation of human dignity of prostitutes** within the industry<sup>173</sup>.
- ❖ At the same time, it is also reported that prostitutes and brothels owners experience a certain "**normalisation**" of their business. **Travel agencies** take advantage of the demand of sex tourism offering organized tours to German brothels; and **retirement homes** plan to create "rooms for intimate encounters" in their premises to allow the provision of sexual services to the elderly and disabled (men). The article does not forget to state that use of "sexual assistance" was, however, still not covered by social insurance schemes.<sup>174</sup>

### 3.4. The abolitionist model in Spain

#### 3.4.1. Legislation: from decriminalization to abolitionism

The regulation of prostitution in Spain has undergone **several amendments** over the last two decades<sup>175</sup>. Under the Criminal Code of **1995, prostitution was decriminalized**, and so were a number of activities related to prostitution, such as exploiting the prostitution of others and pandering. According to enforcement authorities, this decriminalization contributed to growth in the national sex industry<sup>176</sup>.

In 2003, the Criminal Code was amended again<sup>177</sup>, establishing the **criminal liability** of those who obtain benefits **exploiting the prostitution of others, even with consent**. This amendment complemented the criminal package intended to combat **trafficking** in human beings<sup>178</sup>.

<sup>171</sup> "Why Germany is now "Europe's biggest brothel", *The Guardian*, 12/06/2013:

<http://www.guardian.co.uk/world/shortcuts/2013/jun/12/germany-now-europes-biggest-brothel>; "Has legalized prostitution turned Germany's Government into a "pimp"?", *Die Welt*, 15/06/2013:

<http://www.worldcrunch.com/culture-society/has-legalized-prostitution-turned-germany-039-s-government-into-a-pimp-/prostitution-brothel-sex-workers-pimp-club/c3s12294/>; "Germany has become the cut-rate prostitution capital of the world", *Time Business*, 18/06/2013: <http://business.time.com/2013/06/18/germany-has-become-the-cut-rate-prostitution-capital-of-the-world/>

<sup>172</sup> "Global economic crisis hits German sex industry", *Reuters*, 20/04/2009:

<http://www.reuters.com/article/2009/04/21/us-germany-prostitutes-idUSTRE53K00G20090421>

<sup>173</sup> "German authorities want to end "flat-rate" offers in brothels" *Deutsche Welle*, 26/07/2009:

<http://dw.de/p/lxXL>.

<sup>174</sup> "Booming sex trade begins to diversify", *The Local*, 11/01/2011: <http://www.thelocal.de/society/20110111-32351.html>; "Assisted loving: prostitutes and the elderly", *Exberliner*, 15/08/2011:

<http://www.exberliner.com/features/lifestyle/assisted-loving/>

<sup>175</sup> For an historic review of the legislation, see Brufao Curiel, P. (2008), *Prostitución y políticas públicas : entre la reglamentación, la legalización y la abolición*, Fundación Alternativas.

<sup>176</sup> See Unidad Técnica de la Policía Judicial de la Guardia Civil, *Informe Criminológico: Trafico de seres humanos con fines de explotación sexual 2003-2004* (p. 19). See also Hernández Olivier, B., « La prostitución, a debate en España », in Meneses Falcón, C (ed.) (2007), *La prostitución, una realidad compleja* (p.86)

<sup>177</sup> Ley Orgánica 11/2003, de 29 de septiembre, de medidas concretas en materia de seguridad ciudadana, violencia doméstica e integración social de los extranjeros (article 188).

<sup>178</sup> Preamble of the Organic Law 11/2003, Recital IV, par. 4º.

In 2010, a new amendment was introduced in the Criminal Code which reinforced the **protection of minors** and included a new title specifically dedicated to human trafficking<sup>179</sup>.

Despite the fact that exploiting the prostitution of others, **even with their consent**, is a criminal offence since 2003, owning an establishment where prostitution takes place is in itself not illegal, though the owner can neither derive financial gain from prostitution activity, nor hire a prostitute himself.

### 3.4.2. Outcomes of the legislation: legal gaps and obstacles to enforce the law

#### *The legal status of brothels*

While exploiting the prostitution of others (procuring or pandering) is a crime as said above, **owning an establishment where prostitution takes place is not illegal in itself**, provided that prostitutes are adults, not coerced to prostitute themselves, and independent. There is a national union of owners of brothels and sex businesses<sup>180</sup>.

Thus, in theory, the brothel owner acts purely as a "landlord" who rents the rooms to the prostitutes and takes a percentage of the beverages consumed by the customers with the prostitutes. There are also big "nightclubs" where prostitutes have to pay a sum to get access to the place, and pay again if they wish to dance which is considered "marketing". The club gets half the price of the drinks with a "girl", and if the woman uses a room, an amount is also charged to her<sup>181</sup>.

These establishments do **not need a special license** other than the one required by all restaurants, pubs or cafes. However, some **municipalities** and the Autonomous Region of Catalonia **have approved regulations** concerning establishments where prostitution takes place<sup>182 183</sup>. However, these local regulations could be illegal because they are contravening superior national laws and fundamental values of the legal framework<sup>184</sup>.

#### *The legal status of prostitutes*

Prostitution in itself is not illegal but it is not regulated as an economic activity either. However, prostitutes can register in the **Social Security System** as independent professionals within an undefined category<sup>185</sup>.

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<sup>179</sup> Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal

<sup>180</sup> ANELA: <http://www.anela.es/>

<sup>181</sup> "What I learned in a Spanish brothel", *IberoSphere*, <http://iberosphere.com/2010/12/spain-news-what-i-learned-in-a-spanish-brothel/1769>

<sup>182</sup> Is the case of the municipality of Bilbao (Ordenanza Local sobre establecimientos publicos dedicados a la prostitucion de 12 de mayo de 1999), and Barcelona (Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio publico de Barcelona, de 24 de enero de 2006); and the Autonomous Region of Catalonia (Decreto 217/2002 de 1 de agosto, que regula los locales de publica concurrencia donde se ejerce la prostitucion, y Orden 335/2003, de 14 de julio).

<sup>183</sup> "Barcelona tiene 52 locales con licencia donde se ejerce la prostitucion", *La Vanguardia*, 15/02/2011: <http://www.lavanguardia.com/vida/20110215/54115151225/barcelona-tiene-52-locales-con-licencia-donde-se-ejerce-la-prostitucion.html>

<sup>184</sup> see Brufao Curiel, P. (2008), Prostitución y políticas públicas: entre la reglamentación, la legalización y la abolición, Fundación Alternativas (p. 22)

<sup>185</sup> Comisión de Estudios del Consejo de Estado (2011), Informe sobre las posibilidades de actuación contra los anuncios de contenido sexual y prostitución (ES):

<http://www.consejo-estado.es/pdf/Anuncios%20de%20contenido%20sexual%20y%20prostitucion%20en%20prensa.pdf>



As it is a crime to obtain benefits from the prostitution of others, it is also illegal to establish **employment** contracts for prostitution. Nevertheless, some related activities have been recognized by a number of Courts as establishing a labour relationship, such as the role of "**hostess**", i.e. attracting customers for the consumption of beverages in brothels<sup>186</sup>. More precisely, the judgments imposed administrative and even criminal sanctions on brothels for ignoring obligations stemming from social security or labour rights, but not for exploiting prostitution.

Prostitutes are not prosecuted since neither soliciting nor street prostitution is illegal in the country. However, a number of municipalities have approved **local regulations to forbid street prostitution and address the demand**. Some of them foresee fines for both prostitutes and clients, while others only for clients<sup>187</sup>.

### ***High risk of violence***

Prostitutes are exposed to high risks of extreme violence and even death. **Between 2010 and 2012, at least 20 women prostitutes were murdered in Spain**, in most cases with extreme brutality. This figure equates to **5.6% of all femicides** which occurred in that period. In 14 cases, the perpetrators were **clients**<sup>188</sup>.

### ***Drugs use***

Regarding the use of **drugs** in prostitution, data show that the great majority of prostitutes who consume substances have started **after engaging in prostitution**: 83.3% of the prostitutes who consume sedatives, 73.2% of antidepressants consumers, and 66% of cocaine consumers started consuming after engaging in prostitution. Use of cocaine is often instrumental and **demanded by the clients** of sexual services<sup>189</sup>.

### ***Crime***

Although obtaining benefits from or exploiting the prostitution of others is considered a crime since 2003, law enforcement authorities emphasize that the main constraint in prosecuting these offences is related to the **difficulties in obtaining conclusive evidences** to prove the crime<sup>190</sup>. In general, victim statements are the main evidence required, but the percentage of victims who cooperate in criminal proceedings is low<sup>191192</sup>.

<sup>186</sup> Among others, see judgement of the Supreme Court no.1390/2004 (November 22, 2004), and judgement of the High Supreme Court of Murcia no. 284/2012 (April 16, 2012) which established that this activity, provided that the elements of payment, dependency and fixed time are present, can be considered as a working activity in order to protect the rights of workers, convicting the brothel owner for not having issued working contracts and social insurance.

<sup>187</sup> "Madrid se plantea si multar al cliente de la prostitucion callejera", El Pais, 17/09/2012:

[http://ccaa.elpais.com/ccaa/2012/09/16/madrid/1347829537\\_576181.html](http://ccaa.elpais.com/ccaa/2012/09/16/madrid/1347829537_576181.html)

<sup>188</sup> Source: Femicidio.net (ES): <http://www.femicidio.net/noticias-de-asesinatos-de-mujeres-en-espana-y-america-latina/datos-informes-y-cifras-de-femicidios/4705-femicidio-por-prostitucion-en-espana-los-otros-crimenes-machistas.html>

<sup>189</sup> Comisión Mixta de los Derechos de la Mujer y de la Igualdad de Oportunidades en las Cortes Generales (2007) Informe de la Ponencia sobre la prostitución en España (p.177) (ES):

[http://www.congreso.es/public\\_oficiales/L8/CORT/BOCG/A/CG\\_A379.PDF](http://www.congreso.es/public_oficiales/L8/CORT/BOCG/A/CG_A379.PDF)

<sup>190</sup> Comisión Mixta de los Derechos de la Mujer y de la Igualdad de Oportunidades en las Cortes Generales (2007) Informe final de la Ponencia sobre la prostitución en España (13 de marzo de 2007) (p. 42) (ES) :

[http://www.lourdesmunozsantamaria.cat/IMG/pdf/INFORME\\_PONENCIA\\_PROSTITUCION.pdf](http://www.lourdesmunozsantamaria.cat/IMG/pdf/INFORME_PONENCIA_PROSTITUCION.pdf)

<sup>191</sup> Guardia Civil (2005), Informe criminológico. Trafico de seres humanos con fines de explotación sexual (ES): [http://www.oas.org/atip/Reports/Trafico\\_serres\\_humanos\\_2003-04.pdf](http://www.oas.org/atip/Reports/Trafico_serres_humanos_2003-04.pdf)

<sup>192</sup> See also the remarks on sexual exploitation and its relation to rape and the high attrition rates of rape cases within the justice system in the PolDep C study "Overview over the worldwide best practices to prevent rape and assistance for victims of rape, PE493.025.

### **Trafficking in human beings**

According to the authorities, the phenomenon of trafficking for sexual exploitation in Spain is clearly linked to prostitution<sup>193</sup>. It is estimated that **90% of women in prostitution in Spain could be under the control of organized crime networks**<sup>194</sup>.

The Government has made great steps forward in combating **trafficking for sexual exploitation**. In 2008, a specialized Plan of Action against Sex Trafficking<sup>195</sup> was adopted, which is monitoring the situation through an inter-agency task force<sup>196</sup>. In order to foster the coordination of authorities in the identification, protection, and bringing attention to victims of trafficking, the inter-institutional Protocol of Protection of Victims of Trafficking was adopted in 2011<sup>197</sup>.

The Government has also increased the funding and the collaboration between authorities and NGOs and provides continuous training to the special units established within law enforcement authorities. These efforts seem to have had a positive impact, since the number of **victims of trafficking detected is increasing** as well as the number of **prosecutions** for trafficking-related crimes. In 2011, the police carried out 2375 inspections in places where prostitution takes place. There were 14730 cases in which a risk of sexual exploitation was detected, and there were 1082 victims of trafficking for sexual exploitation identified, **around 95% of whom were foreign women**. Actions were taken against 17 criminal organisations and 54 criminal groups. 59 judicial actions for trafficking for sexual exploitation were instigated, of which 45 are in progress. 106 judicial actions for forced prostitution were instigated, of which 83 are currently in progress.<sup>198</sup>

#### 3.4.3. Overall impact

##### **Estimates**

As in other countries, it is very difficult to obtain a reliable figure on the **number of prostitutes** in the country. It is estimated that there are between 300000<sup>199</sup>-400000<sup>200</sup> prostitutes in Spain.

The total **number of brothels** in operation across the country is also uncertain. While the Civil Guard, whose competencies are restricted to rural areas, estimated there were around 1000 in 2005<sup>201</sup>, the association of brothel owners estimated around 1500<sup>202</sup>, a figure

<sup>193</sup> Plan of Action against Trafficking for Sexual Exploitation 2009-2011 (p. 15). Available at (EN, ES, FR):

<http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/home.htm>

<sup>194</sup> U.S. Department of State (2013), Trafficking in Persons Report 2013, Country Narratives:

<http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

<sup>195</sup> Plan of Action against Trafficking for Sexual Exploitation 2009-2011, available at (EN, ES, FR):

<http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/home.htm>

<sup>196</sup> The follow up reports on the implementation of the Plan of Action against Trafficking for Sexual Exploitation from 2009, 2010, and 2011 are available at (EN) (FR):

<http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/home.htm>

<sup>197</sup> Available at (EN, ES, FR):

<http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/ProtocoloMarco/homel.htm>

<sup>198</sup> 3rd Follow up report of the Plan against Trafficking for Sexual Exploitation 2011 (pp.28-30). Available at (EN, ES): <http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/home.htm>

<sup>199</sup> APRAMP (Asociación para la Prevención, Reinserción y Atención de la Mujer Prostituida): <http://www.apramp.org>

<sup>200</sup> Comisión Mixta de los Derechos de la Mujer y de la Igualdad de Oportunidades en las Cortes Generales (2007) Informe de la Ponencia sobre la prostitución en España (p.20) (ES):

[http://www.congreso.es/public\\_oficiales/L8/CORT/BOCG/A/CG\\_A379.PDF](http://www.congreso.es/public_oficiales/L8/CORT/BOCG/A/CG_A379.PDF)

<sup>201</sup> Guardia Civil (2005), Informe criminológico. Trafico de seres humanos con fines de explotación sexual, p.27 (ES): [http://www.oas.org/atip/Reports/Trafico\\_seres\\_humanos\\_2003-04.pdf](http://www.oas.org/atip/Reports/Trafico_seres_humanos_2003-04.pdf)

presented in 2007 to the Spanish parliament. There are tens of 'macro-brothels' flourishing all over the country<sup>203</sup> and the sex tourism is increasing<sup>204</sup>.

The estimated revenues of the prostitution industry in Spain are around €50 million per day, which is more than €18 billion per year<sup>205</sup>. On the basis of such figures, international newspapers are portraying Spain, along with Germany, as an EU "capital" of prostitution<sup>206</sup>.

### **Public views on prostitution**

With the ubiquitous prostitution market, the phenomenon of prostitution is normalized among society. In a survey carried out by the National Centre for Sociologic Research (CIS) in 2008, 77.6% of the people surveyed (men and women) agreed that prostitution was an inevitable phenomenon in society and therefore should be legalized<sup>207</sup>. A national official survey on sexual health carried out in 2009 showed that around **32% of men have paid for sex** at least once in their life<sup>208</sup>. The buyers are men in all age groups, social status and levels of education, but it is worth noting that young men are increasingly recurring to prostitution as a form of entertainment<sup>209</sup>.

### **Migrant women in prostitution and the effects of the crisis**

According to authorities, it is estimated that more than 90% of the women in prostitution in Spain are foreigners<sup>210</sup>. However, this figure is decreasing in the last years. Given the context of the economic crisis, with high unemployment rates and austerity measures, organisations are drawing attention to the fact that lately **Spanish women are forced to turn to prostitution**<sup>211</sup> in order to earn a living.

<sup>202</sup> ANELA [http://www.anela.es/que-es-anela-33648/que-es-anela#prostitucion\\_espanola](http://www.anela.es/que-es-anela-33648/que-es-anela#prostitucion_espanola)

<sup>203</sup> « Europe's brothel – in a corner of Spain », *The Guardian*, 24/06/2006 :

<http://www.guardian.co.uk/world/2006/jun/24/spain.gilestremlett> ; « Open for business : the brothel with 1,800 prostitutes », *The Independent*, 24/10/2010 : <http://www.independent.co.uk/news/world/europe/open-for-business-the-brothel-with-1800-prostitutes-2114265.html>

<sup>204</sup> « In Spain, Women Enslaved by a Boom in Brothel Tourism », *The New York Times*, 06/04/2012 : <http://www.nytimes.com/2012/04/07/world/europe/young-men-flock-to-spain-for-sex-with-trafficked-prostitutes.html?pagewanted=all>

<sup>205</sup> Comisión Mixta de los Derechos de la Mujer y de la Igualdad de Oportunidades en las Cortes Generales (2007) Informe de la Ponencia sobre la prostitución en España (p.20) (ES):

[http://www.congreso.es/public\\_oficiales/L8/CORT/BOCG/A/CG\\_A379.PDF](http://www.congreso.es/public_oficiales/L8/CORT/BOCG/A/CG_A379.PDF)

<sup>206</sup> « Spain, the world capital of prostitution? », *The Independent*, 05/12/2010 :

<http://www.independent.co.uk/news/world/europe/spain-the-world-capital-of-prostitution-2151581.html>

<sup>207</sup> See Centro de Investigaciones Sociológicas (CIS) (2008), *Estudio no. 2738. Actitudes y practicas sexuales*, Febrero 2008. (p. 33). Available at (ES):

[http://www.cis.es/cis/opencm/ES/1\\_encuestas/estudios/ver.jsp?estudio=9882](http://www.cis.es/cis/opencm/ES/1_encuestas/estudios/ver.jsp?estudio=9882)

<sup>208</sup> Ministerio de Sanidad (2009), Resultados de la Encuesta Nacional de Salud Sexual 2009. Available at (ES):

[http://www.msssi.gob.es/organizacion/sns/planCalidadSNS/docs/v5\\_presentacion\\_ResultadosENSS\\_16dic09.pdf](http://www.msssi.gob.es/organizacion/sns/planCalidadSNS/docs/v5_presentacion_ResultadosENSS_16dic09.pdf)

<sup>209</sup> Comisión para la investigación de malos tratos a mujeres. *El cliente de prostitución, de invisible a responsable* (ES): <http://malostratos.org/archivos/2012/06/Cliente-web.pdf>

<sup>210</sup> Guardia Civil (2005), Informe criminológico. Tráfico de seres humanos con fines de explotación sexual, p.27 (ES): [http://www.oas.org/atip/Reports/Trafico\\_seres\\_humanos\\_2003-04.pdf](http://www.oas.org/atip/Reports/Trafico_seres_humanos_2003-04.pdf)

<sup>211</sup> "La crisis empuja cada vez a más españolas a la prostitución", *ABC*, 21/07/2012: <http://www.abc.es/20120721/sociedad/abci-espanolas-prostitucion-201207211123.html>, « Unemployed Spanish women turn to prostitution in desperation », *Think Spain*, 21/07/2012: <http://www.thinkspain.com/news-spain/21474/unemployed-spanish-women-turn-to-prostitution-in-desperation> ; « Prostitution on the rise in crisis-hit Spain », *Al Jazeera*, 04/08/2012 : <http://www.aljazeera.com/video/europe/2012/08/20128474948466393.html>

#### 3.4.4. The political debate on prostitution

##### ***The Special Commission to the parliamentary committee on Women's Rights and Equal Opportunities***

In 2006, the legalization of prostitution was back on the political agenda. On 14 February 2006, the plenary of the Parliament adopted a decision creating a special commission to the Parliamentary Committee on Women's Rights and Equal Opportunities with the purpose of conducting a report on the state of prostitution in Spain, including an analysis of the legislative options on the issue. The special commission was created on 4 April 2006 and adopted its final report on 13 March 2007<sup>212</sup>.

The Final Report reaffirmed the abolitionist approach and **rejected the possibility of the regulation of prostitution**, which they saw colliding with labour law, the legislation on gender equality, and the fundamental **principle of equality** of the Constitution.

The Commission viewed **prostitution as a form of gender-based violence**, inflicting severe damage and risking the physical and psychological health of women and girls; as rooted in patriarchal structures of men's sexuality and the domination of women; and as being fostered by gender discrimination, the feminization of poverty, and global migration patterns. It recognized also that prostitution is a lucrative business, mostly controlled by criminal groups, and is tightly **linked to trafficking of women and girls for sexual exploitation**.

The report further highlighted the need to strengthen the implementation of legislation combating trafficking for sexual exploitation, to develop awareness campaigns to **reduce demand** of prostitution, and to provide legal and social support to prostituted persons.

##### ***Activities following the Report of the Special Commission***

A number of actions against trafficking followed the Report, namely the **adoption of the Plan against trafficking for sexual exploitation** 2009 -2011, with annual follow up; a plan for identifying and protecting victims in 2011; and the **inclusion of a new Title in the Criminal Code related to trafficking** in 2010. However, no legislative action has been taken so far at national level to reduce the sex market either by criminalising the renting of facilities where prostitution takes place, i.e. the brothels, or by penalising the purchase of sexual services, which is currently only punishable when a minor or disabled person is involved.

During 2010 and 2011, the topic reappeared on the political agenda, but this time referred to the possibility of prohibiting the advertisement of prostitution in newspapers. Initially, it was recommended that the media should adopt self-regulatory instruments<sup>213</sup>, but the proposal was not adopted. Therefore, in 2011, the Ministry of Equality, with the support of the State Council<sup>214</sup>, passed a proposal to initiate a parliamentary debate on the possibility

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<sup>212</sup> Comisión Mixta de los Derechos de la Mujer y de la Igualdad de Oportunidades en las Cortes Generales (2007) Informe final de la Ponencia sobre la prostitución en España (13 de marzo de 2007) (ES) :

[http://www.lourdesmunozsantamaria.cat/IMG/pdf/INFORME\\_PONENCIA\\_PROSTITUCION.pdf](http://www.lourdesmunozsantamaria.cat/IMG/pdf/INFORME_PONENCIA_PROSTITUCION.pdf)

<sup>213</sup> "El Presidente quiere eliminar los anuncios de prostitución", *El País*, 16/07/2010:

[http://elpais.com/diario/2010/07/16/espana/1279231204\\_850215.html](http://elpais.com/diario/2010/07/16/espana/1279231204_850215.html)

<sup>214</sup> Comisión de Estudios del Consejo de Estado (2011), Informe sobre las posibilidades de actuación contra los anuncios de contenido sexual y prostitución (ES):

<http://www.consejo-estado.es/pdf/Anuncios%20de%20contenido%20sexual%20y%20prostitucion%20en%20prensa.pdf>

of prohibiting the advertising of sexual services in newspapers and other media<sup>215</sup>. However, after the results in the last elections and the subsequent change in Government, this proposal has not been debated further.

### 3.5. The abolitionist model in Sweden

#### 3.5.1. The neo-abolitionist approach of the Law of 1999: tackling the demand

The issue of criminalizing prostitution was raised in Sweden in the 1970s, followed by a number of inquiries and reports which highlighted the concept that prostitution clashed with the values of freedom of the individual and gender equality.

The proposal to criminalize the purchase of sexual services was part of the Government Bill on Violence against Women (Kvinnofrid, 1997/98:55). According to the bill, the issue of men purchasing sexual services, usually from women, was closely related to **violence against women** and the **lack of gender equality**<sup>216, 217</sup>.

On 1 January 1999, the Swedish Law Prohibiting the Purchase of Sexual Services entered into force. This Law recognizes that any person who buys sexual services is breaking the law. This switched the focus of legislation to the buyers, following the logic that **if there was no demand, there would be no prostitution**.

Consequently, the law aims at:

- ❖ Approaching the issue of prostitution from a gender equality and human rights perspective;
- ❖ Shifting the focus of the regulation from the supply side (prostitutes) to demand (exploiters, traffickers, procurers, and sex buyers), making the distinction between voluntary and non-voluntary prostitution irrelevant<sup>218</sup>;
- ❖ Given the links between prostitution, trafficking, and other forms of sexual exploitation, the law is also part of the Swedish strategy to combat trafficking.

Main **innovations** of the Law:

- ❖ Prostitution itself is neither considered a crime nor an illegal practice; women and men selling sex are not punished in any case;

<sup>215</sup> "Negocio alegal, anuncio ilegal", *El País*, 23/03/2011:

[http://elpais.com/diario/2011/03/23/sociedad/1300834801\\_850215.html](http://elpais.com/diario/2011/03/23/sociedad/1300834801_850215.html); "El Congreso debate si veta la publicidad a los medios con anuncios de prostitucion", *El Mundo*, 14/06/2011:

<http://www.elmundo.es/elmundo/2011/06/14/comunicacion/1308033161.html>

<sup>216</sup> "it is understood that any society that claims to defend principles of legal, political, economic, and social equality for women and girls must reject the idea that women and children, mostly girls, are commodities that can be bought, sold, and sexually exploited by men. To do otherwise is to allow that a separate class of female human beings, especially women and girls who are economically and racially marginalized, is excluded from these measures, as well as from the universal protection of human dignity enshrined in the body of international human rights instruments developed during the past 50 years". In Ekberg, G. (Ministry of Industry, Employment and Communications), "The Swedish Law That Prohibits the Purchase of Sexual Services. Best Practices for Prevention of Prostitution and Trafficking in Human Beings", *Violence Against Women*, Vol. 10, No. 10, 2004.

<sup>217</sup> Swedish Government report (2010), The Ban against the Purchase of Sexual Services. An evaluation 1999 – 2008 (p.5)

<sup>218</sup> Idem

- ❖ Activities related to prostitution, such as pandering or exploiting the prostitution of others, as well as renting facilities where prostitution takes place, could be considered criminal offences<sup>219</sup>.
- ❖ Purchasing sexual services is a criminal offence and is punished with a fine and/or up to one year of imprisonment<sup>220</sup>.

### 3.5.2. Outcomes of the legislation – the Government Report

Recent figures are not available. According to the evaluation of the law carried out in 2010<sup>221</sup>, which included figures from 2008, the bill seems to have achieved **very good results compared to the initial aims**. The **demand of sexual services** seems to have **halved**. Criminal investigations show that **traffickers are deterred from operating in Sweden** given the reduction of the demand. The public opinion regarding prostitution has changed, **the law has received significant support from the population**, and people perceive prostitution as a question of gender inequality.

- ❖ Application of the Law: When the ban was introduced, some feared that it would be difficult to **monitor compliance with the ban** and to define and prove the criminal act. According to the Government, police officers and prosecutors consider that in general the provision works well and no application problems directly linked to the penal provision have been identified. The investigations and operations against prostitution-related crimes are mostly carried out by the **special units** established in the Swedish Police<sup>222</sup>.

Sexual purchase offenses are considered to be **easy to investigate** and relatively uncomplicated to process. Almost half of the offences reported have been linked to an individual, meaning that a decision has been made to bring charges, impose a summary fine, or grant a waiver of prosecution. This is twice the number compared to other reported sexual offences<sup>223</sup>. So far, no one has received a prison sentence for buying sex and the Police have been criticised for not prioritising sexual purchase offenses.

- ❖ Reduction of prostitution: In 1995, the government estimated that there were approximately 2500-3000 prostituted women in Sweden, of whom 650 were on the

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<sup>219</sup> "According to chapter 6, section 12, of the Swedish Penal Code, anyone who promotes or encourages or improperly exploits for commercial purposes casual sexual relations entered into by another person in exchange for payment is guilty of a criminal offence and shall be sentenced to imprisonment for at most four years for the crime of procuring. If the crime is aggravated, imprisonment for at least two and at the most eight years shall be imposed. When judging whether it is a case of gross procuring, consideration is taken to whether the particular case has involved an extensive operation, considerable gain or ruthless exploitation of another person. Promotion can take various forms: examples include operating a brothel, letting premises for purposes of prostitution or helping a buyer to find prostituted persons". See Ministry of Industry, Employment and Communications (Regeringskansliet) (2005), *Fact sheet: Prostitution and trafficking in human beings*. Available at: [http://nordicbaltic-assistwomen.net/IMG/pdf/Sweden\\_Factsheet\\_on\\_Prostitution\\_and\\_Trafficking-2.pdf](http://nordicbaltic-assistwomen.net/IMG/pdf/Sweden_Factsheet_on_Prostitution_and_Trafficking-2.pdf)

<sup>220</sup> According to Chapter 6, Section 11 of the **Penal Code**, a person who obtains a casual sexual relation in return for payment has committed the crime of purchasing sexual services. Purchasing a sexual service on one single occasion is enough for criminal liability. Compensation can be in the form of money, but payment can also be made with alcohol or drug, for example. Promising compensation so that payment is a condition for the service is sufficient to establish liability. A crime is committed even if someone other than the person who avails himself or herself of the sexual service has provided or promised the compensation. An attempted offense is also punishable. The scale of penalties for the purchase of sexual services is a fine or up to six months' imprisonment. From July 2011 the law was amended and the penalties were raised up to 1 year imprisonment in order to allow a more nuanced assessment in serious cases. *Idem* (p. 6)

<sup>221</sup> Swedish Government Report (2010), *Evaluation of the Prohibition of the Purchase of Sexual Services 1999-2008*, (SOU 2010:49). Available at: <http://www.government.se/sb/d/13420/a/151488>

<sup>222</sup> *Idem* (p.10)

<sup>223</sup> *Idem* (p.11)

streets<sup>224</sup>. The figures for 2008 showed a 50% **decrease in street prostitution**, and additional research estimated that there were 300 prostitutes on the streets and 300 involved in prostitution on the Internet<sup>225–226</sup>. The authorities have no information suggesting that former street prostitutes have turned to indoor prostitution.

- ❖ Comparison with other Nordic countries: The prevalence of street prostitution was about the same in the three capital cities of Norway, Denmark, and Sweden before the ban on the purchase of sexual services was introduced in Sweden. But according to a study carried out in 2008, **Sweden's prostitute population is approximately one-tenth of Denmark's, and one-eighth of Norway's**, even though these countries have a smaller population than Sweden (DK: 5.6 million inhabitants, NO: 4.9 million, SE: 9.4 million)<sup>227</sup>.

In the light of the great economic and social similarities that exist in these three countries, it is reasonable to assume that the reduction in prostitution in Sweden can be attributed to the law<sup>228</sup>.

- ❖ Internet prostitution: Prostitution following initial contact over the Internet is an important and growing arena for prostitution. In the last five years, **Internet prostitution has increased in Sweden**, though the Swedish Government states that it is more extensive in neighbouring countries. Nothing indicates that the prevalence of indoor prostitution that is not marketed through advertisements in magazines and on the Internet has increased in recent years<sup>229</sup>.
- ❖ Impacts on prostitutes: The sale of sexual services is not illegal in Sweden. Thus, if registered as self-employed, prostitutes have the obligation to **pay taxes** and are **subject to the Social Security Scheme**, with access to sick-leave benefits and parental leave<sup>230</sup>. There are exit programs for people who wish to leave prostitution.

In Stockholm, Gothenburg, and Malmö, **units specialized in prostitution** have been created which develop programs addressed to support prostitutes. They engage in **outreach and support activities** based on the needs of the individuals. This involves services like crisis management, counselling, substance abuse treatment, help with filing complaints, and helping people to contact health care, social or psychiatric services<sup>231 232</sup>.

- ❖ Attitude of the public towards prostitution: The support of the population on the ban on buying sexual services has increased. Judging by the results of four opinion polls,

<sup>224</sup> Swedish Government report: *Könshandeln: Betänkande av 1993 års prostitutionsutredning* [The Sex Trade: Final Report of the 1993 Prostitution Inquiry] (SOU 1995:15), quot. In Waltman, M. "Prohibiting sex purchasing and ending trafficking: The Swedish Prostitution Law", *Michigan Journal of International Law*, Vol. 33, Issue 1, 2011.

<sup>225</sup> Holmström, C. (2009), *Prostitution in the Nordic Countries*, NORDEN (p.15):

<http://www.norden.org/en/publications/publikationer/2009-756>

<sup>226</sup> When the National Board of Health and Welfare conducted a national survey in 2007, it registered 299 websites in which 301 people were offering sexual services for money in Sweden. Most of the ads targeted buyers in the Stockholm area. Swedish Government Report (2010) *The Ban against the Purchase of Sexual Services*. ... (p.21)

<sup>227</sup> Quoted in Waltman, M. (2011), "Prohibiting sex purchasing and ending trafficking: the Swedish prostitution law", *Michigan Journal of International Law*, Vol. 33, Issue 1, 2011, pp. 133-157 (pp. 146-147)

<sup>228</sup> Swedish Government report (2010), *The Ban against the Purchase of Sexual Services. An evaluation 1999 – 2008* (pp. 7-9)

<sup>229</sup> Idem (p. 8)

<sup>230</sup> "Sweden's Tax-Paying Prostitutes Win Right to Paid Sick Leave", Bloomberg, 5/07/2012: <http://www.bloomberg.com/news/2012-07-05/sweden-s-tax-paying-prostitutes-win-right-to-paid-sick-leave.html>

<sup>231</sup> Socialstyrelsen (2008), *Prostitution in Sweden 2007*:

[http://www.socialstyrelsen.se/lists/artikelkatalog/attachments/8806/2008-126-65\\_200812665.pdf](http://www.socialstyrelsen.se/lists/artikelkatalog/attachments/8806/2008-126-65_200812665.pdf)

<sup>232</sup> Swedish Ministry of Integration and Gender Equality (Regeringskanliet) (2009) *Against prostitution and human trafficking for sexual purposes*: [www.regeringen.se/integration](http://www.regeringen.se/integration)

there has been a change of attitude with regard to the purchase of sexual services, which correlates with the criminalization of the purchase of such services. In all three surveys conducted since the ban was introduced, more than 70% of those asked had a positive view of the ban. Support for criminalization is greatest among young people<sup>233</sup>.

- ❖ Development of demand: In the survey of 1996, around 13.6% of men stated that they had bought sex, while in 2008, this figure had fallen to 8%<sup>234</sup>. A number of respondents also reported that the **ban had affected their actions** to the extent that they no longer purchased sexual services. The impression that buyers have become more 'cautious' is shared by some of the current and former prostitutes who responded to an inquiry, while others have reported that criminalization has not affected buyers because so few are caught and the penalties are so lenient. However, it should be noted that both surveys showed that it was **more common to buy sex abroad** than in Sweden. Eight out of ten purchases by Swedes of sex was carried out abroad, where it is legal. At the same time, there is a current debate in Sweden on whether to criminalise Swedish men (and women) buying sex abroad (which is the case in Norway). For ten years, social services in Stockholm, Gothenburg, and Malmö have been operating as so called **KAST groups** to motivate potential and active sex buyers **to change their behaviour**<sup>235</sup>.
- ❖ Impact on combating trafficking in human beings: The available data indicate that trafficking in human beings has been **reduced** because of the ban on purchase of sexual services. Police investigations and telephone interceptions have revealed that criminal groups that sell women for sexual purposes **view Sweden as a poor market** and choose not to establish there because of the ban<sup>236</sup>. As outlined below, there is evidence from Swedish Police Unit on trafficking, suggesting otherwise.

In fact, in Sweden, a different trend compared with other EU countries is observed with regard to the victims of trafficking identified. While, in general, sex trafficking victims represent a greater proportion of the total number of victims of trafficking, **in Sweden victims trafficked for purposes other than sexual exploitation clearly outnumber victims of sex trafficking**<sup>237</sup>.

In 2012, the authorities identified 21 victims of sex trafficking (30% of the total of victims of trafficking identified)<sup>238</sup>. Swedish law enforcement investigated 21 sex trafficking cases of which 17 were cleared (81%) and in another 6 cases, there was no suspect identified. The sentences of up to five years' imprisonment were given<sup>239</sup>.

However, a lack of knowledge of the trafficking phenomenon among Swedish judges has been observed. In 2010, the government revised its anti-trafficking law to clarify that evidence of a victim's initial consent does not override evidence of subsequent coercion, but some judges continue to acquit suspects or dismiss cases where initial consent was indicated. It seems that "the commitment and expertise of Swedish police and prosecutors was hampered by an **inadequate anti-trafficking response on the part of the judiciary**"<sup>240</sup>.

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<sup>233</sup> Swedish Government Report (2010), The Ban against the Purchase of Sexual Services... (p. 30)

<sup>234</sup> It should be noted that in 2008, making use of sexual services was a criminal offense.

<sup>235</sup> Socialstyrelsen (2008), *Prostitution in Sweden 2007* (p.41)

<sup>236</sup> Swedish Government Report (2010), The Ban against the Purchase of Sexual Services... (p. 29)

<sup>237</sup> For a comparison among EU countries, see EUROSTAT (2013), Trafficking in Human Beings Report

<sup>238</sup> U.S. Department of State (2013), Trafficking in Persons Report 2013, Country Narratives: <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

<sup>239</sup> Swedish National Council for Crime Prevention (BRA), Criminal statistics: <http://www.bra.se/bra/bra-in-english/home/crime-and-statistics/crime-statistics/statistical-tables.html>

<sup>240</sup> U.S. Department of State (2013), Trafficking in Persons Report 2013



Yet, according to Swedish police, trafficking in human beings for sexual purposes continues despite the ban. As there is a lot of money to earn in Stockholm (prices are high and people have high levels disposable income), the criminal groups continue to act on the Swedish prostitution market. The Swedish Police argued that for traffickers the ban on purchase of sex could even serve as a guarantee that the buyers 'behave well'. At the end of October 2013, a notable case on trafficking for sexual exploitation received significant media attention, with two Romanian men prosecuted for aggravated procuring<sup>241</sup>.

### 3.5.3. Overall impact

Before the bill was passed in 1999, prostitution was legal in Sweden, while establishing brothels or pimping was illegal. Buying sexual services was not criminalized.

According to the data and the literature analysed, prostitution in Sweden seems to have significantly changed since the adoption of the law. According to the official evaluations, the law has had a deterrent effect, showing that **demand for sexual services has decreased** by half. Special services have been set up to provide **help and support to men buying sex** who want actually to stop buying sexual services.

Overall, the law has received wide public support. It is reported that there is an increased awareness about the harmful effects of prostitution and that prostitution could be considered a form of gender-based violence.

However, the 2010 evaluation was criticized by official referral bodies<sup>242</sup>. Authorities such as the *Ombudsman for Discrimination*, the *National Board of Health and Welfare*, and the *Swedish Agency for Public Management* are of the opinion that the evaluation, given its methodology and its sources, drew conclusions that were **too far-reaching** about the Act's efficacy, for example regarding the prevalence of prostitution and trafficking for sexual purposes. This observation of these referral bodies casts doubt upon the conclusion that prostitution in Sweden has not increased since the ban was introduced simply on the grounds that there were no signs of such an increase. In addition, the referral bodies would have liked to have seen an analysis of the effects of the Act on people in prostitution.

At international level, **Sweden is seen as a pioneer** and the neo-abolitionist approach is considered being a model to combat sexual exploitation and trafficking<sup>243</sup>. Indeed, some countries have followed this approach<sup>244</sup> and others are considering this direction<sup>245</sup>.

<sup>241</sup> Swedish Police, ABC News, Swedish Public Broadcasting (SVT) 29 October 2013.

<sup>242</sup> Some of the referral bodies (e.g. government authorities) had some critique regarding the evaluation. Here are links to the opinions (in Swedish):

RFSU: <http://www.rfsu.se/sv/Sex-och-politik/Remisser-och-yttranden/Yttrande-over-betankandet-Forbud-mot-kop-av-sexuell-tjanst-En-utvardering-1999-2008-SOU-201049/>

Equal Opportunities Ombudsman:

<http://www.do.se/sv/Om-DO/Remissvar/2010/Yttrande-over-Forbud-mot-kop-av-sexuell-tjanst-En-utvardering-1999-2008-SOU-201049/>

The National Board of Health and Welfare

<http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18170/2010-11-11.pdf>

The Swedish Agency for Public Management:

<http://www.statskontoret.se/upload/Remissvar/2010/2010143.pdf>

<sup>243</sup> "On prostitution, can Canada learn from the Nordic model?", *The Tyee*, 11/04/2012: <http://thetyee.ca/News/2012/04/11/Nordic-Prostitution-Laws/>; "Sweden prostitution law attracts world interest", *USA Today*, 16/03/2008: [http://usatoday30.usatoday.com/news/world/2008-03-16-sweden-prostitution\\_N.htm](http://usatoday30.usatoday.com/news/world/2008-03-16-sweden-prostitution_N.htm); "Prostitution Ban Huge Success in Sweden", *De Spiegel*, 8/11/2007:

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- International Convention for the Suppression of the Traffic in Women of Full Age, 1933

#### United Nations

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- Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949
- Convention on the Rights of the Child (CRC), 1989
- Declaration on the Elimination of Violence against women (DEVAW), 1993
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- Protocol to Prevent, Suppress and Punish Trafficking in Persons, and especially women and children, supplementing the Convention against Transnational Crime, 2000

#### Council of Europe

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- Recommendation Rec (2001) 16 of the Committee of Ministers to member states on the protection of children against sexual exploitation
- Recommendation 1545 (2002) Campaign against trafficking in women
- Recommendation 1610 (2003) Migration connected with trafficking in women and prostitution
- Convention on Action against Trafficking in Human Beings, 2005

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<http://www.spiegel.de/international/europe/criminalizing-the-customers-prostitution-ban-huge-success-in-sweden-a-516030.html>

<sup>244</sup> Among others: Iceland, Norway, New York State (and other States of US), South Africa, South Korea. See MacKinnon, C. A. (2011), "Trafficking, Prostitution and Inequality", Harvard Civil Rights-Civil Liberties Law Review, Vol. 46, Issue 8, 2011, pp. 271-309

<sup>245</sup> In particular: France, Ireland and Scotland.

- Explanatory Report of the Convention on Action against Trafficking in Human Beings, 2005
- Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007
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## **European Union**

- Commission communication of 20 November 1996 to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation
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- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.
- Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
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## USEFUL WEBSITES:

<http://ec.europa.eu/anti-trafficking/>

<http://www.menapat.org/>

<http://fafo.no/prostitution/>

<http://www.nomas.org/>

<http://prosentret.no/en/lovverk/>

<http://www.palermoprotocol.com/>

<http://prostitution.procon.org/>

<http://www.pic-amsterdam.com/>

<http://tampep.eu/>

<http://www.prostitutie.nl/index.php?id=4&L=1>

<http://the-invisible-men.tumblr.com/>

<http://www.prostitutionresearch.com/>

<http://www.ahige.org/>

<http://www.redcontralatrata.org/>

<http://www.apramp.org/>

<http://www.services4sexworkers.eu/s4swi/>

<http://www.catwinternational.org/>

<http://www.sexworkeurope.org/>

<http://www.cwasu.org/>

<http://www.un.org/womenwatch/daw/cedaw/>

<http://www.dutchrapporteur.nl/>

<http://www.ungift.org/>

<http://www.equalitynow.org/>

<http://www.unwomen.org/>

<http://www.havocscope.com/tag/prostitution/>

<http://www.wave-network.org/>

<http://www.gaatw.org/>

<http://www.womenlobby.org/>

<http://lastradainternational.org>

<http://www.wunrn.com/>

## ANNEX I: OVERVIEW OF THE INTERNATIONAL LEGAL FRAMEWORK ON SEXUAL EXPLOITATION

### KEY FINDINGS

- In international law, prostitution, sexual exploitation, and trafficking in human beings are closely related. However, international law seeks to combat sexual exploitation and trafficking in human beings while it leaves the regulation of prostitution to the States Parties. Thus no provisions can be found in international law regarding how prostitution should be organised while simultaneously tackling human trafficking and sexual exploitation.
- International law provisions recognise and take into account that prostitution and trafficking in human beings for sexual exploitation disproportionately affect women and girls and should thus be considered as highly gender sensitive phenomena.
- Several pieces of international law are of relevance for the subject addressed in this note, both at United Nations (UN) and Council of Europe (CoE) level, regarding the fight against forced labour, violence against women, and trafficking in human beings.
- There is evidence that legislation, whether legalising or criminalising prostitution, has effects on the flow of persons trafficked for sexual exploitation.
- It has to be noted that these provisions regard the demand for sexual services as a reason for trafficking of women and children for sexual exploitation. Consequently, the legal instruments enacted by the United Nations and the Council of Europe recommend that States Parties should take measures to discourage such demand and deter buyers of sexual services as an effective means of combatting trafficking in human beings.

### I. United Nations

The United Nations has extensively worked in the field of fighting sexual exploitation. The legal provisions are part of international law on combatting violence against women, forced labour and trafficking in human beings. In recent years, the UN and the CoE have started to highlight the relation between these criminal offences and the demand for sexual services. In the following, the most relevant instruments are summarized in chronological order.

#### I.A) Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949

Adopted on December 2, 1949, one year after the Universal Declaration of Human Rights, this was the first legally binding document to address the issue of trafficking for sexual exploitation<sup>246</sup> as incompatible with the dignity and worth of the human person. It

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<sup>246</sup> For a historical analysis of the Convention and the international texts that followed, vid. Markovich, M. "Guide to the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others", available at: <http://www.catwinternational.org/Content/Images/Article/88/attachment.pdf>

recognizes a link between prostitution and trafficking for sexual exploitation. It calls for punishment for those who "procure, entice or lead" others into prostitution, "exploit the prostitution of another person", or knowingly keep or manage a brothel or any place for the purpose of the prostitution of others. Furthermore, it prohibits any regulation used to subject prostituted persons to registration or any other administrative controls.

### **I.B) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979**

The CEDAW, adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. It defines what constitutes discrimination against women<sup>247</sup> and sets up an agenda for national action to end such discrimination. The article 6 of the CEDAW establishes that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

The CEDAW Committee, in its successive comments and recommendations, calls upon the Parties to strengthen the efforts on combating sexual exploitation of women and provide support for women and girls who wish to leave prostitution. In its General Recommendation no. 19 (11th session, 1992), the Committee recognizes that poverty and unemployment force many women and girls into prostitution, and acknowledges the link between the commercial exploitation of women as sexual objects and gender based violence<sup>248</sup>.

### **I.C) Convention on the Rights of the Child (CRC), 1989**

The UN General Assembly adopted the Convention in 1989, which is a human rights treaty that sets out the civil, political, economic, social, health and cultural rights of children.

The CRC calls upon States Parties to undertake all appropriate measures to protect the child from all forms of sexual exploitation, including the exploitative use of children in prostitution or other unlawful sexual practices and the use of children in pornography.

Sexual abuse and exploitation includes commercial sexual exploitation, child prostitution and child pornography, and it is considered as a form of violence, and therefore "psychologically intrusive, exploitive and traumatic" even if not accompanied by physical force or restraint<sup>249</sup>.

### **I.D) Declaration on the Elimination of Violence against Women (DEVAW), 1993**

The DEVAW was adopted by the United Nations General Assembly in 1993, and although it does not have the binding legal authority of a convention or treaty, it is a strong statement

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<sup>247</sup> Article 1: "For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

<sup>248</sup> General comment no. 11-12: "Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion (...) and contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence".

General comment no. 14-15: "Poverty and unemployment increase opportunities for trafficking in women (...) and force many women, including young girls, into prostitution": <http://www.un.org/womenwatch/daw/cedaw/>

<sup>249</sup> General comments of the Committee on the Rights of Child available at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>



of principle to the international community. The DEVAW provides in articles 1 and 2 the most widely accepted definition of violence against women. For more information, please see Annex II

### **I.E) The Beijing Declaration and Platform for Action, 1995**

A major result of the UN 4th World Conference of women in 1995 was the Beijing Declaration and Platform for Action, which is an agenda for women's empowerment.

The Platform draws attention to the fact that globalization and the global migration patterns have unequal consequences for women and men, and could lead, in many cases, to the sexual exploitation of women. It highlights the significant problem of the feminization of poverty, and that poverty can force women into situations in which they are vulnerable to sexual exploitation. The platform acknowledges that trafficking and sexual exploitation place women and girls at high risk of physical and mental trauma, disease and unwanted pregnancy<sup>250</sup>.

Taking into account the international concern for the effective suppression of trafficking of women and girls for the sex trade, the Platform for Action includes a Strategic Objective addressed to eliminate trafficking in women and assist victims of violence due to prostitution and trafficking<sup>251</sup>, which calls upon Governments to:

Take appropriate measures to address the factors that encourage trafficking of women and girls for prostitution and other forms of commercialized sex;

Strengthen the implementation of legislation to provide better protection of the rights of women and girls and to punish perpetrators;

Provide comprehensive programs to assist and support victims and rehabilitate them into society.

### **I.F) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000**

In response to the increasing international traffic of children for the purpose of child prostitution and child pornography, in 2000 the UN General Assembly adopted this Optional Protocol to the aforementioned Convention, aimed at extending the measures to guarantee the protection of the child from sexual exploitation.

The Protocol recognizes the special vulnerability of girl children to sexual exploitation, acknowledging the disproportioned representation of girls among the sexually exploited.

In order to combat traffic and sexual exploitation of children, the Protocol states the need to reduce consumer demand for child prostitution and child pornography.

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<sup>250</sup> Par. 99

<sup>251</sup> Strategic Objective D.3 (par. 130)

### **I.G) UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000**

This document, often called the Palermo Protocol, is one of the three protocols supplementing the Convention against Transnational Crime adopted by General Assembly resolution 55/25 of 15 November 2000<sup>252</sup>. It is the first international instrument that established a comprehensive definition of trafficking internationally assumed.

Article 9 of the Protocol tackles the demand side of the phenomenon of trafficking calling upon the States Parties to adopt or strengthen legislative or other measures to “**discourage the demand** that fosters all forms of exploitation of persons, especially women and children, which leads to trafficking”.

However, the Protocol, as part of the Convention against Transnational Crime, is limited in its scope since it addresses the issue of trafficking in human beings only by transnational and organized crime.

### **I.H) Review and Appraisal of the Implementation of the Beijing Declaration and Platform for Action (Beijing + 10), 2005**

In its 49th Session in 2005, the Commission Status of Women carried out the 10-year review of the implementation of the Beijing Declaration and Platform for Action.

The outcome document highlights the gender dimension of the phenomenon of trafficking, stating that the majority of trafficked persons are women and girls, who are overwhelmingly trafficked for commercial sexual exploitation.

Resolution 49/2 is specifically dedicated to eliminating the demand for trafficked women and girls. It highlighted the inextricable link between demand and trafficking for sexual exploitation, and calls upon Governments to specifically enforce or adopt legislative measures to deter exploiters and sex buyers who create the demand for prostitution that leads to sex trafficking.

Regarding prevention, it recommends the implementation of educational programs in order to raise awareness on the negative consequences of prostitution and other forms of sexual exploitation; and programs directed to the sex buyers, to inform them about the violence that prostitutes experience.

Besides, the Commission stresses the necessity to conduct research on the relationship between the trafficking of women and children for sex and legislation governing prostitution and other forms of sexual exploitation.

## **II. Council of Europe**

The Council of Europe has a prominent role in leading the fight against trafficking in human beings, including for the purpose of sexual exploitation, and violence against women and as a regional organization has produced an important number of Resolutions and Recommendations to encourage and support Member States in addressing these issues,

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<sup>252</sup> The full text of the Convention and the three Protocols are available at:  
<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

some of which have targeted specifically the phenomenon of trafficking in women for **sexual exploitation**<sup>253</sup>.

Besides, the Council of Europe has adopted three Conventions, in an attempt to set overarching legal instruments, which would set minimum standards at European level:

- ❖ The Council of Europe Convention on Action against Trafficking in Human Beings (2005);
- ❖ The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007);
- ❖ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011).

## **II.A) Council of Europe Convention on Action against Trafficking in Human Beings, 2005**

The Convention recognizes trafficking in human beings as a major problem in Europe, mainly affecting women and children. It acknowledges that the most prevalent form of trafficking in Europe is that for purposes of sexual exploitation, which has strong links with the sex industry<sup>254</sup>.

The Convention, in its article 4, provides a definition<sup>255</sup> of trafficking in human beings identical to the one adopted in the Palermo Protocol, which is the one widely recognized at international **level**. However the Convention is wider in scope than the Palermo Protocol, since it is not limited to transnational and organised crime, and thus could be applied even if trafficking is purely national and does not involve any organised criminal group<sup>256</sup>.

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<sup>253</sup> Among others: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe Member States; Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation; Recommendation Rec (2001) 16 of the Committee of Ministers to member states on the protection of children against sexual exploitation; Recommendation 1545 (2002) Campaign against trafficking in women; Recommendation 1610 (2003) Migration connected with trafficking in women and prostitution. More info at: [http://www.coe.int/t/dghl/monitoring/trafficking/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp)

<sup>254</sup> Explanatory Report, par. 1-3: « Annually, thousands of people, largely women and children, fall victim to trafficking for sexual exploitation or other purposes (...) Trafficking in human beings, with the entrapment of its victims, is the modern form of the old worldwide slave trade. It treats human beings as a commodity to be bought and sold, and to be put to forced labour, usually in the sex industry (...) Most identified victims of trafficking are women (...) many of the victims are young, sometimes children.

<sup>255</sup> Article 4 - Definitions:

For the purposes of this Convention:

- a) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d) "Child" shall mean any person under eighteen years of age;
- e) "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

<sup>256</sup> Explanatory Report par. 61- 80.

Article 6 highlights the importance of tackling demand in order to prevent and combat trafficking in human beings, stating that demand "fosters all forms of **exploitation of persons, especially women and children**, that leads to trafficking".

To this end, the article requests from State Parties to adopt and reinforce legislative, administrative, educational, social, cultural, or other **measures to discourage the demand whether regarding sexual exploitation** or other forms of forced labour.

With regard to other preventive measures, the accent is put on **educational programmes** "which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being"<sup>257</sup>.

Besides, the Convention focuses on the protection of victims, requiring positive action from States Parties to provide assistance to victims<sup>258</sup>.

## **II.B) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007**

The Council of Europe has adopted a number of instruments concerning sexual exploitation of children. However, given the magnitude of the problem and the lack of reliable data of the phenomenon of sexual exploitation and abuse of children<sup>259</sup>, a comprehensive international legally binding instrument was put into place which focuses on the preventive, protective and criminal aspects of the fight against sexual exploitation and sexual abuse of children.

Thus the Convention, adopted in 2007, contains a battery of measures addressing prevention, protection and assistance to victims; coordination of authorities; investigation, prosecution and procedural issues. Besides includes a comprehensive chapter of substantive criminal law concerning offences related with sexual abuse, child prostitution, child pornography, corruption of children and solicitation of children for sexual purposes.

The Council of Europe recognizes that the demand for child prostitutes has increased markedly, and child prostitution is often linked to organised crime and involves trafficking. The article 19 therefore establishes links between demand and supply of child prostitutes and requires criminal sanctions for both the recruiters and the users of child prostitutes. "(...) Owing to the serious harm sustained by child prostitutes, the negotiators felt it was justified to impose penalties on the customers of child prostitutes"<sup>260</sup>.

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<sup>257</sup> Article 6d

<sup>258</sup> Explanatory Report, par. 68: "For example, Article 12 requires Parties to provide certain assistance to victims of trafficking, such as standards of living capable of ensuring their subsistence, through such measures as appropriate and secure housing, psychological and material assistance and access to emergency medical treatment. Similarly Article 14 provides the issuing of a renewable residence permit to victims. Under Article 3 such measures must be applied without discrimination".

<sup>259</sup> In the Explanatory Report, par 1-3 The Council of Europe recognizes sexual exploitation and sexual abuse as some of the worst forms of violence against children, and its concerns about the magnitude of the problem (according to UNICEF, **approximately 2 million children are used worldwide in the "sex industry" each year**), and the lack of statistics and reliable data of the phenomenon in Europe

<sup>260</sup> Explanatory Report of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual abuse, par. 131.

## II.C) The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011

The Council of Europe has undertaken a series of initiatives to promote the protection of women against violence since 1990s, and has adopted a number of resolutions and recommendations calling for legally binding standards on the issue. However, the 2011 Convention, also known as Istanbul Convention, became the first attempt at European level to set a comprehensive framework to prevent and combat violence against women and domestic violence and protect its victims.

### III. The gender dimension of sexual exploitation

The international texts outlined above agree that sexual exploitation affects mainly women and girls.

- ❖ The **UN Optional Protocol** to the Convention on the Rights of the Child on the **Sale of Children, Child Prostitution and Child Pornography** highlights the special vulnerability of girls to sexual exploitation, acknowledging the disproportionate representation of girls among the sexually exploited.
- ❖ As mentioned above, the **UN DEVAW** recognizes **forced prostitution** as a form of **violence against women**.
- ❖ The gender dimension is also clear in the **UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children**. Apart from the name itself, Article 2, subparagraph (a), requires that “**particular attention**” should be paid to combatting and preventing the trafficking of women and children. That reflects the idea that **more specific provisions** may be needed in some areas to take into account the problems of women and children who are targeted<sup>261</sup>.
- ❖ The **UN Commission on the Status of Women** (CSW) had also drawn attention to this fact in its 49<sup>th</sup> session, held in 2005, when reviewing the Beijing Declaration and Platform for Action. It highlighted the **gendered phenomenon of trafficking and sexual exploitation**, recalling that the majority of trafficked persons are women and girls, who are overwhelmingly trafficked for commercial sexual exploitation.
- ❖ The **CoE** has repeatedly<sup>262</sup> pointed to the fact that trafficking is a gendered phenomenon. Specifically the Convention on Action against Trafficking in Human Beings acknowledges that **the most prevalent form of trafficking in Europe is for the purpose of sexual exploitation**, which affects mainly women and girls<sup>263</sup>.

<sup>261</sup> UNODC (2004), *Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Par 22). Available at : <http://www.unodc.org/unodc/es/treaties/CTOC/legislative-guide.html#traffickig>

<sup>262</sup> Among others: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member States; Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation; Recommendation Rec (2001) 16 of the Committee of Ministers to member states on the protection of children against sexual exploitation; Recommendation 1545 (2002) Campaign against trafficking in women; Recommendation 1610 (2003) Migration connected with trafficking in women and prostitution. More info at: [http://www.coe.int/t/dghl/monitoring/trafficking/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp)

<sup>263</sup> Explanatory Report, par. 1-3 : « Annually, thousands of people, largely women and children, fall victim to trafficking for sexual exploitation or other purposes (...) Trafficking in human beings, with the entrapment of its victims, is the modern form of the old worldwide slave trade. It treats human beings as a commodity to be bought and sold, and to be put to forced labour, usually in the sex industry (...) Most identified victims of trafficking are women (...) many of the victims are young, sometimes children.

## ANNEX II: DEFINITIONS RELATED TO SEXUAL EXPLOITATION AND PROSTITUTION AND THEIR IMPACT ON GENDER EQUALITY

### Sexual exploitation

There is no definition of the term "sexual exploitation" or "exploitation of prostitution". The interpretative notes of the negotiation of the **Palermo Protocol**, however, state that the terms "exploitation of prostitution" and "sexual exploitation" are intentionally not defined, which is therefore **without prejudice to how the States address prostitution** in their domestic laws<sup>264</sup>. Furthermore, the **exploitation of the prostitution of others or other forms of sexual exploitation can qualify as trafficking in human beings**.

The only references found relate to the "**sexual exploitation of children**", which according to article 34 of the UN Convention on the Rights of the Child include:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

### Forced labour

The **Palermo Protocol** defines forced labour as a form of exploitation. According to Article 2 of the ILO Convention (no. 29) concerning Forced or Compulsory Labour (1930), "the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The following six elements characterise a forced labour situation; usually two or more are imposed on a worker in a combined fashion: a) **physical or sexual violence**; b) **restriction of movement of the worker**; c) **debt bondage/bonded labour**; d) **withholding wages or refusing to pay the worker at all**; e) **retention of passports and identity documents**; f) **threat of denunciation to the authorities**<sup>265</sup>.

### Trafficking in Human Beings

The definition in Article 3 of the Palermo Protocol establishes three elements constituting trafficking in human beings:

- ❖ Act: recruitment, transportation, transfer, harbouring or receipt of persons.
- ❖ Means: threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of a person having control of another person.

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<sup>264</sup> See the *travaux préparatoires* of the Palermo Protocol, available at: [http://www.unodc.org/pdf/crime/final\\_instruments/383a1e.pdf](http://www.unodc.org/pdf/crime/final_instruments/383a1e.pdf).

<sup>265</sup> ILO (2005), Human Trafficking and Forced Labour Exploitation. Guidelines for Legislation and Law Enforcement (p.20-21). Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081999.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081999.pdf)

- ❖ End result/purpose: Exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

### **Vulnerability in relation to trafficking in human beings (for sexual exploitation)**

The Explanatory Report of the Convention on Trafficking in Human Beings of the Council of Europe provides for a definition in paragraphs 83 and 84 of what is meant by "**abuse of a position of vulnerability**".

83. "By abuse of a position of vulnerability is meant abuse of any situation in which the person involved has **no real and acceptable alternative to submitting to the abuse**. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce".

84. "A wide range of means therefore has to be contemplated: **abduction of women for sexual exploitation, enticement of children for use in paedophile or prostitution rings, violence by pimps to keep prostitutes under their thumb**, taking advantage of an adolescent's or adult's vulnerability, whether or not resulting from sexual assault, or abusing the economic insecurity or poverty of an adult hoping to better their own and their family's lot. However, these various cases reflect differences of degree rather than any difference in the nature of the phenomenon, which in each case can be classed as trafficking and is based on use of such methods".

### **Violence against women**

Violence against women has been comprehensively defined by the UN Declaration on the Elimination of Violence against Women (DEVAW) of 1993.

In its Article 1, "violence against women" is defined as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

Article 2b refers to "physical, sexual and psychological violence occurring within (...) trafficking in women and forced prostitution"<sup>266</sup>;

The CoE's Convention on Preventing and Combating Violence against Women and Domestic Violence of 2011 defines in article 3 violence against women "as a violation of human rights and a form of discrimination against women and shall mean 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, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life". Gender-based violence against women "shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately".

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<sup>266</sup> The DEVAW introduces for the first time in the definition of violence against women the term "forced prostitution".

## ANNEX III: THE ACTION OF THE EUROPEAN UNION ON SEXUAL EXPLOITATION AND VIOLENCE AGAINST WOMEN

### KEY FINDINGS

- Provisions at European level regarding sexual exploitation are inspired by international law and embedded in legislation fighting trafficking in human beings. It has to be noted that decision-making on prostitution falls into the exclusive competence of the Member States, while trafficking in human beings for sexual exploitation has been subject of several legislative acts at European level adopted in the aftermath of the Palermo Protocol under the minimum rules on criminal law provisions of the Treaties.
- Under the Lisbon Treaty, Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims was adopted, following the example set at international level and recommending to the Member States to adopt measures to reduce the demand.
- According to Eurostat, the most common purpose of trafficking in Europe is sexual exploitation, accounting for 62% of all victims of trafficking, of which 96% are female victims. Despite strengthened efforts on the international and European level, there has been an increase in the national and international traffic of women and children for the purpose of sexual exploitation in prostitution in recent years. Strong links between the sex industry and human trafficking for sexual exploitation have been observed.
- There is evidence that legislation, whether legalising or criminalising prostitution, has effects on the prevalence of trafficking for sexual exploitation. There have therefore been demands to legislate on the European level on prostitution in order to fight sexual exploitation more effectively.

### Legal Framework

As a matter of priority, the EU has addressed the question of sexual exploitation in connection with the fight against trafficking in human beings in a number of strategies<sup>267</sup>, actions<sup>268</sup>, and programmes<sup>269</sup>. In line with the approach on the international level, these

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<sup>267</sup> Namely: EU Strategy towards the eradication of trafficking in human beings 2012-2016; The Stockholm Programme - An open and secure Europe serving and protecting the citizens (2010–2014); EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings [Official Journal C 311 of 9.12.2005]. More info available at the dedicated web of the European Commission at: <http://ec.europa.eu/anti-trafficking/section.action?sectionPath=EU+Policy>

<sup>268</sup> Among others: Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography; Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings; Commission of 26 May 1999 on the implementation of measures to combat child sex tourism; Commission communication of 9 December 1998 to the Council and the European Parliament proposing further action in the fight against trafficking in women; Council Joint Action 97/154/JHA concerning action to combat trafficking in human beings and sexual exploitation of children [Official Journal L 63 of 04.03.1997]; Communication from the Commission of 27 November 1996 on combating child sex tourism; Commission communication of 20 November 1996 to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation; among others. For more info see the summary of legislation on trafficking in human beings at:

[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/fight\\_against\\_trafficking\\_in\\_human\\_beings/](http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/)

<sup>269</sup> Some examples of funding programmes: Prevention and fight against crime (ISEC); the Daphne Programme: Measures to combat violence against women, young persons and children; European Instrument for Democracy and Human Rights (EIDHR). Worth mentioning also the Council action 96/700/JHA, establishing an incentive and



instruments **cover the criminal offenses of sexual exploitation and trafficking in human beings but do not touch upon the competence of the Member States to regulate prostitution**, although the most recent ones also call upon the Member States to tackle the demand side to prevent exploitation.

Based on the criminal law provisions of the Treaty, four Directives have been adopted in recent years:

- ❖ Council Directive 2004/81/EC of 29 April 2004 on the **residence permit issued to third-country nationals who are victims of trafficking in human beings** or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;
- ❖ Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on **preventing and combating trafficking in human beings and protecting its victims**;
- ❖ Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 on **combating the sexual abuse and sexual exploitation of children and child pornography**; and
- ❖ Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the **rights, support and protection of victims of crime**.

**Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities**

This Directive complements previous legal texts adopted on illegal migration<sup>270</sup> and trafficking in human beings<sup>271</sup> by obliging Member States to introduce a residence permit intended for both victims of human **trafficking** and third-country nationals who have been the subject of an action to facilitate **illegal migration**.

The residence permit introduced is aimed at offering **incentives to cooperate** with the authorities<sup>272</sup>. A residence permit, which should be issued for at least 6 months and can be preceded by a reflection period, should give access to the labour market and to vocational training and education as well as grant the resources to ensure subsistence and access to emergency medical treatment (including psychological assistance where appropriate).

However, the residence permit could either not be renewed or **withdrawn for different reasons**, for example, if the competent authorities have terminated the relevant proceedings or decide to discontinue the proceedings<sup>273</sup>.

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exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children (STOP) [Official Journal L 322, 12.12.1996]. For more info see the dedicated web of the European Commission at: <http://ec.europa.eu/anti-trafficking/section.action?sectionPath=EU+Projects>

<sup>270</sup> Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. OJ L 328, 5.12.2002, p. 17

<sup>271</sup> Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings. OJ L 203, 1.8.2002, p. 1.

<sup>272</sup> Recital 4-5.

<sup>273</sup> Article 13-14

According to the **Eurostat's** report on Trafficking in Human Beings of April 2013, between 363 and 833 victims received a residence permit in the three year period from 2008 to 2010<sup>274</sup>. The report confirms the findings of the Commission's 2010 implementation report that the implementation in the Member States of the Directive is uneven and not always in line with the provisions of the Directive. In the report, the **Commission** pointed already to the Directive on the rights, support and protection of victims of crime (see item 3.1.4.) and announced possible issues for amending the Directive: "In this context the Commission may consider the need for amendments to the Directive, including the possibility of **issuing a temporary residence permit based on the vulnerable situation of the victim and not necessarily in exchange for cooperation with competent authorities**. Other amendments might include having a **specified length of reflection periods** for victims; **strengthening the framework of treatment**, in particular for minors, and **reinforcement of the obligation to inform victims of their rights**"<sup>275</sup>.

### **Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA**

This Directive lays down minimum standards to be established in the Member States to prevent trafficking, to effectively prosecute criminals, and to better protect the victims. It takes into account the gender perspective, recognising that **trafficking is a gender-specific phenomenon** and that women and men are often trafficked for different purposes<sup>276</sup>.

The **definition** of trafficking adopted in article 2 of the Directive<sup>277</sup> is wider than the definitions taken in previous international instruments, covering also the trafficking for begging and for the exploitation of criminal activities. As the **CoE** Convention, it relies, among others, on the term "position of **vulnerability**" in the context of trafficking meaning also a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

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<sup>274</sup> Eurostat, 2013, p.30. Figures are at best illustrative as not all Member States communicated data for all three years; see p. 60.

<sup>275</sup> COM(2010)493, p.11.

<sup>276</sup> Recital 3.

<sup>277</sup> Article 2. Offences concerning trafficking in human beings:

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable: The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.
4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.
5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.
6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

**Box III/1: Criminalising the use of work or services exacted from a person with the knowledge that this person is a victim of such trafficking**

In Article 18 on Prevention, Directive 2011/36/EU draws attention to the **demand** that fosters all forms of exploitation related to trafficking in human beings. Paragraph 4 suggests that Member States should consider sanctioning the use of **services when it is known to the client that they are provided by means of exploitation**. Such criminalisation could cover the behaviour of **buyers of sexual services** from any trafficked person, irrespective of their nationality<sup>278</sup>.

The Directive also calls upon Member States to ensure that **investigation or prosecution** of trafficking offences are **not dependent on reporting or accusation by the victims**, and may continue even if the victim withdraws his or her statement. To that end, Member States shall ensure the adequate training of the units responsible for the investigation and prosecutions, and the availability of effective investigative tools, such as those used in organised crime or other serious crimes<sup>279</sup> (Article. 9).

Member States were obliged to implement the Directive before 6 April 2013.

**Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography**

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It also introduces provisions to strengthen the protection of the child victims, specifically in criminal investigations and proceedings.

The Directive calls upon the Member States to take appropriate measures to "**discourage and reduce the demand** that fosters all forms of sexual exploitation of children" (art. 23). It also includes rules on **jurisdiction** (art. 17) to ensure that "sexual abusers or sexual exploiters of children from the Union face prosecution even if they commit crimes outside the Union, in particular so-called **sex tourism**"<sup>280</sup>.

According to the definitions established in Article 2:

- a) 'child' means any person **below the age of 18 years**;
- b) 'age of sexual consent' means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;
- c) 'child prostitution' means the use of a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that payment, promise or consideration is made to the child or to a third party.

The Directive contains a wide catalogue of offences in relation to the sexual abuse of children (Art. 3), sexual exploitation of children (Art. 4), child pornography (Art. 5), and the solicitation of children for sexual purposes (Art. 6).

<sup>278</sup> Recital 26.

<sup>279</sup> Such tools could include the interception of communications, covert surveillance including electronic surveillance, the monitoring of bank accounts and other financial investigations (Preamble, par. 15)

<sup>280</sup> Recital 29.

However, the Directive establishes **remarkable differences in the level of criminalisation** of abusive acts against children depending on the **age of sexual consent**<sup>281 282</sup>.

This differentiation applies, among others, to the offences concerning sexual exploitation of **children in pornography** (including recruitment, exploitation, coercion of a child to participate in pornographic performances, and consumption of child pornography) and sexual exploitation of **children in prostitution** (including recruitment, exploitation and coercion of children into child prostitution, and consumption of child prostitution)<sup>283</sup>.

As will be further analysed<sup>284</sup>, these differences in criminal law related to the age of sexual consent of the child victim of sexual exploitation seem neither to comply with the best interest of the child, nor with the provisions of Directive 2011/36/EU<sup>285</sup>.

Member States are obliged to implement the Directive before 18 December 2013

### **Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime**

While the particular needs of victims of human trafficking and child victims of sexual abuse, sexual exploitation and child pornography are addressed in a specific manner in the respective Directives **2011/36/EU** and **2011/92/EU**, the provisions in this Directive are intended as complementary and consistent with the approach taken in the aforementioned instruments. It sets out the **horizontal framework for addressing the needs of all**

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<sup>281</sup> The age of sexual consent differs greatly in EU Member States, 13 being the lowest and 18 the highest.

<sup>282</sup> The inclusion of the differences in the punishment depending on the age of sexual consent was introduced by the European Parliament in the amendments no. 119, 131, 140, 150, 155, and 166. The procedure file can be accessed at:

[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2010/0064\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2010/0064(COD)&l=en)

<sup>283</sup> Directive 2011/92/EU. Article 4. Offences concerning sexual exploitation:

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 7 is punishable.
2. Causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent and of at least 2 years of imprisonment if the child is over that age.
3. Coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.
4. Knowingly attending pornographic performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least 2 years if the child has not reached the age of sexual consent, and of at least 1 year of imprisonment if the child is over that age.
5. Causing or recruiting a child to participate in child prostitution, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.
6. Coercing or forcing a child into child prostitution, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.
7. Engaging in sexual activities with a child, where recourse is made to child prostitution shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent, and of at least 2 years of imprisonment if the child is over that age.

<sup>284</sup> See chapter 5.2.7

<sup>285</sup> Directive 2011/36/EU. Article 4. Penalties:

1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment.
2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:
  - (a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;

**victims of crime**, irrespective of the type of crime or the circumstances or place in which it was committed, improving the general environment for protecting victims in EU law and policy.

**Box III/2: Secondary and repeated victimisation:**

Directive 2012/29/EU acknowledges that victims of trafficking and gender-based violence, including child victims, are especially vulnerable due to the high risk of secondary and repeated victimisation, of intimidation and of retaliation connected with such violence, and shall be duly considered for **specific protection** and support needs.

## ANNEX IV: ACTIVITIES OF THE EUROPEAN PARLIAMENT ON SEXUAL EXPLOITATION AND PROSTITUTION

The European Parliament (EP) has adopted the following resolutions in relation to the sexual exploitation of women and girls and prostitution:

- ❖ EP Resolution of 9 December 2005 **on the current situation in combating violence against women and any future action** (2004/2220(INI))<sup>286</sup> highlights the link between violence against women and prostitution, recalling that 65-90% of prostituted women have been subjected to **sexual abuse in the past**, acknowledges that marginalisation and poverty are basic causes of prostitution and trafficking in women<sup>287</sup>, and explicitly **excludes the idea that working as a prostitute can be equated with doing a job**, calling therefore upon the Member States to reject this approach<sup>288</sup>.
- ❖ EP Resolution of 17 January 2006 **on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation** (2004/2215(INI))<sup>289</sup> recalls the particular vulnerability of women and children to sexual exploitation, and acknowledges that "(...) one of the principal preconditions for international trafficking in women and children is the **existence of local prostitution markets** where certain people may wish to sell and buy women and children for the purpose of exploiting them sexually (...)"<sup>290</sup>. Therefore the resolution calls upon Member States to take measures to **discourage the demand** and seriously address the problems resulting from prostitution on their territory<sup>291</sup>.
- ❖ EP Resolution of 15 March 2006 **on forced prostitution in the context of world sports events**<sup>292</sup> is of significant interest as well, since it calls on the Commission and Member States to launch a Europe-wide campaign during international sports events to inform and educate the general public, and particularly sports people, sports fans and supporters, about the scale of the problem of forced prostitution and trafficking in human beings and, most importantly, to seek to curb demand by raising awareness among potential clients. It also seeks to involve the International Olympic Committee and sports associations, including FIFA, UEFA, sportsmen and sportswomen in the fight against force prostitution and trafficking for sexual exploitation by supporting the "Red Card" campaign.
- ❖ EP Resolution of 16 November 2006 with **Recommendations to the Council on an integrated approach and an action plan for the fight against trafficking in human beings** (2006/2078(INI))<sup>293</sup> specifically recognized the demand of men who purchase women and children for sexual exploitation as a main driving force behind sex trafficking, and therefore calls for strengthening the political will and making a joint effort in order to **reduce such demand**, whilst addressing also other root causes of trafficking such as marginalisation, lack of equal opportunities and decent work. It further proposes the adoption of a **Code of Conduct for officials**

<sup>286</sup> P6\_TA(2006)0038 : <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0038+0+DOC+XML+V0//EN>

<sup>287</sup> Par. M-N

<sup>288</sup> Par. 3i)

<sup>289</sup> P6\_TA(2006)0005: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2006-0005&language=EN&ring=A6-2005-0400>

<sup>290</sup> Par. D

<sup>291</sup> Par. 11-12

<sup>292</sup> P6\_TA(2006)0086 : <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2006-86>

<sup>293</sup> P6\_TA(2006)0498: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2006-498>

**of the EU institutions and bodies**, particularly for those away on business to third countries and similar to the Code of Conduct issued by the UN, which should express clear disapproval of the purchase of sexual services, other forms of sexual exploitation and gender-based violence, and should contain necessary sanctions in case of misconduct.

- ❖ EP Resolution of 26 November 2009 **on the elimination of violence against women**<sup>294</sup> points to the link between the tolerance of prostitution in Europe and the increase of sex tourism and trafficking in women into Europe for sexual purposes.
- ❖ EP Resolution of 5 April 2011 **on priorities and outline of a new EU policy framework to fight violence against women (2010/2209(INI))**<sup>295</sup> which, after admitting the serious problem of prostitution in the EU, requests further information into the **link between the legal framework in the Member States and the form and extent of the prostitution taking place**. Besides this, in this Resolution, the EP makes a strong statement in **recognising prostitution as a form of violence against women**, which, as any other form of gender-based violence "(...) can leave deep psychological scars, damage the general health of women and girls, including their reproductive and sexual health, and in some instances results in death"<sup>296</sup>.

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<sup>294</sup> P7\_TA(2009)0098: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2009-0098+0+DOC+XML+V0//EN>

<sup>295</sup> P7\_TA(2011)0127 : <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2011-0127&language=EN>

<sup>296</sup> Par. J





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ISBN: 978-92-823-5171-0

DOI: 10.2861/44806