



**DESIRE**  
Demand  
for Sexual  
Exploitation  
In Europe

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## Change Records

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## 1. EXECUTIVE SUMMARY

Sex work and its relationship with human trafficking is a contested issue. The controversies on sex work are in fact so deep that the very phrase 'sex work' is also disputed. In the European Union, different approaches to sex work coexist, each with national particularities. Scholars disagree on which approach to take, and on the existence of a relationship between legislation and policy on sex work and trafficking in human beings. Despite some advancement, currently too few rigorous studies and especially empirical studies have been undertaken to be able to draw definitive conclusions. This project sought to fill this gap. DESIrE aimed at generating a better understanding of the impact of different approaches to sex work legislation and policies on the prevalence of trafficking in human beings. To examine this potential correlation, the DESIrE project focused on four case study countries that all adopt very different approaches on the regulation on the provision, facilitation and purchase of sex: Croatia, the Netherlands, Poland and Sweden.

Demand reduction is identified in the regional anti-trafficking legal framework as a means of preventing human trafficking,<sup>1</sup> and taking into account the extent to which these provisions had been implemented in Member States,<sup>2</sup> was the main point of departure for the research project. In order to enquire whether or not a demand reduction strategy is an effective strategy for the prevention of trafficking in human beings, the consortium undertook several steps in the project. In the first two stages of the project, all partners conducted desktop research - developed a working understanding of the key terms: demand, sexual exploitation, sex work and prevention (section 3), and outline the respective regulatory and policy approach adopted in their country, regarding the provision, facilitation and purchase of sex (section 5). The reflections on these approaches also situated in the context of the public discourse around these topics (section 4) that were further considered when engaging with and interviewing various stakeholders (sex workers/persons selling sex, buyers, civil society, policy makers, law enforcement officials and victims of trafficking) as well as the general public. This empirical research sought to determine the attitudes towards sex work and how sexual exploitation is understood by different actors (section 3.7 and section 4); the extent to which there is a relationship between national legislation and policies on sex work and human trafficking (section 5.5) and how demand for sexual services that may fuel human trafficking for the purpose of sexual exploitation can be reduced (section 5.6); how legislation and policies could make persons selling sex feel safer from trafficking in human beings (section 5.7). Finally, the existing regulatory approaches were further considered, to identify complementary measures that could facilitate the prevention of trafficking in human beings for the purpose of sexual exploitation (section 6).

Demand reduction as an anti-trafficking strategy is at the core of the conclusions and recommendations that also take into account the need to acknowledge the socio-cultural differences between different regulatory approaches. The conclusions consider the demand for sexual services and the role of law (section 3.8); the role of the state in preventing exploitation in the sex industry (section 3.8); the perceptions of the impact of the regulatory approach and the risk of sexual exploitation in the sex industry (section 5.7); the additional measures needed to complement the legal regulation of sex industry in order to minimise exploitation and the risk of trafficking (section 5.7); and the social practices and alternatives to legislation that can assist in preventing human trafficking (section 6.5). The report ends with a number of recommendations for the future implementation and development of demand reduction measures that seek to tackle human trafficking for sexual exploitation.

<sup>1</sup> Article 6, Council of European Convention on Action against trafficking in human beings, 2005; Article 18(1), DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF 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.

<sup>2</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of the Directive 2011/36/EU, COM/2016/0719 final

## 2. INTRODUCTION

Sex work and its relationship to human trafficking is a contested issue. The desktop research in the project so far has demonstrated that, in the EU, different approaches to the regulation of the provision, purchase and facilitation of sexual services coexist, each with national particularities.<sup>3</sup> Scholars and policy makers disagree on which approach to take, and even whether a relationship exists between legislation and policy on sex work and trafficking in human beings. Despite some advancement, currently too few rigorous studies have been undertaken to be able to draw definitive conclusions. This project aimed to fill this gap. DESIRE sought to generate a better understanding of the impact of different approaches to sex work legislation and policies on the prevalence of trafficking in human beings. DESIRE exemplified the variety of regulatory approaches by focusing on four different countries: Croatia, The Netherlands, Poland and Sweden.

	Provision	Purchase	Facilitation
Croatia	×	✓	×
The Netherlands*	✓	✓	✓
Poland	✓	✓	×
Sweden	✓	×	×

✓ Not criminalised

✓ Criminalised

\* depending on the municipality policy

*Figure 1: Different regulatory approaches to the provision, purchase and facilitation of sexual services in four case study countries*

### 2.1. Discouraging demand as an anti-trafficking strategy

In Europe, regional anti-trafficking legal instruments have placed an emphasis on discouraging demand as a means of preventing human trafficking.

Article 6 of the Council of Europe Convention on Action against Trafficking in Human Beings (2005) outlines a number of “Measures to Discourage the Demand” including:

- i. research on best practices, methods and strategies;
- ii. Raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of human trafficking;
- iii. Target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;
- iv. Preventive measures including educational programs for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and

<sup>3</sup> DESIRE Deliverable, Report on the legal and regulatory approaches towards sex work in four EU-countries (June 2017), available at: <http://project-desire.eu/report-on-the-legal-and-regulatory-approaches-towards-sex-work-in-four-eu-countries-2/>.

its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

Similarly, the EU Anti-trafficking Directive, also places an emphasis on reducing and discouraging demand, in article 18(1) stating that “Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.”<sup>4</sup>

A further specific measure in this regard is further stipulated in both regional instruments, the criminalisation of the knowing use of services of a trafficked person:

Article 19 of the Council of Europe Convention Against Trafficking posits the criminalisation of the use of services of a victim, “Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.”

Article 18(4) of the EU Anti-Trafficking Directive states that “Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.”

To date, this particular measure, has been implemented, to one degree or another, at a national level in the following countries:

- In 10 countries, Bulgaria, Greece, Croatia, Cyprus, Lithuania, Malta, Portugal, Romania, Slovenia, UK (excl. Northern Ireland) the use of services which are the objects of exploitation of trafficking in human beings, addressing all forms of exploitation, is a criminal offence.<sup>5</sup>
- Two countries have established limited and selective criminalisation of the use of services of victims of trafficking in human beings. Finland and Ireland have a criminal offence targeting only at the use of victims of trafficking for sexual exploitation.<sup>6</sup>
- In Sweden, provisions under the law on banning the purchase of sexual services, which can cover the use of services exacted by victims of trafficking for sexual exploitation, are applied.<sup>7</sup> The same approach has been adopted in France, Iceland, Northern Ireland and Norway.<sup>8</sup>

Whilst, the DESIRE project focused predominantly on discouraging demand as a means of preventing human trafficking for sexual exploitation, measures to discourage demand are equally applicable to all forms of exploitation, including labour exploitation. As emphasised by the Working Group on Trafficking in Persons also outlined some strategies to reduce demand for labour exploitation as follows:

<sup>4</sup> DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF 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.

<sup>5</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of the Directive 2011/36/EU, COM/2016/0719 final, p. 3-4.

<sup>6</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of the Directive 2011/36/EU, COM/2016/0719 final, p. 5.

<sup>7</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of the Directive 2011/36/EU, COM/2016/0719 final, p.5.

<sup>8</sup> Malloch, M., Robertson, L., & Forbes, E., EVIDENCE ASSESSMENT OF THE IMPACTS OF THE CRIMINALISATION OF THE PURCHASE OF SEX: A REVIEW SCOTTISH CENTRE FOR CRIME AND JUSTICE RESEARCH, 24 February 2017, p. 18.



- i. Criminal justice responses which serve to reduce demand that fosters trafficking for labour exploitation by raising the costs of using such labour;
- ii. Measures and mechanisms to improve labour conditions in sectors vulnerable to the use of victims trafficked for labour exploitation, through strengthening and enforcing labour standards and regulations;
- iii. Action against exploitation associated with the migration process, including better regulation of private recruitment agencies and better protection of migrant and refugee workers;
- iv. Private sector initiatives to address exploitative labour practices within supply chains;
- v. Consumer-based action against products made from trafficked labour and;
- vi. Addressing the root causes and contributing factors including social norms that enable exploitative practices to flourish.<sup>9</sup>

## **2.2. Research objectives**

For the purposes of this research, the principal focus was on the demand reduction on sexual services as a method of preventing human trafficking. In particular, the research sought to better understand the extent to which the regulation of sex work can have an impact on the prevention of trafficking in human beings for the purpose of sexual exploitation, the project identified the following aims:

- (a) To understand the current legal & policy approaches to sex work
- (b) To conduct primary research with the general public, consumers, victims of human trafficking, persons selling sex, law enforcement officials and policy makers in part to understand the public opinion and perceptions on:
  - I. The relationship between national legislation on sex work and human trafficking;
  - II. Legislation & policies that would make persons selling sex feel safe (from human trafficking);
  - III. Attitudes towards sex work;
  - IV. The meaning of sexual exploitation;
  - V. how demand for sexual services that fuel human trafficking can be reduced.
- (c) To explore avenues, other than law, that may assist in limiting the demand for sexual services which fuels human trafficking for purposes of sexual exploitation
- (d) To provide evidence-based recommendations on how demand for sexual services can be reduced to prevent human trafficking).

## **2.3. Structure**

Section 3 will discuss the definition of the terms which are at the heart of the research: demand, sexual exploitation and prevention. Section 4 provides an overview of the current public discourse regarding the regulation of sex work and the elimination of human trafficking for sexual exploitation in each country. Section 5 deals with the different regulatory approaches in law and policy to regulating sex work and combating trafficking for sexual exploitation adopted in our four case study countries (Croatia, the Netherlands, Poland and Sweden) on

<sup>9</sup> Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 27 to 29 January 2010, UN Doc, CTOC/COP/WG.4/2010/6.



the provision, facilitation and purchase of sex. Section 6 considers actions to combat sexual exploitation and human trafficking must move beyond the law by turning to social practices and alternatives to legislation. Section 7 centralises country specific and general key recommendations. This report provides an overview of all major research findings and by building on all project deliverables (see annex 1 for list of deliverables) draws general conclusions and recommendations. In addition, taking into account the complexity of the phenomena and the varying approaches to regulating sex work in different contexts, country specific recommendations are also provided.

In addition to this final report, the DESIRE consortium have also produced a Handbook, which is a synthesised version of this report and all research findings.<sup>10</sup> A full list of which is available in Annex 1 and where relevant are cross-referenced throughout this report.

## 2.4. Methodology

The findings, conclusions and recommendations provided in this report are the result of solid mixed methods research. In the first two stages of the project, all partners conducted desktop research to define key terms<sup>11</sup> and outline the respective regulatory and policy approach adopted in their country, regarding the provision, facilitation and purchase of sexual services.<sup>12</sup> Desktop research was also used to collect information on the alternative approaches to combat trafficking in human beings, thus other than law and policy.<sup>13</sup> The empirical stage provided a unique opportunity to engage with various actors (sex workers/persons selling sex, buyers, civil society, policy makers, law enforcement officials and victims of trafficking) as well as the general public in order to answer the objectives set out above.

To engage these target groups, the project partners' outreach consisted of two phases:<sup>14</sup>

1. In order to **identify and build trust with stakeholders**, the project partners:
  - Identified stakeholders: find, map, match and invite stakeholders<sup>15</sup>
  - Met & engaged stakeholders: as part of an emergent design, partners held participatory workshops with the stakeholders identified, and informed them of the project's objectives and collated feedback on the development of research tools e.g. research design, interview guides etc. which was taken into account in their finalisation.<sup>16</sup>
  - Identify research participants: Following engagement with stakeholders, the strategy has been twofold: i) research participants were purposively selected and then ii) further participants were identified using the snow-ball method. In order to

<sup>10</sup> DESIRE Project, *DESIRE Handbook on demand in the context of human trafficking for sexual exploitation*, January 2019.

<sup>11</sup> DESIRE Project, Working paper: *A holistic approach to conceptualising demand for sexual services*, May 2017; DESIRE Project, Working paper: *Towards a comprehensive definition of sexual exploitation beyond the context of human trafficking*, May 2017; Emilia Rekosz-Cebula, What is prevention?, *Bulletin of Polish Society of Criminology*, no.24, 2017, pp.9-23. DESIRE Project, *Report on Demand for Sexual Services that can fuel Sexual Exploitation in the Context of Human Trafficking*, June 2017.

<sup>12</sup> DESIRE Project, *Report on legal and regulatory approaches towards sex work in four EU countries*, October 2017; DESIRE Project, *Video on the differences in sex work legislations*, November 2017.

<sup>13</sup> DESIRE Project, *Briefing paper on the use of technology to combat trafficking in human beings*, September 2018; DESIRE Project, *Briefing paper on non-legislative measures that can discourage and reduce the demand that fosters sexual exploitation related to trafficking in human beings*, September 2018; DESIRE Project, *Video involving buyers of sex services in fighting sexual exploitation*, October 2018.

<sup>14</sup> Derived from the Hope Social Innovation Model developed by Kaime-Atterhög: see Kaime-Atterhög, W., von Friedrichs, Y., "The House of Plenty – a social innovation model", *Emerald Emerging Markets Case Studies*, Vol. 7 Issue: 3, (2017) pp.1-24, <https://doi.org/10.1108/EEMCS-03-2016-0041>; Kaime-Atterhög, W. (2012). *From Children of the Garbage Bins to Citizens: A reflexive ethnographic study on the care of "street children"*. (Dissertation), Uppsala University.

<sup>15</sup> Kaime-Atterhög, W., Hope Methodology Brief 1 – Phase 1 Identify Stakeholders (May 2017). Kaime-Atterhög, W., Hope Methodology Brief 2 – Phase 2 Meet, Engage and Connect Stakeholders (May 2017).

<sup>16</sup> Kaime-Atterhög, W., Hope Methodology Brief 3 – Phase 2 Meet, Engage and Connect Stakeholders (June 2017).

ensure as a diverse sample as possible, partners also employed additional strategies to identify participants.<sup>17</sup>

2. In order to **better understand the context and begin to define the problem**,<sup>18</sup> the partners collected primary data with all target groups:
  - *Semi-structured interviews: sex workers/persons selling sex, buyers, NGO workers, policy makers, law enforcement officials and victims of trafficking.* The interviews were semi-structured with open ended questions, allowing for a reflexive approach whereby participants could develop their own narrative.
  - *Online survey: general public.* An online survey was conducted in the four case study countries to determine the predominant attitudes, opinions and understanding of the general public.
  - *Stakeholder workshops.* In addition, the DESIRE consortium held three workshops to which stakeholders participated to reflect and provide input on the DESIRE findings.<sup>19</sup>

*Table 1: Target sample size and sample achieved in Croatia, Poland and The Netherlands of interviewees.*<sup>20</sup>

	Target Sample Size	Croatia (HR)	Poland (PL)	The Netherlands (NL)
<b>General public (G)</b>	385	385	641	385
<b>Persons buying sex (B)</b>	30	30	9	18
<b>Persons selling sex (SW)</b>	15	15	15	19
<b>Victims of human trafficking (V)</b>	15	0	2	2
<b>Law Enforcement (L)</b>	10	10	8	3
<b>Civil Society (C)</b>	10	10	9	12
<b>Policy Officials (P)</b>	10	10	5	6
<b>Other Experts (OE)*</b>	-	-	4	3

<sup>17</sup> DESIRE Project, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)* November 2018, pp. 22-25.

<sup>18</sup> Kaime-Atterhög, W., Hope Methodology Brief 4 – Understand the context and define the problem (January 2018).

<sup>19</sup> DESIRE Project, *Summary and Presentations from workshop in Warsaw*, 13 June 2017. DESIRE Project, *Summary of the validation workshop in Tilburg*, 17 October 2017. DESIRE Project, *Summary of the validation workshop in Zagreb*, 19 June 2018.

<sup>20</sup> For more information on composition of the target groups in each country, see DESIRE Project, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)* (November 2018), pp. 8-20.

\*Other experts: a psycho-therapist, a sexologist, a photographer preparing photos for persons selling sex, a maker of documentary films about sex and sexuality of teenagers, academics/researchers.

## 2.5. Non-inclusion of Swedish qualitative and quantitative data

As outlined in section 2.4, the report is based upon the findings of all aspects of the project, including both the desktop research and the fieldwork conducted in Croatia, The Netherlands, Poland and Sweden. Regarding the desktop research, the report includes data from all countries. However, any reference to the qualitative and quantitative data refers only to data from Croatia, The Netherlands and Poland, presented as national reports and a comparative report.<sup>21</sup> The first draft of the Swedish national report of qualitative and quantitative data was withdrawn after stakeholders and target groups that were interviewed withdrew their consent. As a result, the information in the present report does not draw on the qualitative and quantitative data from Sweden and the conclusions and recommendations refer only to Croatia, The Netherlands and Poland.

## 3. TERMINOLOGY

### 3.1. Definition of terms

Aligning with Article 18 of Directive 2011/36/EU on **preventing** and combating trafficking in human beings and protecting its victims, and the demand reduction measures outlined in Articles 6 and 19 of the Council of Europe Anti-Trafficking Convention, the DESIRE project sought to provide a deepened understanding, based on, empirical and comparative research, on how policies can be used as a way to reduce **demand** and as such curb demand for human trafficking for the purposes of sexual exploitation. To make that possible, central notions from the Directive, such as demand, sexual exploitation and prevention, needed to be defined in order to have a common and harmonized understanding of the project aims. In this regard, the understanding of demand reduction further drew upon the article 9(5) of the UN Palermo Protocol, which calls on contracting parties to “discourage the demand that fosters all forms of exploitation of persons, especially women and children”.<sup>22</sup> However, the lack of definition of key concepts in regional and international legal instruments required further investigation: what is understood by “demand”? And in the framework of the sex industry, is “exploitation” equal to and only inclusive of “sexual exploitation”? As a result, the first step to **preventing** trafficking for the purpose of sexual exploitation by providing a “deepened understanding” on how to reduce **demand** that in some cases may lead to **sexual exploitation** in the specific context of trafficking, was to undertake a thorough definitional exercise.

### 3.2. Defining demand

To define the notion of “demand” the focus was on an economic understanding of demand, which provided an opportunity to consider the different dynamics at play involving various actors, factors influencing their decisions, and the markets, at the intersection of all of which is

<sup>21</sup> DESIRE Project, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, November 2018.

<sup>22</sup> DESIRE Project, *A holistic approach to conceptualising demand for sexual services*, May 2017, p.4.

placed under the umbrella term “demand”. The economic approach thus enabled a holistic consideration of the notion.<sup>23</sup>

Taking as a basis the economic definition of demand (“the willingness and ability to purchase a good or service”), demand was defined as “*the willingness and ability to use services*”. This notion is inseparable from the “supply” that refers to the provision of those services.<sup>24</sup> The notion of demand is, in itself, already split in two. There is a “primary demand”, which is the demand for the final product (e.g. customers demand sexual services), and a derived demand, consequence of the latter (e.g. in order to provide those services, a person selling sex will need a room to rent).<sup>25</sup>

These demands are embedded in complex social structures that involve different markets and actors that are interrelated and where various factors also come into play and influence the decision making of actors.

### 3.2.1. The actors in the sex industry

Three main groups of actors were identified: persons selling sex, facilitators, and buyers. All actors have different demands.

1. The **persons selling sex** are the persons providing sexual services for monetary or non-monetary benefits. These sexual services include direct intercourse, but also other sexual activities, such as webcam masturbation, lap dancing, and so on.
2. The **buyers** are those who purchase the services provided by the persons selling sex.
3. The **facilitators** are a more diverse group in terms of agents. Following the division of Brucket and Law,<sup>26</sup> three types of facilitators were identified: the agencies (brothels, escort agencies, pimps), the associates (mentors) and the contractors (cleaning service, guards, drivers, and so on).<sup>27</sup>

These actors interact differently according to the legal framework regulating the selling of sexual services.

### 3.2.2. The markets within the sex business

All the actors presented above have different types of **demands** (potentially generating derived demands) whose supply will inevitably involve at least another kind of actor. In this sense, it is not possible to understand the concept of demand by singling out one of the actors involved in this complex and interrelated network, as any type of demand will necessarily involve more than one type of actor for its supply. For example, a buyer wanting to purchase sex services will solicit a person selling sex directly or via a facilitator. The person providing sexual services might, in turn, also solicit a facilitator (e.g. to rent a room) in order to supply to the demand of the buyer.

Therefore, both the actors and the markets are interrelated. Actors may be involved in the market without awareness of their role within it. For example, a taxi driver who transports a sex worker to a buyer. The latter situation presents the demand of a sex worker for transportation to the buyer, and supply in the form of taxi services.

<sup>23</sup> DESIRE Project, Report on Demand for Sexual Services that can fuel Sexual Exploitation in the Context of Human Trafficking, June 2017, p.8.

<sup>24</sup> DESIRE Project, A holistic approach to conceptualising demand for sexual services, May 2017, p.5.

<sup>25</sup> Ibid.

<sup>26</sup> Brucket, C., & Law, T. (2013) Beyond pimps, procures and parasites: mapping third parties in the incall/outcall sex industry. Rethinking management in the adult sex industry project. Final report.

<sup>27</sup> DESIRE Project, A holistic approach to conceptualising demand for sexual services, May 2017, p.8.

The complexity of these interrelations are *de facto* impacting the different markets, as visible in the figure below<sup>28</sup>:

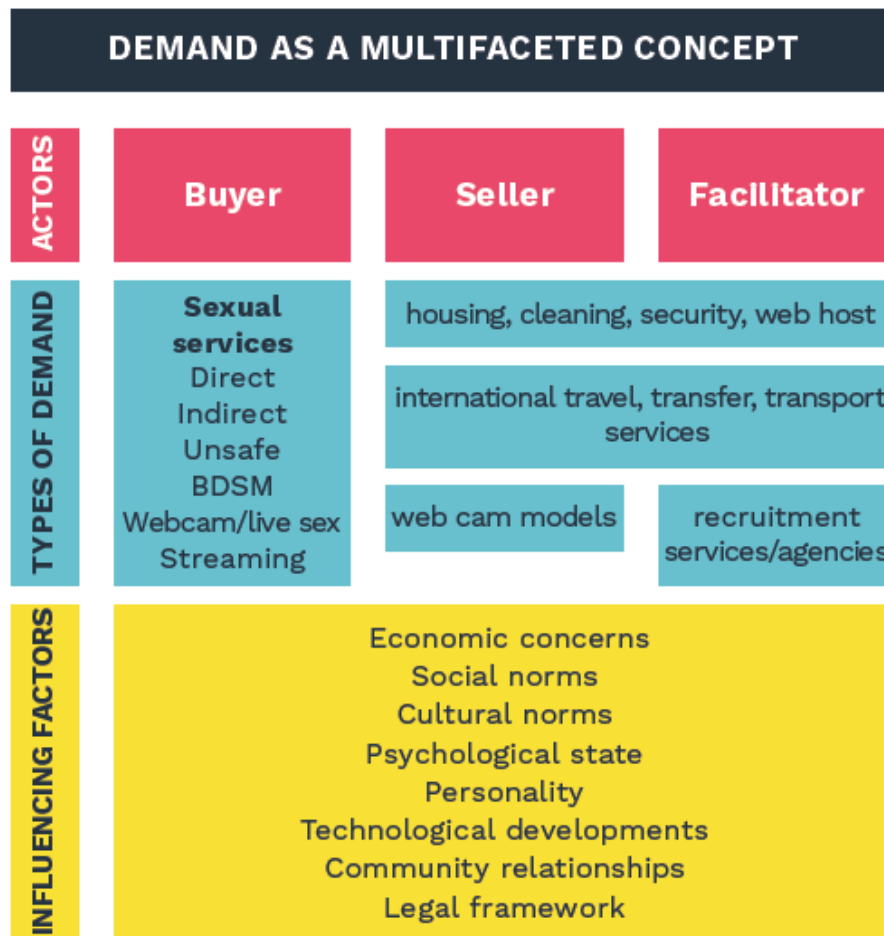


Figure 2: Different actors, types and factors of demand in the sex industry

### 3.2.3. Factors influencing the decision making of actors

Several factors shape the behaviour of the actors involved in this process. These include economic considerations (considered as a major factor influencing persons selling sex and facilitators), the personality, or the psychological state of the persons involved in these markets. In the specific context of the sex industry, the cultural context is very important regarding the behaviours that persons selling sex and buyers will adopt. Indeed, the cultural norms and values tend to impact the level of acceptance towards the provision of sexual services. Similarly, views on masculinity might also guide the choices of buyers. Furthermore, community relationships and the level of socialisation of different actors is a strong factor that will influence the behaviour of all actors presented here. Indeed, the “better” a person is socialised according to the applicable cultural norms, the least s/he will be inclined to enter in deviant behaviours. Other factors include the social background, the law and policy applicable regarding the provision of sex services, but also the technological developments.<sup>29</sup>

<sup>28</sup> Ibid, p.7.

<sup>29</sup> DESIRE Project, A holistic approach to conceptualising demand for sexual services, May 20176, pp.9-10.

### 3.3. Defining and understanding the scope of sexual services

The DESIRE project, in recognising shifts and trends in the sex industry, also wanted to ensure that the understanding of sexual services was broad enough to include all other “alternative forms of sexual services”<sup>30</sup> whereby, it may be possible that persons providing such services are also vulnerable to human trafficking. For the purposes of this academic exercise, and understanding the complexities of such a term,<sup>31</sup> prostitution as a sexual service is understood as occurring if there are four elements present:

1. a sexual service, which is understood as an exchange of actions of a purely sexual nature in direct contact,
2. some form of remuneration or payment, either in cash or in any other valuable/luxury goods,
3. a lack of an emotional relationship between the person offering sexual services and the person interested in buying them,
4. the provision of sexual services (as outlined in points 1-3) is made on a recurring basis.

Thus, the term ‘alternative’ may imply that the behaviours being analysed are similar or akin to sex work, but certainly not identical to it. As has been mentioned, they have some of the characteristics of sex work, but not all. The following practices were identified as being the type of exchange of actions of a sexual nature (in alphabetical order): BDSM, cybersex or web camera sex, erotic massage, exclusive call-girls, erotic dance, lap dance, table dance and individual striptease (in clubs), peep shows (and its variants) in shops and special centres, phone sex, sex sponsoring, sexting, and shopping-centres girls.<sup>32</sup>

Here the desktop research investigated whether legal regulations and organisational solutions in the field of public policy are characterised by social pragmatism, a focus on solving specific problems and harm-reduction strategy. The categorisation of these alternative forms of sexual services will be discussed further in relation to the regulation of the provision of sexual services in section 5, and the extent to which the legal and policy frameworks sufficiently clarify the scope of the meaning of sexual services within the domestic context. Indeed, this is an important exercise, because if we wish to reflect on the relationship between the behaviours referred to herein, and human trafficking, it is necessary to determine which specific forms of the provision of sexual services create conditions for human trafficking and, therefore, for the forced provision of such services – if so, to what extent?

Similarly, to what extent is this threat directly proportional to the degree of organisation of the social setting in which this service is provided? For example, in situations where there is any form of facilitation in the provision of sex services, such as an intermediary in reaching buyers or the organisation of someone else's sexual services, is the risk of human trafficking increased? On the other hand, where the person offering sexual activity is a freelancer, and the person undertaking the activity is fully autonomous in their decision-making process (e.g. choice of buyer), is the risk of human trafficking reduced?

Taking this into account, “alternative forms of sexual services” can be divided into two categories. The first, which can be seen as 'safer' for sex workers, includes phone sex, cybersex, sexting, sex sponsoring, and exclusive call-girls. The second, for this analysis pre-

<sup>30</sup> For more information please see: Deliverable No. 2.2: Z. Lasocik, Ł. Wieczorek, Academic article on alternatives forms of sexual services of the DESIRE project.

<sup>31</sup> For more on stigma and terminology etc, see DESIRE Project, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, November 2018.

<sup>32</sup> For more information please see: Deliverable No. 2.2: Z. Lasocik, Ł. Wieczorek, Academic article on alternatives forms of sexual services of the DESIRE project.



named 'at risk' of exploitation from third parties, should include all forms of erotic dance, peep shows with direct contact, erotic massage, BDSM, and shopping-mall girls.

This break down of alternative forms of sexual services is merely considered as an initial proposal, requiring further studies and research as verification of this hypothetical typology based on empirical data may prove to be an interesting and inspirational research project. The results can be of great value for the design of effective and rational state responses to the existence of various forms of satisfying the people's sexual needs. Such a response could serve as an effective means to eliminate human trafficking, and the rational actions of authorities taking into account a balance between individual rights and the public interest.

### 3.4. Defining sexual exploitation

The definition of sexual exploitation developed in this project seeks to be applicable and accountable to instances of exploitation beyond the context of trafficking or child abuse, to which this notion is usually limited.<sup>33</sup> The definition was to be functionally operational, with room for developments following its application throughout the course of the project. The definition was intensively discussed, and its evolution demonstrates how difficult it is to define such a complex phenomenon.

Initially, the definition read as follows:

***“Sexual exploitation is any actual or attempted interaction retrieval of sexual activity that leaves one party worse off (psychologically, physically, economically) than it was before the interaction and/or than it was entitled to or that is mutually beneficial but occurs in an “unfair” and/or “vulnerable” context”.***<sup>34</sup>

The core elements of this definition were that interactions are:

1. Harmful: “when an interaction leaves one party worse off (psychologically, physically, economically) than it was before the interaction and/or than it was entitled to”<sup>35</sup>, and;
2. Unfair: “an interaction leaves both parties better off than ex ante”. “Unfair:” interactions can be perceived as such either in the process, substance or outcome in which the interaction occurs and/or unfolds.” In this regard, it is acknowledged that establishing the (un)fairness nature of a transaction (or of its outcome) presents a major challenge and can only be done on a case by case basis.<sup>36</sup>

The elements of this definition enabled one to “transcend debates on consent when establishing whether an interaction is ‘exploitative’”<sup>37</sup> or not, a debate that has arguably taken too much space in the discussion on exploitation, and, as such, overshadowed its essential components.<sup>38</sup>

However, it was questioned whether it was possible to claim that the interaction is “mutually beneficial”. For example, a thorough reading of the content of interviews conducted in Poland allowed to formulate the conclusion that also persons selling sex know how to, and sometimes, manipulate the buyer for their own benefit. Of course, the beneficiary of such manipulation is always the sex worker. As a result of the discussion amongst partners, and following further

<sup>33</sup> Kaime Atterhög, W., & Nart, M., (2017) Towards a Comprehensive Definition of Sexual Exploitation Beyond the Context of Human Trafficking, Working Paper. International Maternal and Child Health, Uppsala University and DESIRE project, Working paper: Towards a Comprehensive Definition of Sexual Exploitation Beyond the Context of Human Trafficking, May 2017.

<sup>34</sup> DESIRE project, Working paper: Towards a Comprehensive Definition of Sexual Exploitation Beyond the Context of Human Trafficking, May 2017, p.4.

<sup>35</sup> Ibid, p.5.

<sup>36</sup> Ibid, p.5.

<sup>37</sup> Ibid, p.4.

<sup>38</sup> Ibid., p.7-8.



revisions of the definition,<sup>39</sup> the final definition of the sexual exploitation developed and adopted within the DESIRE Project, prior to fieldwork (see section 3.7 for research participants' understanding of sexual exploitation), reads as follows:

***“Sexual exploitation is the involvement in sexual services in which the party that provides them is taken advantage of, e.g. taken advantage of in a position of vulnerability and is treated in an unfair or harmful manner, irrespective of whether or not the latter has given consent.”***<sup>40</sup>

The development of the definition considered the paradox of “choice” in the context of vulnerability,<sup>41</sup> recognising the fluidity of the exploitation concept, wherein the “choice” of someone to engage in exploitative situations can be “triggered” by a wide range of structural, familial, personal socio-economic, psychological and/or physical vulnerability elements.<sup>42</sup> Such complex and interlinked societal or structural factors that characterize the process that “pushes”, “triggers”, and “pulls” (causal factors) may increase the risk of people to become victims of human trafficking for sexual exploitation. Accordingly, in the context of the sex industry, sex work can be a vehicle to human trafficking and sexual exploitation.

It is important to note, however, that not all people who are vulnerable end up being exploited and, thus, further research is needed on resilience and different exit strategies from poverty in different country and cultural contexts. Exploitative or “unfair” conditions are indeed defined by norms in a particular culture, and thus are subject of variations. Thus as with unfairness, any assessment of the decision-making process of a sex worker in source, transit and destination countries must be made on a case by case basis bearing in mind contextual factors from which such decisions are made.

### 3.5. Defining prevention

The term prevention has been defined in many ways and used in various contexts. Because this notion takes different meanings and forms according to the context in which it is applied, it is hardly possible to provide a definitive definition of it.

Some general features are, nevertheless, identifiable. Prevention always refers to “various activities undertaken in response to different types of social problems. Those actions are often regulated by various provisions of law. They are always taken by someone and for someone. All intended preventive actions have some general and detailed goals.”<sup>43</sup>

In this sense, all preventive actions have five components that enables one to define them in the specific field in which they unfold: “semantic (what prevention means in a specific field), legal (how it is regulated), institutional (who is responsible for it), practical (what kind of measures are taken) and teleological (what the goal of prevention is, what issues are covered, and what the target groups are).”<sup>44</sup>

The concept of prevention cannot be reduced to any of these elements. It is their cumulative result that provides the definition of prevention as applicable to a particular context. In the

<sup>39</sup> For example, the University of Warsaw Team (Prof. Zbigniew Lasocik) submitted an alternative definition: “Sexual exploitation occurs when one party in a sexual relationship takes advantage of the dependence or position of vulnerability of the other party, irrespective of whether or not the latter has provided consent” 24 October 2017.

<sup>40</sup> DESIRE Explanatory Note, November 2017, p. 3.

<sup>41</sup> DESIRE project, *Report on Demand for Sexual Services that can fuel Sexual Exploitation in the Context of Human Trafficking*, June 2017, pp. 18-19. See also Kaime Atterhög, W., & Nart, M., (2017) Towards a Comprehensive Definition of Sexual Exploitation Beyond the Context of Human Trafficking, Working Paper. International Maternal and Child Health, Uppsala University.

<sup>42</sup> See a conceptual framework for mapping and understanding the context and dynamics that can lead to exploitation of vulnerable people in society developed by Kaime-Atterhög, W. (1996). Street children and prostitution: the situation in Kenya. NU-News on Health Care in Developing Countries, 10, 27.

<sup>43</sup> Emilia Rekosz-Cebula, “What is prevention?”, *Bulletin of Polish Society of Criminology*, no.24, p.11-22.

<sup>44</sup> Ibid.

context of human trafficking for the purpose of sexual exploitation, each of these dimensions take a particular meaning.

1. The **semantic** one refers to the “*the suppression of the trafficking of human beings (Article 17 of the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1952), the discouraging of the demand that fosters all forms of exploitation of persons (Article 9 of the Palermo Protocol), decreasing the likelihood of the emergence of the phenomenon of trafficking in human beings (The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016), reducing children's vulnerability to becoming victims of trafficking (Article 5 and 19 of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings), discouraging the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking (Article 6 of the 2005 Council of Europe Convention), combating factors at the source of human trafficking (recital 2 of the Preamble to Directive 2011/36/EU of the European Parliament and of the Council of 2011).*”
2. The **legal** one is spread across various legal texts that include *The United Nations Convention for the Suppression of the Traffic in Persons and of the Prostitution of Others* of 1949; the article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000; the article 5 of the Council of Europe Convention on Action against Trafficking in Human Beings; and the preamble of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.
3. The **institutions** that share the responsibility of preventive actions against human trafficking for the purpose of sexual exploitation refer to a group of mixed actors involving both international and national public bodies, as well as the civil society, in which NGOs have a prominent role in this context.
4. The **practical** dimension of the prevention activities regarding human trafficking for the purpose of sexual exploitation are very numerous and diversified. These are listed in the Palermo protocol (“*legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking*”), in Article 5 of the Council of Europe Convention on Action against Trafficking in Human Beings (“*research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings*”). A more detailed list of measures that should be taken to reduce demand for trafficking is contained in Article 6 of the 2005 Convention, and in Article 18, Directive 2011/36/EU of the European Parliament and of the Council. These include: education and training (to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings), information and awareness-raising campaigns, research and education programmes aimed at raising awareness and reducing the risk, regular training for officials who can have contact with victims and potential victims of trafficking in human beings, including police officers; analysis of the need to deem as acts of crime involving the use of services constituting a form of exploitation (Article 18 of the Directive).)”
5. The **teleological** dimension includes the subjective and objective scope of prevention. The subjective scope relates to target groups, i.e. individuals particularly vulnerable to becoming victims of human trafficking, including, primarily, children and women;

stakeholders, such as institutions, entities and private individuals whose involvement and awareness of human trafficking problems can contribute to preventing this phenomenon; as well as the media. On the other hand, the objective scope covers phenomena related to migration, human rights, gender equality strategies and social problems (such as poverty), including, above all, the causes of human trafficking, such as the demand for specific services.<sup>45</sup>

### **3.6. Possible interrelations between demand reduction and the prevention of human trafficking for sexual exploitation**

The exercise to define core terms identified related to the prevention of human trafficking for sexual exploitation revealed the multifaceted and complex nature of this issue.

The notion of demand in the framework of trafficking in human beings for the purpose of sexual exploitation itself involves various actors and markets that are all engrained in a web where they co-exist in relation to one another. For instance, as outlined above, the demand of one actor is most likely to generate derived demands from other actors who would be the “suppliers” to the initial demand. In this regard, the notion of demand cannot be understood outside the framework of the network as a whole where all actors and markets are connected to one another. On top of this, other latent factors that drive the demand come into play. These are not visible in the specific and tangible social interactions among the actors at stake, but they influence the demand by shaping the decision-making process of the different actors involved. These are, for example, the social and cultural norms, the legislation, the economic dimension, etc. that will impact the demand and direct it.

Similarly, the definition of sexual exploitation implies that a clear-cut and one-size-fits-all mechanism cannot establish whether a situation is exploitative or not. In determining whether a sexual interaction taking place in the context of the sex industry is exploitative or not, requires a case by case assessment which takes into account specificities of each situation in order to determine whether or not the person providing sexual services is taken advantage of and is treated in an unfair or harmful manner.

The understanding of prevention further confirms the need to carefully understand the context that one is facing when striving to prevent and combat human trafficking for the purpose of sexual exploitation. Prevention in one context will not mean the same (or have the desired preventive effects) in another context. The five dimensions of prevention outlined above vary according to the context and result in a different understanding as well as form of prevention.

What comes out of all this is that the level of sophistication needed in the response to trafficking in human beings certainly needs to be proportional to its multifaceted nature and to its level of complexity.

### **3.7. Reflections based on empirical findings**

#### **CROATIA**

#### **DEMAND FOR SEXUAL SERVICES**

Several experts, persons selling sex and buyers interviewed in Croatia, believed that the existing legal framework in their country does not significantly influence the functioning of the sex industry by virtue of an increase or decrease in the demand for sexual services.

Indeed, from the perspective of the persons selling sex themselves, despite the criminalisation of the provision of sexual services, they emphasise that their involvement in the provision of sexual services is a survival strategy - as a way to pay the bills, as their job that provides food on a table - as a hard job, and even as a “necessary evil”. Four respondents stressed the

<sup>45</sup> Ibid, p.21.

burdens that they face, such as the fact that the provision of sexual services is not only physically and psychologically demanding but also there was a sense that everyone is against you: *"This is the hardest job on the world. Who hasn't tried it, doesn't know. Police is against you, neighbours, buyers, procurers. Everyone. Prices are constantly falling down, young and good looking are coming. You have to hold out this all.* (HR-SW13) This respondent suggested a sense of unprotection and as if sex workers are left behind on their own. Four respondents have also highlighted the necessity of legalising sex work, but to limit the work of procurers and agents.

The Croatian findings also identified two reasons why buyers engage in sex work. The hedonistic approach is motivated by a sense of fun, pleasure and satisfaction whilst the compensatory approach is due to the fact that they might be single and have no partners, compensate marital relations and so on. This in a way gives us an idea about some of the demand factors by buyers.

## EXPLOITATION

Persons selling sex predominantly associated sexual exploitation with three different elements:

- a) Coercion accompanying sex
- b) Economic exploitation of sexual service providers by procurers or others
- c) Violence and abuse (involving rape, paedophilia, using minors for sexual activities or mentally ill people)

Two sex workers clearly stated that the provision of sexual services is not related to sexual exploitation, and three equated it with trafficking and slavery. Both the concepts of sexual exploitation and human trafficking evokes a negative association from the buyers. For nine buyers, sexual exploitation meant coercion but without any or full access to earnings from the sexual activity. In short it could also amount to economic exploitation.

For three buyers, sexual exploitation included power imbalances with established relations of dominance and oppression.

For seven buyers, sexual exploitation is perceived as an organised criminal activity with inclusion of the procurer (N=4) and having not one, but a group of victims. On the other hand, three respondents recognised violation of human rights, noting that sexual exploitation is something that should be punished, and four buyers connect it with the use of violence (abuse and rape). Here for some buyers, sexual exploitation has a gender perspective involving women.

As to experts they shared their ideas on sexual exploitation more in detail. Their associations and professional experience-based descriptions are mostly oriented around the idea of coercion and involuntarily being engaged in sexual activities. More concretely, some of them equated sexual exploitation with rape, the use of all sorts of aggression and including forcing someone into sex work. It appeared that three respondents connected it with a wide range of behaviours from "the lighter ones" such as exposing someone to watch sexual activities to more severe ones such as rape (N=7), aggression (N=5) and forcing someone into sexual intercourse.

Respondents from the expert group recognised two dominant criteria when persons selling sex can be considered as a victim of sexual exploitation:

- a) using force or coercion and engaging a person in sexual activity against their own will (N=16);
- b) taking away money that has been earned from the provision of sexual services (N=10).

Other criteria were experiencing rape and being exposed to someone's aggression. Lack of free will is an element that respondents would also use to distinguish between regular sex workers and those that were forced into sex work and therefore exploited, even though for most of them it is difficult to notice the distinction. Particularly vulnerable groups from their point of view, are women which again confirms a strong gender perspective in this matter. Furthermore, three age groups are identified as being particularly vulnerable: children, young people and elderly people. Also, other factors enhance the vulnerability of a victim due to psychological vulnerability, economic "precarity", or lack of access to education. Specific social risks factors for sexual exploitation are mostly socio-economic and respondents see sexual exploitation as a social problem. It is increased due to:

- poverty;
- unemployment or low salaries and increased indebtedness in the population;
- political and institutional crisis.

Respondents from the expert group (N=2) also mentioned migration as a risk factor and only several of them connected it to individual risk factors, such as low self-esteem, lack of knowledge and information or a sense of powerlessness.

Combining risk factors with the idea of what sexual exploitation is, respondents are describing their strategy mostly as combination of rewards and punishments or a having "*a bait strategy*". They use as baits promises about better future, jobs, earnings or at first provide financial or material resources. After this, it follows a period of coercion and threats with an addition of violence, imprisonment or abduction. Sometimes, close family member or partner might be involved.

The online survey of the general public showed that 59% of Croats thought that sex work is always or almost always a form of sexual exploitation meanwhile 65% of the general public thought that adults should be allowed to choose if they want to sell sex for a living (60% accepted the right of adults to buy sex).

### ***Forced prostitution as sexual exploitation***

The majority of Croatian respondents were aware that there are people that have been engaged in selling sex against their will (77,7%). And 85,5% of respondents thought that authorities can help people not being forced to sell sex.

A slightly bigger percentage of respondents thought that people who are forced to sex can call authorities to help them from those thinking they cannot (43% to 36%) A majority of survey respondents (more than 83% in Croatia) thought that buyers should ensure that the persons they are buying sex from are not doing so against their will.

These results match those from the interviews with persons selling sex who mostly said that they do not trust the police; 14 out of 15 respondents demonstrated their dissatisfaction with law enforcement. Their criticisms can be grouped in three main reasons:

- a) there is unjust selection of who will be punished, referring to so called "elite prostitution"<sup>46</sup> which is considered to not be subject to prosecution, while street sex work is usually under police and judicial pressure.
- b) there is an experience of police and judicial corruption in the sense that law enforcement depends on a personal connection between sex workers, pimps, police officers or judge.

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<sup>46</sup> Term elite prostitution/sex work is linked to high profile buyers such as politicians, business people and celebrities. At the same time, sex workers engaged in elite sex work provide more expensive sex services and operate with agents that are linked to organised crime.



- c) basically, there is no clear dynamics of law enforcement and the law is sporadically enforced, while sometimes there are periods when is not enforced at all. *"Pure laughter. How many policemen are the buyers?!"* (HR-SW2)

## HUMAN TRAFFICKING

When it comes to human trafficking, different groups of respondents associated it with different aspects.<sup>47</sup> Buyers mostly referred to human trafficking as a form of organised criminal activity with its structural international frame and even as a global social problem and phenomenon. To a certain extent, it is again connected with a gender perspective and interactions between the victim and offender, violence is an important aspect as well as a denial of free will and freedom. Similarly, persons selling sex think of trafficking as caused by financial reasons and poverty, they also connect it to words such as, "slavery," a "movie story" or a fiction, and think that it doesn't exist in our social setting because only two persons selling sex had met a victim of trafficking, and mostly it was not a topic that was discussed amongst sex workers. There were some indications that the Roma population, or specifically Roma children and women, might be victims of trafficking but it is often viewed as part of "their culture", and occurring in domestic context. This is a topic that requires deeper analysis. Experts connected human trafficking mostly with different kinds of exploitation and forced labour, but several respondents stressed it as a horror or tragedy that one person is going through.

When it comes to knowledge about victims and offenders in trafficking, experts thought that victims mostly come from the countries in the Croatian neighbourhood, mostly Bosnia and Herzegovina, Kosovo, Serbia, Montenegro, or from the other countries in the region such as Ukraine or Moldova. Several respondents thought that there are also victims from Croatia that are either Romani population or come from rural areas. The groups identified as being most at risk for becoming a victim are people in poverty, people with poor education, young people. This is probably connected with perceiving trafficking as forced labour and an increased vulnerability of unemployed persons. Other vulnerable groups identified included women and persons that currently work as sex workers. On the other side, respondents, except for law enforcement professionals, knew very little about offenders.

## THE NETHERLANDS

### DEMAND FOR SEXUAL SERVICES

Considering the reduction of exploitation in the sector, Dutch policy/health care workers/law enforcement respondents seemed to have a general consensus that imposing legal solutions that make sex work illegal is not the most efficient approach to address exploitation within the sex industry. However, simultaneously complete legalization and facilitation by the national authorities was also questioned as this may lead to normalization. This double-sided approach seems to reiterate the dichotomy present in the perception of the industry. The Dutch respondents represented variant opinions, therefore, the views on demand were initially linked to moral judgements as to whether the sex industry is in fact an acceptable profession. Nevertheless, all respondents agreed that the sex industry has to be regulated and sex workers protected. Although Dutch respondents were not in favour of criminalising or punishing buyers, respondents did specify that those buyers who knew that they are using services of an exploited person have to be deemed responsible for this. Sex workers outlined concern regarding the increased regulation and 'nit-picky' rules imposed upon the legal industry, which

<sup>47</sup> De Koster, M., & Enhus, E., *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, DESIRE project deliverable 3.2, November 2018, p. 47.

seem to move the sex industry further underground, whereas one of the reasons for the legalisation was a more transparent sector. This trend was considered to be negative by sex workers, due to the lack of safety that can be provided within the illegal industry. This illustrates how demand from the side of sex workers is shifting, meaning that due to gaps in policy and (unintended) negative side-effects, sex workers enter a more dangerous illegal sector and are less inclined to report their experience out of fear for repercussions.

In the Netherlands, a larger group of survey respondents (43-44%) believed that the criminalization of the buying or the selling of sex would impact on the provision of sexual services by decreasing it (this response did not indicate whether or not they find these measures desirable since they were not asked this question), and 21% responded “don’t know”. Nearly 49% believes that legalisation of prostitution makes sex workers less vulnerable to abuse and exploitation. In addition 67% of the general public thinks that sex work is inevitable and will always exist in society (with 23% of the respondents undecided).

Furthermore, it seems that in general respondents, in all respondent groups, agreed that some regulations are more inclined to place sex workers in more vulnerable positions, making them more vulnerable to exploitation and less inclined to report such experiences.

## **EXPLOITATION**

The way in which persons selling sex defined exploitation varied depending on which sectors they were working in and their personal experiences with sex work. As was the case with service providers, they used the words human trafficking and sexual exploitation interchangeably. The variety of ways in which sexual exploitation was defined included unfair financial gain, coercion and force exerted by facilitating agents, exploitation by the municipality and window owners (increased difficulty to provide services and high rent prices) and exploitation by going beyond initial arrangement of service consented to provide (e.g. BDSM practices going too far). Interestingly, one sex worker also mentioned the exploitation by persons selling sex of their buyers by manipulating them for financial gain.

It is important to mention that buyers did not consider themselves to be the exploiting party. However, their views and associations with what sexual exploitation is varied significantly. A common trend was that exploitation included coercion and force. Furthermore, a financial element was often added. For example, the majority of the income earned by a sex worker being taken, or forcing debt upon a worker. Finally, for some it was difficult to define something that one has never been exposed to. For instance, a Dutch buyer who has very limited experience with buying sexual services mentioned the following: “I know very little about that. I think that when you are not in that environment, you hear very little about it. Of course, there are stories about pimps and loverboys, only, I am not exposed to this really” (NL-B07).

When talking about sexual exploitation, public and municipality officials mostly referred to anti-trafficking legislation and the financial gain. Moreover, sexual exploitation and exploitation in general terms was often used interchangeably in the interviews. Sexual exploitation was often approached from a labour rights’ and conditions’ perspective. Dutch respondents suggested that the sex industry as a sector should be treated as any other economic institution where labour rights and privileges should be applied. Furthermore, they referred to the lack of education programmes for persons selling sex about the work as well as some municipalities do not take necessary measures to protect sex workers.

### ***Forced prostitution as sexual exploitation***

The perception of the prevalence of human trafficking/sexual exploitation varied among the respondents in the Netherlands.

Among buyers of sexual services, the following answers were provided to the question: ‘Do you think sexual exploitation is common in sex work in The Netherlands?’:



- NL-B12: “Yes, it is common (50-60%)”
- NL-B13: “It’s far less common than generally assumed”
- NL-B14: “Yes because it’s a dubious sector, and that attracts criminality”
- NL-B15: “I consciously do not go to Eastern European prostitutes”
- NL-B16: “Pimps, human traffickers and racketeers in window prostitution are the biggest exploiters (...) Although pimps and human traffickers exist, I don’t think they are common”
- NL-B17: “This happens a lot in The Netherlands. The heroin hookers”
- NL-B9: “I know little of that”
- NL-B11: “Little”

This also displays how some individuals are further removed from the issue, making it difficult to form an informed opinion on a topic which already has so much uncertainty around it. This lack of familiarity with sexual exploitation specifically, may be related to the high prevalence of “I don’t know” responses among the Dutch respondents. In order to curb sexual exploitations buyers did not perceive themselves as being the responsible party. It was mentioned that buyers may not report out of shame or argued that the victim will simply deny exploitation anyway. However, some buyers did believe that an anonymous reporting system could be beneficial as currently they were unaware of what steps to take when identifying exploitation.<sup>48</sup>

It was clear among persons selling sex that they were indeed of the opinion that exploitation did occur within the industry. However, as outlined in the definition, the exploitation took a variety of forms. Some persons selling sex, both male and female, as well as buyers mentioned the use of pimps in the sex industry as exploiters. Several Dutch interviewees identified brothel/window owners and house-keepers (high rents) and municipality regulations (high taxes) as being the main exploiters. Persons selling sex also suggested that a training should be provided for sex workers. this way they could be informed about their rights and the dangers in the industry, resulting in them being more inclined to foresee situations of exploitation.

Policy and service providers were surely aware of exploitation indeed occurring within the industry. One recommendation mentioned by respondents to prevent or curb exploitation was to increase labour standards in the industry on the basis that if the government perceives it to be a legal occupation, workers should also be treated as such. Furthermore, municipalities should focus on protective policies and increase safety in the sector to prevent exploitation.

## HUMAN TRAFFICKING

The confusion between sexual exploitation and human trafficking in the Netherlands happens as there is a quite broad interpretation of human trafficking in the country’s counter-trafficking legislation: if someone brings a sex worker across the border for working in prostitution, even when this is entirely consensual, this is interpreted as trafficking in human beings. It is thus not surprising that persons selling sex themselves provide such situations as examples of trafficking (for instance NL-SW12, when asked whether he had noticed indicators of human trafficking within the male sex work milieu).<sup>49</sup> If sex workers and policy makers/service providers were using the terms sexual exploitation and trafficking interchangeably, clients did seem to make distinction between two. In many cases, trafficking was interpreted quite literally

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<sup>48</sup> DESIRE project, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, DESIRE project Deliverable 3.2, November 2018, p. 47.

<sup>49</sup> Ibid, p. 48.

as “trade” or “human trade”. It also illustrated how little policy awareness clients indeed have. There was quite some confusion in the Netherlands about what exactly constitutes exploitation and what is the role of consent and coercion. For example, if persons selling sex agree to pay high prices for the rooms or follow the rules, but still considers such prices and rules as exploitative, then consequently exploitation might be viewed as consensual.<sup>50</sup>

## POLAND

### DEMAND FOR SEXUAL SERVICES

Overall, in the Polish research, sex work was seen as undesirable for the most part, but public opinion leans towards the belief that everyone should have the right to choose this field of work. Respondents did, with great reservations, refer to the possibility of reducing the demand for sexual services. The questions referring to demand were quite often acknowledged by the statements that the demand was present always or that the demand is present now and it will be – legal regulations, regardless of their nature, will not change it. But it should also be noted that the respondents appeared to find question referring to demand difficult to respond to, like all others regarding the role of the state and law in creating a new face of sex business in Poland.

In Poland, the respondents stated that the scale of demand for sexual services has little to do with legal regulation. During the research, it emerged that a small part of buyers had knowledge of the law existing in Poland, which means that customers are not interested in whether the service they buy is legal. The situation changed in the case of buyers who are active on the Internet forum, they knew everything about the legal regulations and showed great awareness. Respondents agreed that the demand for sexual services is not affected by law, but by sexual need, which for many reasons cannot be implemented in a partnership/relationship. As for the demand for the organization of sex work, the respondents (sex workers and experts) declared that if facilitation of sex work is criminalised, the risk of abuse and exploitation is higher. The respondents were concerned that the attempt to prohibit the use of sexual services would also lead to the frustration of sexual needs and, consequently, the possibility of sexual abuse and the increase of sexual crimes. However, whilst respondents did not clearly indicate what the affect of regulation on the sex industry in Poland would be, there were varying opinions as to the level of government responsibility and intervention (i.e. simply collect taxes vs. provide health and safety training as for any other profession). An interesting finding did emerge from both interviewed victims of trafficking in Poland who, said that recognition of the sex industry as a profession would help to increase the safety of persons selling sex by pulling this profession out of the shadow and provide tools to fight human trafficking for sexual exploitation. This statement was confirmed by respondents from the Law Enforcement group of respondents who perceived difficulties in identifying persons forced to sex work during routine checks on escort agencies. For instance, respondents believed that where sex workers have to register and undergo monitoring leading to interaction with officials, policemen, doctors, will be better protected and have greater confidence in the event of a need to report abuse. Furthermore, recognition of sex work as a regulated economic sector would reduce stigma and stereotypes.

Similar to the Netherlands, also 67% of the general public agreed with the statement that the sex industry cannot be eliminated and it is not possible for the law to influence the demand for sexual services nor sexual exploitation. Instead, any influence on demand for sexual services can only be achieved by implementation of “everyday life practices” (or at least to start with that) - education of sexual culture and respect for every human being. Experts, however, declared that the law can be a tool for law enforcement to fight crime and trafficking, but they declared that the legalization of sexual services can give them such tools and control.

<sup>50</sup> Ibid, p.50.

## EXPLOITATION

Most of the respondents described sexual exploitation, in general, as an attempt of sexual contact without the consent of one of the parties involved. Several experts said that all forms of sexual contact in exchange for money or other goods constitute sexual exploitation or human trafficking. Several respondents cited the relationship between sexual exploitation and paedophilic acts or the abuse of helplessness. Buyers and some sex workers identified sexual exploitation with rape, and when the terms of the agreement are changed during sexual intercourse.<sup>51</sup> An important issue raised by one of the respondents (the buyer) was the need to feel power over the victim.

There were differences in how sexual exploitation is defined by groups of respondents:

- a. Buyers defined sexual exploitation as rape or change of contract terms and an attempt to extort additional activities during sexual intercourse.
- b. Women providing sex services and victims of human trafficking defined sexual exploitation as any sexual activity against the will of the other person.
- c. Experts mentioned similar examples, but three of them declared that for them, any form of sex for money is sexual exploitation.
- d. Polish public opinion in 43% claimed that sexual intercourse in exchange for money is always or most often (14% and 29% respectively) sexual exploitation.

### ***Forced prostitution as sexual exploitation***

Respondents knew that there is forced prostitution in Poland, they said at the same time that the scale of the phenomenon has significantly decreased over the last couple of years. According to respondents who have contact with people from the industry on a daily basis suggested that at the moment in Poland, approximately 10-20% of people providing sexual services are forced to do so (PL-V/02, PL-SW/14). Buyers declared that they have not witnessed any abuse nor believed that they could use the services of women forced to perform this profession. They had the conviction that they would "feel" if they were involved with a person forced to do sex work. One of the buyers reported that he was only a witness to violence caused by the partner of one of the girls working in the agency, his aggression was caused by jealousy. Victims said some of their buyers knew they were being forced, but only because they said it themselves. In a coercive situation, they were not able to choose their buyers and reach out to violent buyers. Experts said that in Poland there are people forced to sex work. They said that the most endangered sector is street prostitution and then "housing". In Poland, women working in these sectors are Bulgarians, Ukrainians, Belarussians, etc. Poles, convinced by experts, are forced to practice sex work abroad. There were exceptions to this rule, one of the experts gave an example of a Polish woman forced by her husband to prostitute herself in Poland.

## HUMAN TRAFFICKING

In Poland, for all groups of respondents, human trafficking evoked associations with forcing someone to prostitution abroad, retention of identity documents and enslavement. A key element seemed to be the need for movement between two countries. For example, one of the respondents testified that she was forced into sex work and subsequently sexually exploited by her so called friends, but she was not a victim of trafficking because she was not taken abroad for this purpose (PL-V02).

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<sup>51</sup> Ibid, p. 45.

### 3.8. Conclusions

#### Conclusions on demand for sexual services and the role of law

1. **There is very limited demand for sexual exploitation. There is however, demand for sexual services.** Of course, demand for sexual exploitation exists but it should be seen as an absolute margin not driven by specific needs of buyers. According to the respondents, exploitation in the sex industry is rather the result of financial greed of the human traffickers. Buyers demand sexual services but those who would like to hurt sex workers are extremely rare. Some of them may participate in the sexual exploitation but they are rather unaware of that. It is however possible that the demands of buyers e.g. low prices of sexual services can facilitate the exploitation of sex workers.
2. **Demand for sexual services exists despite legal regulations.** It is difficult to measure the causality between legal regulations and demand. Furthermore, according to the respondents, the legal regulations on demand e.g. criminalisation of buyers, prohibition of sex work, are not proper and effective instruments to control sexual behaviour.
3. **Respondents stated that it is impossible to eliminate sex work.** The majority of the respondents in all case study countries said that they would not buy sexual services themselves but at the same time they claimed that it cannot be eliminated. Paradoxically, respondents pointed out that adults have the right to make independent decisions about their sexual life, also to offer sexual services.
4. **Respondents believed that there are economic incentives underpinning the sex industry, significantly influencing the choices of persons selling sex, buyers and policy makers.** A person selling sex may interrupt the provision of services if she/he earns a certain amount, the buyer may choose the cheapest or the most expensive service and, for instance respondents in Poland and the public discourse in Croatia show that the state may not legalize sex services because the state is afraid of accusations that it will benefit from prostitution of others (taxes).
5. **Well-designed social policies in conjunction with criminal and administrative laws need to be further strengthened, acknowledging the complexity of the sex business and the economic factors that influence the choices of persons selling sex.** Many respondents pointed out that in the sex industry, criminal law alone is not effective. State authorities should design well rooted social policy including (labour) rights for sex workers to educate persons selling sex, to protect them and support them in case they want to stop providing sexual services.

#### Conclusions on the role of the state in preventing exploitation in the sex industry

1. **Public opinion seems to be leaning towards recognizing sex work as a morally condemned phenomenon, nevertheless sex work requires some government regulation in order to protect persons selling sex from exploitation.** Many respondents of the online survey stated that not only should people be allowed to choose to sell sex if they want to (PL and NL 75 %, Croatia 65%) but also that in case of violence or any form of exploitation sex worker should be helped.
2. **Violence and coercion were identified as key elements of exploitation by the respondents.** This corresponds to the reference to harm and unfair treatment in the

operational definition in the context of adult sexual exploitation and as such, violence and coercion should be perceived as necessary elements of sexual exploitation.

3. **Foreign nationals who are involved in sex work were identified as a vulnerable group but there is ambiguity regarding how regulations apply to them.**<sup>52</sup>In all countries, researchers determined that among persons selling sex there were foreign nationals. They engage in sex work because they can easily get anonymity and usually can make much higher earnings than in their homeland. Their vulnerability may also be related to the loss of social capital as migrants. Some of our respondents reported that foreign nationals face more problems and difficulties seeking and when at work than nationals.

#### 4. **PUBLIC DEBATES IN CROATIA, THE NETHERLANDS, POLAND AND SWEDEN**<sup>53</sup> **CONCERNING THE REGULATION OF SEX WORK AND THE ELIMINATION OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION**

##### 4.1. **Croatia**

Sex work in Croatia is not actively discussed by the government. In 2012, the legislative reform concerning criminalization of both persons selling sex and their buyers almost passed parliamentary procedure without public discussion. However, the draft never passed Parliament due to disagreements between policy makers. The only visible intervention of Prime Minister was his support for the withdrawal of the draft law from the procedure. Nevertheless, the Prime Minister stated that he was not convinced which regulation model is the most suitable for Croatia.

The media show relatively high interest for publishing and investigating stories about criminal offences connected to sex work or life stories of persons selling sex. On one hand, some newspapers highlight the sex industry emphasizing its economic component, for instance, consider the following headings: *For a day with Rich I earn 1.000 euro*<sup>54</sup>, *Students and Prostitution: By day they learn, by night they earn 3.000 kuna*<sup>55</sup>, *I do not give easy, I am a businesswoman*<sup>56</sup>. On the other hand, others stress the criminal and marginalising components: *Prostitutes in Croatia want better police conduct*<sup>57</sup> or *At margins – prostitution in Croatia: we have old laws and general lack of care, which solutions are offered?*<sup>58</sup>, the latter is encountered more rarely.

NGOs take different positions concerning the sex industry. It usually depends on socio-cultural contexts of their interests and aims. For instance, feminist associations often portray sex work as violence against women. They view the industry to be inherently harmful, especially in terms of physical and psychological well-being of persons selling sex. Other NGOs, especially the ones focused on the health care, have a rather neutral position when it comes to sex work, they often advocate for the implementation of harm reduction programs to prevent the spread

<sup>52</sup> DESIRE Project, Working paper: *A holistic approach to conceptualising demand for sexual services*, May 2017.

<sup>53</sup> Reference to Sweden is included in this section, as the information follows from desktop research and not empirical findings.

<sup>54</sup> Available at : <https://www.express.hr/life/zg-prostitucija-za-dan-s-tajkunima-zaradim-1000-eura-1159#>, last accessed on July 30, 2017.

<sup>55</sup> Available at: <https://www.express.hr/life/studenti-i-prostitucija-danju-uce-nocu-zaraduju-3000-kuna-1584>, last accessed on July 30, 2017.

<sup>56</sup> Available at: <https://dnevnik.hr/vijesti/hrvatska/ispovijest-hrvatske-prostitutke-za-provjereno-nisam-radodajka-ja-sam-poslovna-zena---455895.html>, last accessed on July 30, 2017.

<sup>57</sup> Available at: <http://www.index.hr/vijesti/clanak/prostitutke-u-hrvatskoj-zele-bolji-odnos-s-policijom/971913.aspx>, last accessed on July 30, 2017.

<sup>58</sup> Available at: <http://www.lupiga.com/vijesti/na-marginama-prostitucija-u-hrvatskoj-imamo-zastarjele-zakone-i-opcu-nebrigu-a-koja-se-rjesenja-nude>, last accessed on July 30, 2017.



of STDs.<sup>59</sup> The health care organisations also protest against abuse and violence against persons selling sex<sup>60</sup> in this way they do not seek full “eradication” of consensual sex-work nor absolute criminalisation of buyers.<sup>61</sup>

**Impact of public debate:** The prominence of the “pro vs contra” arguments in the public debate depends on the positions of social powers and influence. Established feminist associations who are promoting the abolitionist model are getting much more attention, as they are financially supported by the Government and participate in the eradication of criminal forms of sex work where persons selling sex are victims of trafficking in human beings.

#### 4.2. The Netherlands

The discourse around sex work policy in the Netherlands is focused on human-trafficking counteraction. The legalization of voluntary sex work by adults at the national level combined with a system at the level of municipalities was perceived as a way to reduce exploitation and gaining control over the sex industry. However, starting from 2005-06, the Dutch policy was highly criticized by pro-abolitionist movements and some political parties especially when the striking cases of exploitation in the licensed sector were revealed. In 2006, the police discovered a big gang of Turkish criminals who forced women to work in the sex industry. The fact that it happened in the licensed sex work sector became shocking for politicians and police. Moreover, as Goraj<sup>62</sup> described almost in one day sex work became synonymous with violence and crime. Consequently, trafficking in human beings became at the centre of the sex work policy discourse.<sup>63</sup> From that moment on municipalities turned to a more stricter control by reducing the number of the visible sex work facilities, limiting options to receive a permit, setting obligatory intake interviews, and prosecuting unlicensed sectors and individuals. Because regulation took place at the municipality level via a permit system big differences between municipalities exist. Therefore, in 2009, the first unified legislation was initiated, namely the Bill for the Regulation of Prostitution and Suppression of Abuse in the Sex Industry, or Wrp (Bill 32211) (in Dutch, De wet regulerend prostitutie en bestrijding misstanden seksbranche). The Bill reflects the discourse around normalisation of the sex industry on the one hand and exploitation/abuse that occurs in this sector on the other hand.. It calls for a permit policy at the national level that covers all sectors of the sex industry and stricter control with a specific focus on unlicensed sex work. It will fundamentally change the starting point of the prostitution policy: currently voluntary prostitution by adults is legal unless restricted by municipal law. Under the proposed legislation prostitution will be illegal unless a permit has been acquired. Until now (December 2018) this new law has not been adopted and the proposal is currently being revised.

**Impact of public debate:** To be able to fight human trafficking in all existing sex work sectors especially after the Sneep case, a new “enforcement” tool started being widely implemented. The process for obtaining a permit or the intake for sex workers (until recently obligatory in some municipalities) is aimed at gathering as much information as possible about persons selling sex to find signals of human trafficking. However registration ideas and intakes were abolished by many of municipalities after the wave of dissatisfaction coming from persons selling sex as well as judgements on violation of privacy laws by using intakes and

<sup>59</sup> Jovović I., 2014. „Priručnik za provođenje vanjskog rada u populaciji seksualnih radnica/ka njihovih klijenata“, ISBN: 978-953-99866-6-5.

<sup>60</sup> Available at: <http://www.udruga-let.hr/novosti/medunarodni-dan-borbe-protiv-nasilja-nad-seksualnim-radnicama/>, last accessed on July 30, 2017.

<sup>61</sup> From personal correspondence with Ms. Iva Jovović, executive director of Life Quality Improvement Organisation “FLIGHT”.

<sup>62</sup> Goraj, J. (2012). The influence of media on society's perception of prostitution. Critical discourse analysis of the Dutch media on prostitution in the years 2011, 2019 and 2000, unpublished Masters Thesis, University of Leiden, Department of Public Administration, (February).

<sup>63</sup> Wagenaar, H., Altink, S., & Amesberger, H. (2017). *Designing Prostitution Policy: Intention and Reality in Regulating the Sex Trade*. Policy Press.

registration<sup>64</sup> Although all parties agree that exploitation should be eradicated, there is still no common understanding between municipal organizations, governmental parties, NGOs, and even persons selling sex about when “exploitation” occurs. Therefore, despite the fact that the discourse around sex work is mainly focused on the reduction of sexual exploitation, it will always unintentionally or intentionally touch upon the questions of morality and definition of morality might differ between the main voices in the sex work debate around the country.

### 4.3. Poland

Although there is not an active ongoing discussion around sex work among Polish politicians and policy makers, some points, especially with regard to the legalisation of the sex industry are being raised occasionally. According to Plywaczewski,<sup>65</sup> one of the main discussions that was held in Poland around the sex industry was focused on whether the government should introduce a clear regulative system. Currently sex work represents the only legally operating profession in Poland that is not a subject to the Labour Code. As was argued by one of the former Polish Ministers Michal Boni, it is not difficult to introduce the new occupation in the labour legislation. However, should the profession be truly normalised, sex workers would become subjects to all social benefits including unemployment allowances. In this case, politicians are concerned that the general public would not accept the possibility of tax money to be spent on the support of sex workers who lost their jobs. Furthermore, if persons selling sex will hypothetically receive a “normalised status”, labour bureaus would have to offer sex work as a possible occupation and this might contradict the prevalent moral stances in the country. Another problem outlined by Plywaczewski was focused on administrative powers needed to implement the legalisation program. It requires a close collaboration of many state institutions, such as Health Service, Chamber of Commerce, Labour and Migration authorities that is challenging considering the Polish bureaucratic administrative systems.

There are also those politicians who stand for complete abolition of the sex industry, namely far right Catholic parties, such as, “Right of the Republic” (in Polish *Prawica Rzeczypospolitej*). For example, Artur Zawisza (member of the mentioned party), attempted to push through the ban on miniskirts and “heavy make-up” on the streets.<sup>66</sup> The proposal was not explicitly targeting the sex industry, but yet it had an implicit agenda to reduce the street sector of the sex industry.

Although some discussions that have been present in Poland throughout last decades have been illustrated, the dialogue is still considered to be insufficient to promote a certain legislative model. For example, some policy proposals were introduced in the beginning of 90s, such as the one of Imielinski who recommended to focus on: (1) healthcare; (2) reliable exit programs; (3) prevention of people to enter the sex industry, especially due to economic reasons.<sup>67</sup> This proposal did not receive the required attention. Finally, the only clear administrative focus taken by Polish authorities and NGOs concerns harm reduction programs, such as general HIV prevention among vulnerable groups that often includes persons selling sex.

**Impact of public debate:** since there is very limited discussion whether sex work should be legalized or criminalised in Poland there are several advantages and disadvantages of such situation. As to advantages we could say that because providing sex services in Poland is both not a topic of public debate and crime, policy/law makers do not pay attention to policies that would further restrict the provision of sexual services. They are not forced to register as sex

<sup>64</sup> ECLI:NL:RVS:2018:2856

<sup>65</sup> E. W. Plywaczewski, Phenomenon of prostitution in Poland. Around the problem of legalization, in P. Piotrowski (ed.), Understanding Social Problems Pathology, Rodopi, Amsterdam - New York 2006.

<sup>66</sup> Less 'Enticing' Warsaw A Miniskirt Ban in Poland? Spiegel.de <http://www.spiegel.de/international/europe/less-enticing-warsaw-a-miniskirt-ban-in-poland-a-481907.html> (last access: 11.10.2017).

<sup>67</sup> Imieliński, K. (1990). *Manowce seksu: prostytutcja*. Res Polona.



workers, they are not controlled by any public institution, they even don't have to pay tax on the service they are providing.

On the other hand there are some disadvantages of this limited attention. Because sex business is not under public/state control, then sex workers forced to prostitution are in high risk that no one will help them. Of course, forced prostitution is criminalised in Poland. But since very limited attention is paid by state institutions to this sector of economy and state has limited knowledge in this area, it might happen that not all victims of forced prostitution or trafficking for sexual exploitation will receive appropriate assistance or any support. Sex work is not treated as a regular job which also means that sex workers do not have access to the health care system or social services (e.g. pension).

#### 4.4. Sweden

Historically, sex work was not a criminal offence in Sweden, whereas the facilitation of such services has been criminalised for decades.<sup>68</sup> The political and public debates around the sex industry became activated in the beginning of 90s. They were mainly provoked by the publication of two reports by the commission of the Prostitution Inquiry (established in 1993). The last report was presented in 1995 under the title: "Sex Trade" where it was proposed to criminalize both "the purchase" and "the sale" of the casual sexual liaison.<sup>69</sup> The criminalization of the "sale", or in other words the "supply of sexual services" was believed to be helpful in stopping women from entering the industry. However, the Government introduced the Sex Purchase Act (criminalisation of buyers) to the Parliament in 1998, it was proposed not to criminalise persons selling sex, but buyers and facilitating parties. The Act constituted a part of the legislative package called the "women peace" (dedicated to the wide range of sexual offences against women). Finally, in January 1999 Sweden became the first country in the world to adopt the criminalisation of the "purchase of the sexual services". According to Ekberg and Waltman, the main goals of the Act were (1) to reduce the prostitution market; (2) address safety and wellbeing of people in prostitution (primarily women); (3) to reduce demand for sexual services from male buyers that will assist in combating trafficking in human-beings for sexual exploitation; (4) change attitudes towards the sex industry and by this facilitate the gender equality.<sup>70</sup> At first, the articles of the Act were not highlighted in the Swedish Criminal Code, but were added to it shortly after. The adoption of the law was widely criticized at the beginning by influential Governmental bodies such as Social Welfare Board, the Police, the National Court Administration, the Chancellor of Justice and the Prosecutor General.<sup>71</sup> The main criticism targeted the difference in ideological stances and the lack of empirical underpinning for the adoption of the model.<sup>72</sup> The demand question is widely used as justification for the adoption of the Swedish model. Such way to look at the sex industry is only possible if the sex industry as such is viewed as exploitative. In this case, all people who use the services of persons selling sex will ultimately exploit him/her.<sup>73</sup> From this perspective, the eradication of sex work market through the implementation of measures targeting the ones

<sup>68</sup> It was introduced in 1965, and highlighted in the current Criminal Code, 1962

<sup>69</sup> Wong, C. Christoffer Wong, 'Prohibition in Swedish Law of the Purchase of Sexual Service', in *Prostituzione e diritto penale: problemi e prospettive*, a cura di Alberto Cadoppi, Dike Giuridica Editrice, Roma 2014, ISBN 9788858203743, pp. 177–195. Interestingly, it was not defined what was meant by the casual sexual liaison, but it was evident from the report that other kinds of sexual services (e.g., naked posing) were included in the definition.

<sup>70</sup> Ekberg, G. (2004). The Swedish law that prohibits the purchase of sexual services: Best practices for prevention of prostitution and trafficking in human beings. *Violence against women*, 10(10), 1187-1218; Waltman, M. (2011, October). Sweden's prohibition of purchase of sex: The law's reasons, impact, and potential. In *Women's Studies International Forum* (Vol. 34, No. 5, pp. 449-474). Pergamon.

<sup>71</sup> Träskman, P. O. (2005). "Den som betalar för sex är en brottsling": om den svenska kriminaliseringen av sexköp som ett medel för att motverka prostitution. *Nordisk tidsskrift för kriminalvetenskap*, 73-92.

<sup>72</sup> Wong, C. Christoffer Wong, 'Prohibition in Swedish Law of the Purchase of Sexual Service', in *Prostituzione e diritto penale: problemi e prospettive*, a cura di Alberto Cadoppi, Dike Giuridica Editrice, Roma 2014, ISBN 9788858203743, pp. 177–195

<sup>73</sup> DESIRE, *Report on legal and regulatory approaches towards sex work in four EU countries*, October 2017, p. 32.

who demand sexual services will consequently abolish all sexual activities performed for remuneration. Finally, if the market is eradicated, it is not profitable to trafficked or exploited persons selling sex. It is an interesting and important understanding, but nevertheless, it requires a full change of attitudes and does not necessarily accept contradictions. Therefore, the public discourse around the Swedish Model is always touching upon the question whether there is a possibility of the voluntary engagement in the industry. One of the main positive points that is often outlined by the proponents of the model can be summarized in the following citation of Ekberg: “In Sweden, 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”.<sup>74</sup>

**Impact of public debate.** Taking into account the legislative reform, the support for a criminalisation of purchase sexual services by the general public has increased. The question remains whether this attitude change indicates that stigmatization of prostitution has been moved from sex worker to clients/buyers, or if the criminalization of purchasing sexual services has rather increased stigmatization of those who buy and sell the services.<sup>75</sup>

## **5. LEGAL AND POLICY APPROACHES TO REGULATING THE FACILITATION, PROVISION AND PURCHASE OF SEXUAL SERVICE**

There are many approaches to the regulation of the provision and purchase of sex amongst EU Member States, as the previous section demonstrated, the public discourse, social, political and cultural context is of relevance to how the legal and policy approach is framed. Nevertheless, it is possible to group together those that share similar features, with the identification of four types of approaches to the facilitation, provision and purchase of sexual services in the European Union. These are exemplified in the project by four case studies: Croatia, the Netherlands, Poland and Sweden.

In this section, the main features of each of these approaches will be outlined and reflected upon in light of anti-trafficking law and policy in each country as well as the findings from the fieldwork that, among other things, sought to determine if there is indeed a relationship between national legislation and policies on the provision and purchase of sex and on human trafficking; what legislation would make persons selling sex feel safer; and whether the demand for sex services can be reduced (since that demand may fuel trafficking in human beings for the purpose of sexual exploitation). As such, this section provides some of the major findings of this research whose added value mainly lies in examining the models selected here in light of the empirical work conducted in these countries.

### **5.1. Croatia: criminalization of the provision and facilitation of sexual services**

#### **5.1.1. The regulation of sex work**

In the Republic of Croatia persons selling sex are punished for misdemeanour if they are found guilty of providing sexual services.<sup>76</sup> The buyers who buy sex services are not prosecuted but are in fact used as witnesses for the prosecution. However, the buyers of sexually exploited persons may be convicted for a crime if they use the sex services by knowing these persons

<sup>74</sup> Ekberg, G. (2004). The Swedish law that prohibits the purchase of sexual services: Best practices for prevention of prostitution and trafficking in human beings. *Violence against women*, 10(10), 1187-1218.

<sup>75</sup> DESIRE, *Report on legal and regulatory approaches towards sex work in four EU countries*, October 2017, p. 44.

<sup>76</sup> Criminal Code (Official Gazette nos. 125/11, 144/12, 56/15, 61/15), Section 157 (criminal offence of “prostitution”), Section 162 (criminal offence of “pimping the child”).

are victims of trafficking in human beings, with the punishment of imprisonment ranging from one up to ten years.<sup>77</sup>

In Croatia, the law defines the provision of sex services as a misdemeanour of 'prostitution'. It elaborates on the offender, the action, and the punishment; anyone over the age of 14 can be an offender, an action of this misdemeanour is defined as "indulging in prostitution" which means that a person has to be involved in a longer period of sex work for it to be a crime (provision of sex service on a single occasion will not be convicted), and the punishment for this particular crime is either fine or imprisonment, or both. Providing sex services is a crime, it is illegal for any person to facilitate provision of sex services. Thus, brothels, escort services, and even associations that advocate for persons selling sex (except in the context of the health sector, abolitionism or outlawing) cannot be legally established. Contractors can also be liable for a misdemeanour if they allow harlotry in their premises or knowingly supports provisions of sex services in any form.<sup>78</sup> Whether the contractor received monetary or non-monetary benefits is irrelevant. However, it is possible that sometimes contractors are unaware of the fact that they are part of the sex industry, and a lack of their criminal intent would mean that they will not be punished by law.

Another law that has to do with the sex industry is the crime of 'prostitution' that prosecutes facilitators. Although the title of the criminal offence is 'prostitution', this particular legislation only incriminates facilitators, and not persons selling sex. The criminal law has created a double standard for sex workers where they are treated as offenders when they provide sexual services voluntarily (without any associates), but are considered victims if facilitators are involved and/or if forced to provide sexual services. Under the latter circumstance, the persons selling sex serve as witnesses for the prosecution in criminal trials against their associate. This can be a tricky law to navigate as occasions where the defendants accuse the persons selling sex of lying about their role could arise, or sex workers could be reluctant to disclose the details of the arrangement made with the facilitators in order to avoid being prosecuted for misdemeanour or to avoid the social stigma that comes with sex work.

The national legislation also provides for a qualified criminal offence of 'prostitution' where the persons selling sex did not consent to the provision of sexual services, and/or the relationship between the facilitator and victim was abusive or exploitative. For this crime, the offender can be anyone but the motive must be only for financial gain. Forcing or inducing the provision of sexual service through the use of threat, deception, fraud, abuse of authority, abuse of the victim's dependence on the offender, or abuse of position of vulnerability of the victim are all actions that are described by this law as criminal.

### **5.1.2. The understanding and regulation of sexual services beyond prostitution**

Even if sex work is mentioned in the Croatian legislation, the Criminal Code does not clearly define sexual services, whereas it often mentions such terms as "to provide sexual services"<sup>79</sup> or "other forms of sexual exploitation, including pornography"<sup>80</sup>. Consequently, the courts are responsible for such interpretation, but do not always pay much attention to this issue, focusing rather on statutory signs of crime<sup>81</sup>. Although the case law might use slightly different terms to describe "prostitution offences", such as, for instance, "provision of sexual services" or "sexual exploitation", it mostly deals with direct sexual contacts, not virtual. Furthermore, courts apply

<sup>77</sup> Croatian Criminal Code, Section 106(4).

<sup>78</sup> MAPOA, Section 7: „Whoever allows harlotry in his premises or in other ways supports prostitution shall be punished by a fine between 50 to 350 DEM or imprisonment up to 30 days.“

<sup>79</sup> Croatian Criminal Code, Section 157 (criminal offence of "prostitution").

<sup>80</sup> Croatian Criminal Code, Section 106 – (criminal offence of "trafficking in human beings").

<sup>81</sup> Croatian Supreme Court decision no. 3 KŽ-963/15-7 of 15.12.2015.

the same stance in cases concerning both sexual exploitation for commercial or non-commercial purposes. The third party-advertisements about sexual services and their distribution/provisions is also criminalised in Croatia (the advertisements in public – in press, television, on the Internet, etc.)<sup>82</sup>. However, in practice there are few criminal proceedings in this regard<sup>83</sup>. Still, the penalty is not applicable in the cases, when someone personally publishes the advertisement about private sexual services.

One might observe that the state policy in dealing with the question of sex work is implemented in rather selective way, since actions taken are largely focused on elimination of street sex work – the most visible or noticeable kind of services<sup>84</sup>. However, there is no clear effort on behalf of the state to limit alternative forms of sexual services – regardless of the fact that country authorities and law enforcement units are aware of their existence because the information about them is publicly available.<sup>85</sup> Therefore, it is difficult to define these activities as complementary. Thus, one can even assume that they are largely apparent because they are concentrated only on one aspect related to the provision of sexual services, while at the same time disregard the whole spectrum of alternative forms of sexual services.

What is more, sex work and alternative forms of sexual services in Croatia are not a political issue of great interest. Legislative reform of 2012 in regards to criminalizing both persons selling sex and their buyers can serve as a good example of this low interest approach. This reform passed parliamentary procedure almost without public discussion. Such discussion on sex work-like issues has never been initiated by the Croatian Government. This suggests that politicians have no will to debate the issue and they are reluctant to adhere to public opinion on the matter, in order to undertake the steps in regulating alternative forms of sexual services. Equally, this problem of alternative forms of sexual services is completely overlooked in public debate.

Despite the existing law in Croatia, sexual services are available. Taking this into account, it must be stated that the legal and political solutions adopted in Croatia are ineffective because they do not correspond to the set goals and aims of the legislative, which means that they do not contribute to the effective elimination of the provision, purchase and facilitation of sexual services.

### 5.1.3. Anti-trafficking regulatory approach

In the context of human trafficking – criminalised in the Criminal Code<sup>86</sup> –a facilitator could be penalised where they knowingly mediate in sex work if the legal requirements of the trafficking offence are met. Facilitators can be divided in two categories: 1) those who may influence the person who is having supervision over the other person, who may be a parent, legal representative, worker in the educational, social welfare or healthcare institution or prison and 2) those who have direct relationship with the person who will be sexually exploited such as pimps, drivers, state borders' officials, landlords or any other person having direct contact with the victim. The action of the crime may be committed either (a) by use of force or threat, deception, fraud, kidnapping, abuse of authority or difficult position or relationship of dependence, by giving or getting money or other benefit to gain the consent of the first group of above persons who are having supervision of others or (b) by recruiting, transporting, taking across the borders, hiding, receiving victim, exchanging or transferring the supervision over

<sup>82</sup> Croatian Criminal Code, Section 157(3) (criminal offence of "prostitution").

<sup>83</sup> Cameroon S.D. Brown, 2015. *Investigating and Prosecuting Cyber Crime: Forensic Dependencies and Barriers to Justice*. International Journal of Cyber Criminology, vol. 9, issue 1, pp. 64-74.

<sup>84</sup> Prostitucija u Hrvatskoj – preliminarni rezultati istraživanja, Mirovni Institut Slovenije 2017, p. 6.

<sup>85</sup> Munivrana Vajda M., Dragičević Prtenjača M., Maršavelski A., 2016. "Nekažnjavanje žrtava trgovine ljudima u Hrvatskoj – pravni standard kao fikcija ili stvarnost." Zbornik radova Pravnog fakulteta u Splitu, no. 53, vol. 4, pp. 991-1009.

<sup>86</sup> Croatian Criminal Code, Section 106(1). The basic criminal offence describes the person of offender, modalities of criminal activities, anticipated consequences for victims and punishment.

the victim. The purpose of both types of activities must be exploitation for “prostitution” or other forms of sexual exploitation, including pornography. The consent of the victim to be exploited does not exclude criminal liability for trafficking in human beings. The punishment provided for this crime is imprisonment ranged from one to ten years. Whoever recruits transports, takes across the border, hides, receives a victim, exchanges or transfers the supervision over the child for “prostitution” or other forms of sexual exploitation, including pornography, shall be punished by the imprisonment ranged from one to ten years.<sup>87</sup> However, when the crime is committed by a person influencing another person having supervision over a child, the punishment provided is the imprisonment ranged from three to fifteen years. The same punishment is provided for the case that criminal offence against both adults and children is committed by an official person by abuse of their authority (e.g. police officer, border control), or the offence is committed against greater number of people, or the danger of one or more persons is caused in a conscious manner.<sup>88</sup>

## **5.2. The Netherlands: regulation of the provision of sexual services**

### **5.2.1. The regulation of sex work**

For centuries, persons selling sex in the Netherlands have not been criminalised. However, in the beginning of the 20th century, facilitation of sex work was prohibited. The situation has changed since October 2000, when all sex work proprietors started operating legally. In some municipalities they had to acquire a license and all sex workers had to pay taxes. Consequently, sex workers started officially renting property as self-employed entrepreneurs. The lifting of the ban on brothels was done in order to create a transparent system that could be regulated so as to combat organized crime and human trafficking in the sector. Although the facilitation was decriminalised the municipality law in Article 151a created the mandate for municipalities to set rules to regulate sex work via permit system for sex businesses. Currently the Dutch legislation still lacks a unified legal system for the regulation of the sex industry at the national level. Municipalities have the freedom to develop their own policies. Local sex work policies are often based on the guidelines developed by the Vereniging van Nederlandse Gemeenten (Association of Dutch Municipalities, hereafter VNG), but nevertheless each city eventually chooses a slightly different way to regulate sex work within their municipality. This means that some municipalities have stricter regulatory policies, while others are more lenient.. Prostitution is illegal when performed without a permit although a permit is required. Municipalities are tasked with enforcement and monitoring of adherence to the permit requirements and pay attention to healthcare, labour conditions for the sex workers, and identification of human-trafficking victims. The latter is also often performed by the police and is one of the main reasons for the legalisation policy. In addition, the legalization policy adopted in 2000 put an additional load on national immigration, social/security, labour authorities, and fiscal authorities who had to incorporate sex work in their systems. Although the normalisation of sex work was another aim of the legalisation policy, sex work is still not viewed as a “generally accepted occupation”. The Labour Service will not advise to work in the sex industry to unemployed citizens, neither will it support the choice of those who are willing to join the sector (National Rapporteur, 2016).<sup>89</sup> It is not possible for third country nationals to receive a work permit for work in the sex industry. In a similar way banks might not consider sex work a trustworthy occupation and therefore it is not easy for sex workers to arrange a loan or a mortgage or even to open a business account. In addition, due to the hierarchical relation between an employer and an employee, it is said that sex workers cannot work as employee but have to work self-employed. On the other hand, all parties working in the sex industry are subject to taxation schemes. Due to the fact that sex workers especially who work in clubs

<sup>87</sup> Croatian Criminal Code, Section 106(2).

<sup>88</sup> Croatian Criminal Code, Section 106(3).

<sup>89</sup> Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen (2016). *Monitor mensenhandel. Cijfersmogelijk slachtoffers 2011-2015*. Den Haag: Nationaal Rapporteur.



and brothels cannot be regarded as fully self-employed persons, an opting-in arrangement was agreed with the tax authorities where the business owner pays the sex worker after tax deduction. ,

### **5.2.2. The understanding and regulation of sexual services beyond prostitution**

In the Netherlands, since the provision, purchase and facilitation of sexual services<sup>90</sup> is legal albeit subjected to conditions, the understanding of sex work is considerably broader than in other countries,. Firstly, in the Netherlands, some forms of behaviour that we refer to as 'alternative forms of sexual services' (see section 3.3) are treated as prostitution if they result in sexual services in any form. An example of such behaviour is a relaxation massage that ends with a 'happy ending'<sup>91</sup>, which is a form of sexual satisfaction. Secondly, the regulation of the prostitution sector is still being debated. Currently, there is an intensive discussion on a new law called the *Bill for Regulation of Prostitution and Suppression of Abuse in the Sex Industry*<sup>92</sup>, referred to as the 'WRP'. This law is an attempt to comprehensively regulate the provision of sexual services at the national level instead of municipal level in a further attempt 'to fight human trafficking, crime and abuse in the sex industry'.<sup>93</sup> Prostitution according to the draft, is *making oneself available for sexual acts with another person in return for payment*<sup>94</sup>. There is no doubt that this definition is sufficiently broad to include, to a certain extent, the behaviours and interactions that we refer to in this report as 'alternative'. , However, it does not apply to situations in which there is no direct contact between the person providing the service and the recipient.

In the Netherlands, peep shows and shows with sexual content are formally, i.e. in terms of registration, treated as places that provide sexual services, which means that in many municipalities they need a permit. However, the activity of people participating in such shows (people exposing their bodies or demonstrating sexual activity) itself is rather considered as pornography and not prostitution, because it is assumed that there will be no direct contact between the 'actor' and the viewer.

Sexting against the will and of minors falls within the definition of producing, sharing and possession of child pornography and is a criminal offence criminalised in Articles 240, 240a and 240b Dutch Criminal Code and can be sentenced with a maximum of four years imprisonment.

### **5.2.3. Anti-trafficking regulatory approach**

Human trafficking is criminalised in Article 273f of the Dutch Criminal Code and can be sentenced with a maximum of twelve years imprisonment, and in case of aggravating circumstances with life time imprisonment. The article includes nine forms of human trafficking. It combines the implementation of international documents with related practices previously criminalised in the Dutch criminal code such as profiting from the exploitation of a third person, and the international recruitment of persons selling sex even if the sex worker consents. Under Section XVIII (this section in general addresses "Serious offences against Personal Liberty"), Article 273f of the DCC explicitly states which acts, means, and intentions to exploit victims will be considered as human trafficking. The article mentions labour trafficking, trafficking for sexual services, trafficking of children (under 18), as well as trafficking for organ removal, forced begging and forced criminal activities. It has been mentioned time and again by the

<sup>90</sup> We are aware that the term 'prostitution' raises objections and controversy; however, we use it to clearly isolate this form of sex services from the other forms referred to in the report.

<sup>91</sup> Ibid.

<sup>92</sup> Joyce Outshoorn, Policy Change in Prostitution in the Netherlands: from Legalization to Strict Control, Sex Res Soc Policy (2012) 9: 233. <https://doi.org/10.1007/s13178-012-0088-z>

<sup>93</sup> Ibidem.

<sup>94</sup> DESIRE project, *Legal and regulatory approaches towards sex work in four EU-countries*, October 2017.

Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children that the section relating to human trafficking in the DCC is a complex provision that has elements that can be interpreted differently. This can cause several nuances that could make or break the case to be overlooked. Policies on human trafficking intersect various sectors, ranging from labour to organised crime. Human trafficking is identified as a major problem by the Dutch national policy on organised crime. It has been observed that there have been efforts made to not only dismantle trafficking networks, but to also understand and identify the systems or structures that facilitate human trafficking. For this, the policy on organised crimes stresses the importance of cooperation amongst various institutions such as police, municipalities, labour and tax office, NGOs, et cetera.

The approach adopted to combat human trafficking in the Dutch sex work industry ties back into changes in prostitution policy. The connection between sex work and human trafficking policies is indicated by the fact that the aim of lifting general ban on brothels was to regulate and legitimise the sex work industry, thereby providing persons selling sex with the same rights as any other worker/employee so that it would be easier to detect exploitation and abuse. Therefore, the Dutch approach to human trafficking is to combine criminal law that punishes traffickers, with administrative law for licensing and labour laws that technically protect victims.

### **5.3. Poland: criminalization of taking benefits from someone sex work**

#### **5.3.1. The regulation of sex work**

According to the Criminal Code of 1997, the provision and purchase of sexual services is legal but taking any profits from someone's prostitution is illegal. There are several crimes related to the provision of sexual services, such as: forced prostitution, procurement/pimping and human trafficking also for sexual exploitation. Also there is another provision in the Criminal Code regarding recording a naked image without consent of a person. At the same time Polish Petty Offence Code contain specific regulation offenses against public morals such as indecent behaviour, use of indecent words but also proposing another person indecent sexual act that violates public order.

There are no specific regulations regarding agencies offering sexual services (escort agencies and brothels). In the Code of List of Classification of Business Activities in Poland (list of businesses which any person can run in Poland) there is one category (no. 96.09.Z) which contains such forms of business activities as escort agencies, marriage agencies and hostess agency business. In other words, anyone can open an escort agency but cannot reap any profits from someone's prostitution since this is illegal. As a result, all brothels in Poland are officially operated as escort agencies, with the suggestion that sexual services are not provided, however in reality, it is well known that escort agencies provide such services.<sup>95</sup>

Regarding contractors working in so called sex business (e.g. cleaners, guard, drivers) all of them works based on civil law contracts or employment contracts like other workers in Poland. There is no distinction between contractors working in sex business and other companies (employer) in Poland.

#### **5.3.2. The understanding and regulation of sexual services beyond prostitution**

Whilst providing sexual services in Poland is legal, it is not recognised in law and policy as a profession and as a result there is no clear policy on the provision of sexual services relating to matters of health, tax etc. Similarly, the purchase of sexual services is also legal. However taking benefits from someone's sex services is criminalised. Finally, as discussed in section

<sup>95</sup> The Polish Language dictionary translates the terms "escort agency" as a place where sexual services are provided: <https://sjp.pl/agencja>.



4.3, there is no public debate about sex work or on commercial activities to satisfy sexual needs of people.

The fact that there is no such debate does not mean that these practices are not present. On the contrary, all of the sexual services specified in section 3.4 are present, in many variants, and they are relatively common. Unlike in the Netherlands erotic massage which ends with sexual satisfaction is not considered to be form of prostitution. The same applies to lap dancing or peep shows which in many cases lead to direct contact and sexual satisfaction the buyer. Such services as phone sex, cybersex, sexting and sex sponsoring have become normal for various social groups. Polish youth and their parents are quite well aware of sexting, because its negative consequences were subject of numerous publications.<sup>96</sup> Recent reports on suicide and blackmail cases<sup>97</sup> drew attention to even darker side of this issue. On the other hand, it is undisputed that the most-popular form among those that have been categorised as 'alternative forms of sexual services' is sex sponsoring, which became the theme of a feature movie several years ago<sup>98</sup>.

### 5.3.3. Anti-trafficking regulatory approach

Human trafficking (also for the purpose of sexual exploitation) is a crime according to Article 189a of the Polish Criminal Code with penalties from three to fifteen years of imprisonment. Preparations to commit this crime is liable to imprisonment from three months to five years.<sup>99</sup>

Despite the anti-trafficking framework that criminalises human trafficking for the purpose of sexual exploitation, the perception of violence in the sex industry is a very sensitive issue in Poland, for example, nearly a decade ago, the Deputy Prime Minister and Minister of Agriculture publicly asked *"Is it impossible to rape a prostitute?"*.<sup>100</sup> It was meant to be a "joke" but it can definitely serve as an example of perception on sexual violence in Polish society. Nevertheless, it does not imply that Polish authorities ignore sexual crimes. For instance, in 2016 law enforcement authorities (police, prosecution) initiated 2.500 cases of rape (1300 confirmed), 230 cases of taking advantage of the vulnerability of another person to have sex and 100 of abusing a relationship of dependence to subject a person to sexual intercourse. Unfortunately, this data do not allow for the further identification victims of human trafficking for sexual exploitation and victims of sexual violence amongst persons selling sex.<sup>101</sup>

## 5.4. Sweden: criminalization of the purchase of sexual services

### 5.4.1. The regulation of sex work

The purchase of a sexual service is criminalised in Sweden under the Sex Purchase Act and the Swedish Criminal Code.<sup>102</sup> Although the discussion about the regulation of the sex industry was quite active in the second half of the 20th century, the Sex Purchase Act was only enacted in 1999.<sup>103</sup> The Sex Purchase Act was amended twice after its introduction in 1999, namely in

<sup>96</sup> Seksting wśród polskiej młodzieży, Warszawa 2014, Fundacja Dzieci Niczyje.

<sup>97</sup> Available at: <http://www.echodnia.eu/swietokrzyskie/wiadomosci/opatow/a/zamiescil-nagie-zdjecia-nastolatki-w-internecie-zostal-zatrzymany,12197067/>

<sup>98</sup> Sponsoring, directed by Małgorzata Szumowska Poland, France, Germany 2011.

<sup>99</sup> For more information on anti-trafficking legislation and policy in Poland, see DESIRE Project, *Report on legal and regulatory approaches towards sex work in four EU countries*, October 2017, pp. 29-30.

<sup>100</sup> Available at: <http://www.newsweek.pl/polska/od-rzadu-do-nierzadu,12494,1,1.html>.

<sup>101</sup> See crime statistics: <http://www.statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-6/63496,Zgwalcenie-art-197.html>

<sup>102</sup> Swedish: Sexköpslagen, SOU 2010:49

<sup>103</sup> Section 11 of Chapter 6 of the Swedish Criminal Code: *A person who, otherwise than as previously provided in this Chapter, obtains a casual sexual relation in return for payment, shall be sentenced for purchase of sexual service to a fine or imprisonment for at most one year.*

*The provision of the first paragraph shall also apply if the payment was promised or given by another person.*

Swedish Ministry of Justice: [http://www.government.se/contentassets/602a1b5a8d65426496402d99e19325d5/chapter-6-of-the-swedish-penal-code\\_unofficial-translation\\_20140922.pdf](http://www.government.se/contentassets/602a1b5a8d65426496402d99e19325d5/chapter-6-of-the-swedish-penal-code_unofficial-translation_20140922.pdf).

2005, when some of its articles were added to the Criminal Code, and in 2010, mainly to increase the maximum penalty for the “purchase of sex” from six months to one year. Consequently, Sweden became the first country in the world to adopt a law that criminalizes not the provision of sexual services, but the purchase (Chapter 6, Section 11). Accordingly, facilitators (“koppleribrott”, Chapter 6, Section 12) are criminalised as well. The wording of the Swedish Sex Purchase Act is gender neutral, but the main justification behind the adoption of this legislation was the perception of “prostitution” as violence against women and girls, although there are reports on growing popularity of young boys to sell sex to older men. For the purchase to be criminalised, it is not necessary to receive services from professional sex workers, it can also be a so-called “one time action”. Buyers of sexual services in the Swedish context and legislation are referred to as “buyers”. In Sweden, not only the purchase itself is punished by the Swedish Criminal Code, but the intention to do so as well, as such attempts to buy sexual services are also penalised;<sup>104</sup>

Facilitation in Sweden is criminalised under the Chapter 6, section 12 of the Swedish Criminal Code. It is stated in the Criminal Code that: “a person who promotes or improperly financially exploits a casual sexual relations for payment of another person shall be sentenced for procuring to imprisonment for at most four years”.<sup>105</sup> The criminal status is extended in section 12 to anyone who promotes sex-services directly (Agencies and Associates) or indirectly (contractors) supports the supply and purchase of sex service. A typical facilitator that can (consciously or not) help a sex-worker is a landlord. If a landlord becomes aware that the sublease is using their property to sell sex-services and does not proceed with the termination of the contract, then he or she is considered a criminal under section 12 of chapter 6 of the Criminal code.

The provision of such services is not regulated by any legal sanctions and the consent of the sex-worker to provide a sex-service is irrelevant for the existence of the crime for the purchaser and facilitators. If the sex worker (victim in the Swedish context) decides to press charges against the alleged offender (in this case – the buyer), they might have access to legal assistance and receive financial coverage for harm done.

#### **5.4.2. The understanding and regulation of sexual services beyond prostitution**

In Sweden, sex services<sup>106</sup> are not limited to classical prostitution, but are understood quite broadly, because it is forbidden to use, inter alia, such forms of sexual services as web camera sex, phone sex, massage parlours and exclusive call-girls.<sup>107</sup> Such a broad understanding of the provision of sexual services has resulted from the fact that when the problem of prostitution was discussed in Sweden in the 1990s, advocates of the ban on purchasing such services

<sup>104</sup> Section 15 of Chapter 6 of the Swedish Criminal Code: *An attempt to commit rape, gross rape, sexual coercion, gross sexual coercion, sexual exploitation of a person in a position of dependency, gross sexual exploitation of a person in a position of dependency, rape of a child, gross rape of a child, sexual exploitation of a child, sexual abuse of a child, gross sexual abuse of a child, exploitation of a child for sexual posing, gross exploitation of a child for sexual posing, purchase of a sexual act from a child, purchase of sexual service, procuring and gross procuring shall be dealt with in accordance with the provisions of Chapter 23. This also applies to preparation for procuring, and to preparation for and conspiracy to commit and failure to reveal rape, gross rape, rape of a child, gross rape of a child, gross exploitation of a child for sexual posing and gross procuring.*

Swedish Ministry of Justice: [http://www.government.se/contentassets/602a1b5a8d65426496402d99e19325d5/chapter-6-of-the-swedish-penal-code\\_unofficial-translation\\_20140922.pdf](http://www.government.se/contentassets/602a1b5a8d65426496402d99e19325d5/chapter-6-of-the-swedish-penal-code_unofficial-translation_20140922.pdf).

<sup>105</sup> Chapter 6, Swedish Criminal Code. Accessed online at: [http://www.government.se/contentassets/602a1b5a8d65426496402d99e19325d5/chapter-6-of-the-swedish-penal-code\\_unofficial-translation\\_20140922.pdf](http://www.government.se/contentassets/602a1b5a8d65426496402d99e19325d5/chapter-6-of-the-swedish-penal-code_unofficial-translation_20140922.pdf).

<sup>106</sup> For the purposes of this section of the study, sexual services are understood to mean all activities related to the practise of prostitution, including alternative forms of sexual services. The authors have adopted such a broad definition, because the term ‘sexual services’ is equally broadly understood in Sweden, and when various documents refer to the provision of these services, it is difficult to determine which services they are talking about - classical prostitution, or behaviours that the authors have called ‘alternative forms of sexual services’.

<sup>107</sup> Available at: [http://eucpn.org/sites/default/files/content/download/files/po\\_se\\_pt\\_leg\\_.pdf](http://eucpn.org/sites/default/files/content/download/files/po_se_pt_leg_.pdf).

justified the proposed solution by claiming that their commercial provision was a form of exploitation of and discrimination against women and girls<sup>108</sup>. Moreover, the Swedish Parliament, in justifying the changes in the law that were supposed to penalise the purchase of sexual services in 1998, stated that prostitution is the violence of men against women<sup>109</sup>.

It is also interesting that despite the Swedish legislation adopted, the provision of sexual services, including alternative forms of sexual services, is not a marginal phenomenon<sup>110</sup>, but an ongoing, current social issue that the Swedish government is also aware of.<sup>111</sup>

When it comes to alternative forms of sexual services, there are several that exist in Sweden: sexting, phone sex, cybersex (webcam sex), erotic dance, erotic massage, and exclusive call-girls. In addition, the police believe that sexual services are also provided in strip clubs and body-care salons that officially function as massage, spa or beauty salons<sup>112</sup>. In practice, these places are only a camouflage for their actual activities. Phone sex is a less popular alternative form of sexual services than sexting, for instance, but it still exists in Sweden. However, these types of services are likely losing popularity, and are being replaced by more-modern ones, such as sex chat, webcam sex and various types of social networking sites, as mentioned above. The creation and distribution of pornographic photos and videos, even among persons under the age of 18, are legal in Sweden, if no payment (financial or non-financial) has been taken for their creation or distribution. Thus, indecent images can be exchanged without any hindrance, and this action will not be punishable as long as no payment is made. However, lap dance (striptease) although the provision of section 14 of chapter 2 of the Swedish Criminal Code states that 'Public appointments which constitute a pornographic performance must not be organized' and so-called 'pornographic performances' have been banned since 1982.<sup>113</sup>

However, in times when 'pornographic performances' were permitted, clubs located in Skåne in Southern Sweden were extremely popular. However, pure strip clubs are currently being heavily questioned by local authorities, as these facilities do not receive alcohol permits. Therefore, this is a rather peculiar, yet effective way of eliminating these types of clubs. This example clearly shows that there are also other non-statutory methods of restricting the functioning of such activities, and that local authorities can control alternative forms of sexual services by way of administrative decisions. At the same time there are also erotic massage parlours, in which sexual services are also provided. And, although there is no specific data in this regard, an analysis of the press shows that they are very popular, particularly in the case of Thai massage parlours.<sup>114</sup> One newspaper reports that thousands of people can use sexual services in just two massage parlours in Uppsala<sup>115</sup>. When it comes to exclusive call-girls, according to Stockholm authorities, the scale of this phenomenon is much larger than a decade ago, because in 2006-2014, the number of advertisements increased from 304 to 6 965<sup>116</sup>.

<sup>108</sup> Seo-Young Cho, A. Draher, E. Neumayer, Does Legalized Prostitution Increase Human Trafficking? World Development 2013 Vol. 41, p. 75.

<sup>109</sup> J. G. Raymond, Prostitution on Demand. Legalizing the Buyers as Sexual Consumers Violence Against Women 2004, 10(10), p. 1158.

<sup>110</sup> The data of Regional level investigations in Norrbotten, Västerbotten, Västernorrland and Jämtland show that in 2014-2016, between 8 234 and 9 694 advertisements about their provision were identified, while between 2 036 and 4 894 profiles were identified (see: <http://www.jamstall.nu/wp-content/uploads/2016/12/Prostitution-och-manniskohandel-for-sexuella-andamal-2016-rapport.pdf>).

<sup>111</sup> Förbud mot köpavsexuell tjänst Enutvärdering 1999–2008, Stockholm 2010: [www.regeringen.se/49bb8a/contentassets/2ff955c847ed4278918f111ccca880dd/forbud-mot-kop-av-sexuell-tjanst-en-utvardering-1999-2008-sou-201049](http://www.regeringen.se/49bb8a/contentassets/2ff955c847ed4278918f111ccca880dd/forbud-mot-kop-av-sexuell-tjanst-en-utvardering-1999-2008-sou-201049) [last accessed 7 November 2017].

<sup>112</sup> [https://polisen.se/Global/www%20och%20Intrapolis/M%C3%A4nniskohandel/Manniskohandel\\_Lagesrapport\\_17webb.pdf](https://polisen.se/Global/www%20och%20Intrapolis/M%C3%A4nniskohandel/Manniskohandel_Lagesrapport_17webb.pdf) [last accessed 7 November 2017, link no longer accessible 28 January 2019].

<sup>113</sup> Section 14 of Chapter 2 of the Swedish Criminal Code: *Public appointments which constitute a pornographic performance must not be organized*.

<sup>114</sup> Available at: <https://www.sydsvenskan.se/2013-08-18/han-koper-sex-pa-thaisalonger> [last accessed 16 November 2017].

<sup>115</sup> Available at: <https://www.svd.se/tusentals-sexkop-pa-massagesalonger> [last accessed 16 November 2017].

<sup>116</sup> Prostitution in Sweden 2014. The extent and development of prostitution in Sweden, County Administrative Board of Stockholm Report 2015:18, p. 19 (<http://www.lansstyrelsen.se/stockholm/SiteCollectionDocuments/Sv/publikationer/2015/rapport-2015-18.pdf>).

This significant increase can be interpreted to mean that the supply of such services has increased. At the same time, this data shows that, despite the legal and political solutions adopted in Sweden, the sex services market is rapidly growing instead of shrinking. Thus, the question arises as to whether Sweden's current model of dealing with the commercial provision of sexual services and the array of alternative forms of sexual services is an effective tool for reducing such demand for sexual services.

Undoubtedly, the provision of sexual services in Sweden is changing. There is less and less street prostitution (for example, in Gothenburg)<sup>117</sup>, and more provision of sexual services using the internet and mobile telephones,<sup>118</sup> including the phenomena that the authors refer to as alternative forms of sexual services. Also, data of the Swedish police<sup>119</sup>, the National Board of Health and Welfare<sup>120</sup> and the Swedish National Council for Crime Prevention (BRÅ)<sup>121</sup> confirm that the sale of sexual services occurs primarily through the internet, mobile telephones and mobile applications. Stockholm authorities also recognise the problem of controlling the provision of sexual services, including alternative forms of sexual services, especially when contact with buyers is established through special online chat rooms, social networking sites or mobile applications<sup>122</sup>. These problems are due to the fact that law enforcement agencies do not have sufficient knowledge in this area, or the resources to be able to effectively counteract these phenomena<sup>123</sup>. Another issue is that posting advertisements related to the provision of sexual services is not a crime within the meaning of Swedish law. On the other hand, prosecuting buyers using the abovementioned tools can become quite difficult, particularly when it comes to situations where there is no direct contact between the buyer and the sex worker (for example, webcam sex). It turns out that if the Swedish authorities wanted to consistently implement the solution adopted in 1999, they would have to block, for example, certain websites, as some politicians and activists have proposed<sup>124</sup>. This, in turn, can be difficult to accomplish, if the server on which the website is located is outside the jurisdiction of Sweden. Therefore, it can be said that the solution adopted in Sweden does not completely create the potential to effectively eliminating alternative forms of sexual services, particularly those that are provided via the internet or mobile devices.

#### 5.4.3. Anti-trafficking regulatory approach

In 2002, Sweden adopted new legislation that prohibits human trafficking for the purposes of sexual exploitation and forced labour and prescribes penalties of two to ten years of imprisonment.<sup>125</sup> It is forbidden to “use inappropriate measures – such as unlawful coercion, misleading activities, taking advantage of someone’s vulnerable situation, to take control over another person by recruiting, transporting, finding lodgings for or committing similar actions,

<sup>117</sup> Available at: [https://polisen.se/Global/www%20och%20Intrapolis/M%C3%A4nniskohandel/Manniskohandel\\_Lagesrapport\\_17webb.pdf](https://polisen.se/Global/www%20och%20Intrapolis/M%C3%A4nniskohandel/Manniskohandel_Lagesrapport_17webb.pdf) [last accessed 20 October 2017, link no longer accessible 28 January 2019].

<sup>118</sup> [https://polisen.se/Global/www%20och%20Intrapolis/Människohandel/Manniskohandel\\_Lagesrapport\\_17webb.pdf](https://polisen.se/Global/www%20och%20Intrapolis/Människohandel/Manniskohandel_Lagesrapport_17webb.pdf) [last accessed 21 October 2017, link no longer accessible 28 January 2019].

<sup>119</sup> [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/trafficking\\_in\\_human\\_beings\\_for\\_sexual\\_and\\_other\\_purposes\\_situation\\_report\\_10\\_sv\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/trafficking_in_human_beings_for_sexual_and_other_purposes_situation_report_10_sv_1.pdf)

<sup>120</sup> National Board of Health and Welfare, Prostitution in Sweden, 2007, published November 2008, [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>121</sup> Sexuell människohandel En fråga om tillgång och efterfrågan Rapport 2008:24, available at: [https://www.bra.se/download/18.cba82f7130f475a2f180006250/1371914721803/2008\\_24\\_sexuell\\_manniskohandel.pdf](https://www.bra.se/download/18.cba82f7130f475a2f180006250/1371914721803/2008_24_sexuell_manniskohandel.pdf)

<sup>122</sup> <https://nmtsverige.se/sites/default/files/prostitution%20kartlaggning%202014.pdf>. [last accessed 1 November 2017, link no longer accessible 28 January 2019].

<sup>123</sup> Real stars, Mapping of the Swedish Internet Sex Market: Part 3, Blog, available at: <http://realstars.eu/en/kartlaggning-av-den-svenska-sexkopsmarknaden-del-3/>.

<sup>124</sup> Nyheter 24, Sex säljs helt öppet på nätet – vi måste göra något, available at: <https://nyheter24.se/debatt/856268-sex-saljs-helt-oppet-pa-natet-vi-maste-gora-nagot> [last accessed 3 November 2017].

<sup>125</sup> For more information on provision of victim support and identification of human trafficking victims in Sweden, see DESIRE Project, *Report on legal and regulatory approaches towards sex work in four EU countries*, October 2017. Pp. 30-31.



with the purpose of making use of that person for prostitution or other sexual purposes.<sup>126</sup> For minors, the use of inappropriate measures is not required for the section in the Criminal Code on trafficking in human beings to apply. The crime of Human Trafficking is composed from the three following elements: 1) act 2) use of improper means, 3) purpose (of exploitation). All three elements are necessary to file a case as trafficking in human beings.<sup>127</sup>

In conjunction with the anti-trafficking law, the prohibition of the purchase of sexual services is premised upon the understanding that such a measure would eliminate human trafficking for the purpose of providing sexual exploitation.<sup>128</sup>

### **5.5. Respondents' knowledge and views of the functioning of the regulatory frameworks in Croatia, the Netherlands and Poland**

Taking into account the wide ranging approaches to the facilitation, provision and purchase of sexual services, as well as the anti-trafficking regulations, the following section provides an overview of the research participants' knowledge of the legal framework regarding sex work, their perception of how well it is functioning and to what extent the law impacts on the sex industry and increases the protection of those who are risk of sexual exploitation and/or human trafficking and any suggested alternatives to the current legal and policy framework.

#### **CROATIA**

Most Croatians surveyed online knew the legal framework regarding sex work in their country and most of them thought at the same time, that people will not stop buying sex services even if it will be criminalised. Sex workers were mostly familiar with the existing framework and some of them had personal experience with law enforcement, because they had to pay fines. When it comes to law and policies experts' and buyers' understanding of legal framework were in many aspects different, because half of them were familiar with the legal framework in Croatia, while the other half did not have or had only partially knowledge.

Whilst respondents, mostly had knowledge about the legal framework, their opinions about implementation were quite different. Sex workers were familiar with existing law, and some respondents were either neutral, or aware that law was necessary, while the majority of respondents strongly disagreed with the content of the existing law. Their criticism was mostly connected with the idea that penalties were too high (and this is general case with penalties, not solely those related to sex work), but also that that they are inconsistently enforced by law enforcement agencies (see section 5.6).

Opinions of the buyers about existing law varied. Some of them did not have an opinion or were not familiar with the law. But for one third of the buyers, the law was not acceptable and for some others it was acceptable to some extent. Reasons for negative attitudes come from a general sense of injustice and inappropriate legal framework in Croatian society. Few respondents articulated that the law should not punish sex workers or that sanctions were too high: the sex work legislation is viewed as overly punitive - much like other Croatian criminal law and penalties. Others also claimed that the legal framework was necessary, as it is necessary to follow and implement legal rules.

As far as implementation was concerned, more than half of the interviewed buyers felt that the law is basically not implemented or that it is implemented depending on the social background and connections that a person has, implying the existence of an unjust system that may be due to corruption. Others did not have a clear opinion or were not familiar with the law. The

<sup>126</sup> Chapter 4, Section 1a of the Swedish Criminal Code.

<sup>127</sup> Swedish Police Report. Available at:

<https://www.brottsoffermyndigheten.se/Filer/Föreläsningspresentationer/Presentation%20Kajsa%20Wahlberg.pdf>

<sup>128</sup> Sexuell människohandel En fråga om tillgång och efterfrågan Rapport 2008:24, available at: [https://www.bra.se/download/18.cba82f7130f475a2f180006250/1371914721803/2008\\_24\\_sexuell\\_manniskohandel.pdf](https://www.bra.se/download/18.cba82f7130f475a2f180006250/1371914721803/2008_24_sexuell_manniskohandel.pdf) [last accessed 20 October 2017].

buyers felt that the law was not affecting the sex industry, while the other half said that it had an effect.

Experts were also ambivalent towards law implementation. Law enforcement officers either thought that it was satisfying or did not want to comment, while NGO representatives demonstrated negative opinions. Some of them claimed that there was inconsistency in implementation of the law, that there were too long procedures and too mild penalties in certain cases. Further, half of the experts (mostly those NGO) actually believed that existing legal framework has no effect on sex industry and some of them were not sure. In recent years, there has been no significant change in legal system. It does not offer sufficient answer for the most severe types of trafficking and sexual exploitation, but on the other hand it is not effective to prevent sex work in general. One can conclude that there is a significant discrepancy between the law, reality and its implementation.

For example, regarding law enforcement, the opinion prevailed that it is not consistent and that it serves only political ends: there is an unjust selection of who will be punished, whereby so called “elite prostitution” is not subjected to prosecution, while street sex work usually is under police and court pressure. Further, there is an experience of police and court corruption in a sense that law enforcement depends on a personal connection. In general, there are no clear dynamics of law enforcement and the law is enforced only sporadically, when it brings political points. Croatian law enforcement officers mostly think that the enforcement of the law is satisfying or did not want to comment, while NGO representatives had the most critics, mentioning inconsistency in the implementation, overly long procedures, a bad regulatory framework in general, and penalties that are too soft for certain very problematic cases.

In Croatia, there appears to be significant dissatisfaction with the existing laws and law enforcement practices among the various groups of interviewees. Negative attitudes towards the law appeared to be linked to a more general distrust in public authorities and institutions. In Croatia, some key critics were: inconsistency among different actors (HR-B12), lack of public resources to improve peoples’ lives (HR-B26), and a general sense of corruption (HR-B28; HR-SW2). As a result, several experts, sex workers and buyers interviewed in Croatia, believed that the existing legal framework in the country does not significantly influence the functioning of the sex industry.

- *It takes too long to make a judicial decision (HR-E2)*
- *Insufficient and not applicable (HR-B12)*
- *It is not carried out consistently but arbitrarily (HR-B26)*
- *If you know a judge, you can do better. Inconsistent (HR-B28)*
- *Pure laughter. How many policemen are the buyers?! (HR-SW-12)*

Respondents were asked about what the best legal solution could be. Most of the sex workers were in favour of legalisation of sex work and they felt that it would improve their working conditions and increase their protection. Additionally, some of them underlined that it would make a difference if police would stop prosecute them. They stressed a need for fair and loyal competition on the market, balancing prices and protecting domestic sex workers from foreigners. They also suggested additional measures, such as providing social rights and combating corruption.

Some of the respondents demonstrated a lack of trust towards the state in a sense that it is usually ineffective in protecting citizens, laws were not followed and did not support the idea that the state takes a portion of their income through taxes. Regardless of that, arguments for legalising sex work prevailed. The reasons for this was a need for increased social order and increased protection of sex workers.



Buyers shared positive opinions about decriminalisation/legalisation and suggested possible changes. According to them criminalisation does not bring the expected social results, while legalisation would raise engagement both on the buyers and providers side to engage in sex work. The experts suggested that the criminalisation of buying sex services would not have negative effects on buyers.

From the experts' perception, there was a need to make changes in the existing legal framework and most of them agreed that role of the law is to improve personal protection of sex workers, protect public interest and prosecute criminal offence.

A significant challenge in the future will be to tackle more seriously problem of sexual exploitation and trafficking since respondents believed that criminals are always one step ahead and it is impossible to prevent their activities as well as that there are chances for the police to be proactive. Respondents mostly perceived that it is a responsibility of society in general and only few saw it as a responsibility of buyers or sex workers.

Regarding the question whether criminalising the buying or selling of sex would decrease the provision of sexual services, the answers of the general public showed a similar pattern for buying as for selling. Most Croatian survey respondents believed that such legal measures would not change the provision of sexual services or doubted that this would be the case. Only a small part of the Croatian public positively answered that the provision of sexual services decreases when buying sex is criminalised.

Croatian law enforcers who were interviewed are generally in favour of harsh sanctions towards sex workers and buyers, stronger police surveillance and eradicating sex work from society. Some of them had personal experience in their work with victims and offenders; many share the opinion that sex workers are in an oppressed, vulnerable and powerless position. The interviewed sex workers, buyers, policy officials and civil society stakeholders on the other hand, mostly favour legalisation/decriminalisation because in their opinion, this increases sex workers' protection against exploitative pimps, forced prostitution and trafficking.

The majority of the general public surveyed in Croatia agreed that legalising the selling of sex would make sex workers less vulnerable. Finally, taking into account the socio-economic background of the sex workers encountered, one Croatian sex worker stressed that prostitution or trafficking legislation cannot take away the poverty that is "*worse than the stigma of sex work*" (HR-SW8). See section 6 on social practices.

## THE NETHERLANDS

Sex workers seemed quite aware of the legal regulations on sex work in the Netherlands and some were able to provide detailed analysis and recommendations regarding these regulations. The same is true for survey respondents; more than 90% was aware of the fact that sex businesses needed a license for legally running a sex business.

When it comes to buyers it was quite interesting to observe that despite the fact that the majority of respondents had a Dutch nationality, they were not necessarily aware of the municipal policy concerning the sex industry. At the same time, compared to the other buyers, buyers interviewed in The Hague had quite an extensive knowledge about the sex work regulations in The Hague and other cities with big sex work markets.

It was quite clear that all civil society, law enforcement authorities were quite well informed about the fact the sex industry is legalised in the Netherlands. However, service providers and outreach workers were not informed about very specific local regulations or rules that are targeting, for instance, brothel owners. It is also worth mentioning that every municipality is responsible for its own local policy and, therefore, there was no expectation that the respondents would be aware of the regulations in all municipalities.

Regarding the assessment of the functioning of the legal regulations imposed on sex work, more educated buyers (university level) or more politically aware and provided very detailed

answers. They quite clearly stated their perceptions of policy measures on the regulation of the sex industry, anti-trafficking action and safety measures. In some cases, such perceptions were quite negative. Buyers were also dissatisfied with increasing control over the sector.

Similarly, sex workers although predominantly in support of legalization, did not like the trend of over-regulating the industry. For example, considering the experience of the concrete counter trafficking initiatives, as for instance, intake interviews carried out by window owners, one respondent maintained a critical attitude towards this policy as it is deemed to be ineffective and intrusive. Another respondent who worked as an escort and from home in the municipality where it was not allowed experienced frequent checks by the police as anti-trafficking measures, as something very disturbing.

Furthermore, as mentioned, there are a range of forces which are moving the industry towards a less visible space which is a concerning move for some. Some sex workers felt as though their voice was not sufficiently included in the policies constructed which are imposed for them, upon them. Sex workers in general are concerned of their privacy and for instance, are critical of obligatory registration. Furthermore, legalisation was also seen as being accompanied with negative consequences, such as the need to pay taxes and other associated costs. Desire of anonymity make it quite unlikely for sex workers to report crimes or exploitation. Consequently, they remain vulnerable. For instance, the illegality of working from home was mentioned by various respondents as a barrier to reporting signals of human trafficking and exploitation.

In some cases, the concept of 'policy' alone already brought confusion to respondents. However, some were able to provide some insight and analysis regarding the current approach taken by the government. Buyers emphasized that if the safe environment is provided for both buyers and sex workers there will be more possibilities for reporting and monitoring the industry. However, the current trends of eliminating visible sectors of the industry and the move of prostitution to private homes, are not necessarily making the industry safer for involved parties. The following citation serves as a good illustration of buyers' ideas about how to make the industry as safer place: *I am pro safety, and safety is created by letting someone work in a space which is safe, and which is monitored* (NL-B02).

Buyers seemed to have differing opinions on legalization. For example, one person mentioned that: *legalisation increases both the supply and the demand for sex work, but because it is legalised and there is actual legislation and policy about it, you are able to supervise and capture it more thoroughly. Then you have more insight in the way things occur and what the circumstances are. If it's made illegal, everything needs to happen under the radar. It will continue to exist, thus by making it illegal it will cause that some buyers do not dare or want to go, but it will continue to exist. I think by making it illegal the circumstances only will become worse* (NL-B07).

The buyers also mentioned disregarding the policy approach, the sex industry will always operate (NL-B08), because, in fact, legalisation does not change much in regard with exploitation because literally: *bad people will continue to do bad things* (NL-B09). At the same time one respondent pinpointed that: *Legalisation is also required to be able to provide an overview of the industry, and to direct policy towards creating safer working conditions* (NL-B13).

Experts were of rather critical opinion about the way sex industry is managed. Although sex work is a legal profession, it seems not to be acknowledged in the same manner as other occupations (e.g. cannot open a bank account). Respondents stated that there was a turn towards a more restrictive or overprotective attitude by municipalities in response to the Sneep case.<sup>129</sup> This moral panic turned policy backwards in terms of the empowerment of sex workers.

<sup>129</sup> The Sneep Case, Aimelo District Court, The Netherlands, 11/07/2008, available at: [https://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/sneep-case\\_en](https://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/sneep-case_en).

Although it is argued that the sex industry should remain legal, policy and service providers emphasize a need for better labour standards. In general, all respondents among this group agreed that the sex industry must be better managed. Furthermore, some sex work markets were not targeted enough in order to provide a safe environment and focus needs to be directed towards these parts of the sector (e.g. online).

All groups agreed and emphasized the need to ensure that sex workers are safe and protected. Therefore, among all groups there was a general consensus that the industry should be legalized and regulated. However, due to the different regulation policy imposed on each municipality, it could be more harmonized and focussed on protection as opposed to over regulation. Dutch regulation on sex work protect women, men, and transgender against forced prostitution. However, as was specified by two of our respondents from the municipality women are still a priority when it comes to monitoring and regulation of the sex business. Transgender sex workers and male sex workers are also under the radar of police and other administrative authorities.

## POLAND

Most experts knew the legal framework regarding sex work quite well, especially law enforcement, judge and NGO activists, but not all of them were familiar with law regulations, for instance politicians (parliamentarian, local deputy).

Some experts expressed a false expectation that there are additional regulations, in addition to criminal law, regarding sex services which they are not aware of. In reality, as already outlined in section 5.3, the only legal provisions regulating sex work are found in the Criminal Code.

Most of buyers did not know the legal framework regarding sex work in Poland or they were not interested in this topic. One of them said “I simply purchase of sexual services and I do not pay attention to the legal framework of this type activity” (PL-B8). Another buyer stated that sex services are illegal in Poland, which is not the case. These findings show a lack of knowledge about sex business in Poland among ordinary people.<sup>130</sup>

Most of the sex workers knew the legal framework. Four women were not familiar with that at all. Among them there were two sex workers from Bulgaria (road sex worker) – who were not aware whether sex work in Poland is legalized or criminalised. Because road sex workers are the most vulnerable ones these findings are very symptomatic. One of the sex workers who knew about the legal framework, declared that she had been told by a police officer that she can provide sex services because this is not prohibited in Poland. The officer explained that only those who take benefits from someone’s sex work are criminalised.<sup>131</sup> This example clearly shows that law enforcement can play an important role in increasing social and legal awareness among sex workers, especially as sex workers have rather limited possibilities to receive professional assistance from state institutions and from NGOs.

Two victims who were interviewed, did not know the legal framework addressing sex work in Poland. One victim declared that providing sex services in Poland is a crime, which is of course not true. While another victim stated that she has never been interested whether provision of sex services is legal or illegal in Poland.

When it comes to the assessment of the legal framework in Poland, according to half of the respondents of the online survey, buying and selling sexual services is legal in Poland, leaving the remaining respondents to claim that it is illegal. This means that a large proportion of the general public did not know the Polish legal framework in this area.<sup>132</sup> Similarly, almost half of

<sup>130</sup> DESIRE project, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, DESIRE project Deliverable 3.2, November 2018, p. 53.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid, p. 52.

the survey respondents believed that criminalizing the purchase and sale of sexual services does not affect the scale of the sex industry, while over a third of respondents were not able to answer such question. Nearly half of the survey respondents believed that the legalization of sex work in practice means that the sex workers are less vulnerable but a third held completely the opposite opinion. A final important finding of the public opinion poll was that two thirds of respondents thought that criminalizing the purchase of sexual services will not reduce the demand for these services. Nevertheless, it was quite a common opinion that the State should undertake activities that will contribute to increasing the safety of sex workers and allow the specific institutions and organizations to control providing sex services.

Most of the experts admitted that current Polish legislation regarding sex services is fine. But they were very negative about the implementation of the law. According to them fighting with pimping is not a priority task of the law enforcement bodies, especially prosecutors did not want to deal with such cases if the evidence is not very strong (e.g. only sex worker testimony). Much more attention was paid to forced prostitution and trafficking for sexual exploitation.

According to sex workers current legislation in Poland does not work at all. Law is only “on paper” (in the Criminal code) but in practice it does not work, because there is no motivation to fight with pimps and close brothels. This is of no surprise since many of escort agencies in Poland are controlled by Police, Border Guard as a source of useful intelligence. Most of the sex workers and one victim claimed that legal solutions do not play any important role when it comes to sex services. They thought, though, that legalization of sex work in Poland will help sex workers to work like all other workers and also will help those of them who are exploited. Sex workers and law enforcement indicated difficulties in criminal cases in gathering of evidence against pimps. Often the only evidence is a testimony of the sex worker. Even if law enforcement is successful in bringing criminals before the court, the sentences are rather minimal.

As to buyers most of them said that the legislation regarding sex work in Poland is not logical, because sex workers can provide their services but any form of organization is not legal. That is why most of them support the legalization of sex work in Poland which will help sex workers to work officially. According to the buyers, the sex industry will be more transparent leading to a reduction in situations where someone is forced to provide sexual services.

According to one of the victims, sex work in Poland should be legalized, while another did not have any opinion on this matter.

Most of the respondents (polling and interviews) tended to claim that the regulations (whatever legalization or penalization sex work or buying sex services) have no impact on the shape of the sex-business in Poland. Almost all buyers stated that criminalising sex work will not affect the demand for sex services. Experts often said that there is no ideal model of regulating sex work that would provide the best protection for sex workers, but it seems that the legalization of sex work gives more opportunities to control sex business by the state. However, when sex work or buying sex services are criminalised this business usually operates in the so-called “underground”. Therefore, experts had doubts whether these solutions can bring the desired changes, as certain institutions will not be able to obtain complete information about the sexual services market. Some experts claimed that legal regulation has a limited impact not only on sex work but also on the protection of women against sexual exploitation and human trafficking. While others said that current regulations help pimps and traffickers to expand their business because of lack control and that is why legalization is much better solution. At the same time some interviewees claimed that if sex work would be criminalised then state institutions will have stronger tools to eliminate forced prostitution and trafficking for sexual exploitation. But most agreed that legalization of sex work is a much better solution than criminalisation.

Most of the respondents stated there was no clear governmental approach to the regulation of the functioning of the sex business in Poland. However, there was a high level of agreement

that it is the government who should play a dominant role in this matter. State authorities should pay attention to provide safe places for people who want to sell and buy sex; support sex workers if they would like to change their current job or simply help sex workers whenever they need any help. Some experts also said that the government should improve the system of combating forced prostitution and trafficking for sexual exploitation, for instance law enforcement agencies or social services should monitor this area.

Only very few respondents claimed that the legalization of sex work increases trafficking for sexual exploitation. One expert said that in the Netherlands, where sex work is legal, traffickers have less problems to recruit and bring sex workers and to force them to provide sexual services.

When asked about the most advantageous solutions experts listed several steps that should be taken by state authorities and civil society. Firstly, the government should legalize sex work in Poland and design a system of supporting sex workers. It is important to underline that two thirds of respondents from public opinion poll claimed that the government should provide assistance to persons selling sex if they need help. Secondly, public institutions and NGOs should permanently monitor the sex-business in Poland and collect as much data as possible about it to prevent sexual exploitation and trafficking. In other words, we should know more about this peculiar type of activity in Poland. Thirdly, there is need of raising awareness campaigns among citizens concerning sexuality, sex services, sexual exploitation and trafficking. Finally, some experts tended to say that penalties for forcing into prostitution or pimping should be much higher than they are now.

Some sex workers said that that persons providing sex services should be more educated about their rights, sexuality and help that they might receive from the state or NGO. In other words, raising awareness campaigns among sex workers are needed. State should also create opportunities for sex workers to get better education or useful qualifications for those of them who wants to stop providing sex workers and start working in a different area.

As to buyers only one of them said that increasing their knowledge on sex services and sexual exploitation is needed.

One victim said that all private apartments where single sex workers provide services should be banned and only escort agencies and brothels should exist. According to this participant, private apartments are the most dangerous places for sex workers.

## **5.6. Relationships between legal regulations regarding sex business and the phenomenon of human trafficking**

### **CROATIA**

In Croatia, the issues of sexual exploitation and human trafficking are not set enough on the public agenda. Definitions of sexual exploitation given by the interviewees often shared an economic dimension – with many references to exploitation for economic benefits or financial gain and to labour exploitation through breach of contract, withholding pay, unprotected work – on the one hand, and to coercion and violence on the other hand. Regarding the prevalence of sexual exploitation, a large part of the general public claimed to be aware that there are people engaged in selling sex against their will- 77% of Croatian survey respondents. Many interviewees excepted that persons buying sex, see sexual exploitation and human trafficking as interchangeable. Like the term sexual exploitation, human trafficking is often associated with labour exploitation and the notion of ‘slavery’ or forced labour, treating people as a commodity and a source of income. On top of that, human trafficking was often associated with organised crime. Croatians experts, for example, described human trafficking as “lucrative work done by criminals” (HR-E4), “the worst part of the human psyche” (HR-E7), and an “international organized crime” (HR-E10).



## THE NETHERLANDS

Evidently, prevalence of exploitation in the given context is affected by many factors<sup>133</sup> and policy/legal approaches represent only one factor among many existing. Therefore, it is indeed very challenging to understand the relationship between policies and exploitation, and one of the reasons was described by Cyr in 1974,<sup>134</sup> he argued that: "Often, it is virtually impossible to determine whether different policy outcomes are due to variations in the specificities of policies themselves." The subject of the research, namely, sex work regulation complicates the process even more due to its ideological (moral) character that should always be acknowledged by researchers. More precisely, by addressing groups who are related to the industry in some way we can answer the question of how policy/legal frameworks can influence their decisions, how they can restrict or encourage their choices and consequently identify intended and unintended effects of legislation on (possible) exploitation and trafficking. It is important to remember that due to the ongoing debates about the official trafficking definition, we also focused on exploitation in the industry that might and, in fact, be broader.

Therefore, in our research we found several examples of how the absence of local policies in the Netherlands might intentionally or unintentionally create possibilities for exploitative conditions.

Since municipalities are responsible for designing and implementing sex work regulation policies and there are nearly 400 municipalities in the Netherlands, not all of them, in fact, have regulation policies and in more extreme cases some choose to have zero policies. Consequently, sex workers who are active in these municipalities are often forced to work underground, in illegal market or move to another place. It is commonly known that underground and illegal facilities are much more difficult to control and the chances of mistreatment, exploitation and trafficking in human beings increase. This tendency was confirmed by both policy makers and sex workers themselves.

Furthermore, some of the counter trafficking mechanisms that are aimed at the protection of sex workers might be perceived differently by sex workers and instead of facilitating the protection they make sex workers feel more unsafe. Consequently, it is another example of how policies affect the behaviour of sex workers and their safety. More precisely, considering the experience of the concrete counter trafficking initiatives, as for instance, intake interviews carried out by window owners, one of the respondents maintained a critical attitude towards this policy as it is deemed to be ineffective and intrusive:

*So I went there but you have to do an intake appointment. And so the very first questions that they asked me where: are you forced? and are you doing this independently? And I was like, yeah. No duh, so even if I was forced why would I tell you right now? And I think they asked me if I had a boyfriend. and i think they asked, like, what were my migration roots. (..) so they really look at: oh they really might be forced.(NL-SW4)*

Finally, monitoring measures in itself can be slightly counterproductive in its nature. For instance, municipality officials or police is making fake appointments and later enter the apartment of sex workers, however, if there are no concrete indications of a criminal offence they are not allowed to enter the property and it depends on sex workers whether she/he will let them in, as described by one sex worker:

*...and what the police does is, that is something where if it was up to me they should, that is the way right. Finding the women: that is the way. So they go and make appointment. They simply do that as buyer. Then they are at the door and at the*

<sup>133</sup> DESIRE Project, *Report on Demand for Sexual Services that can fuel Sexual Exploitation in the Context of Human Trafficking*, June 2017.

<sup>134</sup> *Policy Sciences*, 1975, Volume 6, Number, 4, Page 375 Arthur Cyr, Peter deLeon <https://link.springer.com/article/10.1007/BF00142380>



*moment that they say: we are police, then they actually do not have a warrant to enter the property. So when a woman says: I don't want you inside my house, then they don't come further. Although most women let them in, but then the difficult thing is, they do not release any information. (NL-SW7)*

One of the goals of such checks is to uncover trafficking/exploitation signals, but sex workers do not necessarily experience it like this. It is important to mention that not all municipalities have policies for escorts and even less municipalities had developed policies for sex workers who are providing services at home. This is how sex worker experienced the lack of policy in the municipality she worked in:

*Well, it is all a bit: yes, no, is allowed, is not allowed. and eh, yes well I think there should simply be clear rules about it. How and what. But, recently we went and called some hotels... yes, and then do you have policy for that? well, no, because that doesn't happen here. (NL-SW6)*

In a similar way, buyers interviewed expressed safety concerns and did mention that they prefer legal sectors, but were not eager to report the crimes. Consequently, if reporting is not facilitated, it is difficult to identify people who are trafficked. Furthermore, creation of safe and monitored space that certainly is a state's responsibility can facilitate better counteraction of trafficking in human beings. Buyers emphasized that if a safe environment is provided for both buyers and sex workers there will be more possibilities for reporting and monitoring the industry. However, the current trends of eliminating visible sectors of the industry are not necessarily making the industry safer for both all involved parties.

Buyers also mentioned that since it is very difficult or in many cases even impossible to provide services at home for sex workers it makes them quite vulnerable to exploitation. For example:

*I also find that a negative development regarding the policy approach of the government. Let's say, yes, that it keeps becoming more and more difficult for those ladies to receive customers at home where they feel comfortable, and safe. Right, where the hygiene is good, where they can be checked by the GGD every two months, and yes that just continues decreasing. (NL-B02)*

## POLAND

Respondents in Poland were not aware of the relationship between these two phenomena. Research conducted in Poland clearly indicated that all respondents: sex workers, buyers and experts did not see links between legal regulations regarding sex industry and the threat of trafficking in human beings. They also did not see the possibility of impacting on the demand by means of law and policy. Instead, they place the greatest role in educating and building citizens' awareness. According to the respondents, the high level of sexual awareness and sensitivity of all citizens leads to limiting the phenomenon of sexual exploitation. On the other hand, special training for sex workers, including access to useful information, will increase the level of safety of the work provided. But it is also very important to educate buyers who in fact are not interested in acquiring services from victims of human trafficking. In order to make customer education more visible and effective, using anonymous reporting systems, such as crime stopper or the stop app,<sup>135</sup> which allows the buyer who has suspicions in this respect to provide information to the police or any other authority.

## 5.7. Conclusions

Then the ultimate question remains; what is the impact of these policies on the occurrence and prevention of human trafficking or sexual exploitation? Overall, the research respondents suggested since that policy regulating the provision, purchase and facilitation of sexual

<sup>135</sup> DESIrE, Briefing paper on the use of technology to combat trafficking in human beings, September 2018

services in and of itself does not impact human trafficking, it is necessary to supplement such policies with additional measures to achieve the intended effect (see section 6). Nevertheless, there are similar trends in all countries e.g. a shift from outside prostitution to indoor prostitution, from visible to less visible forms of prostitution, increased use of internet.<sup>136</sup> These trends occur in all countries, suggesting that this cannot be a result of the (very different) policies in the three research countries. However, based on the scope of the current research objectives, it is not possible to draw far reaching conclusions regarding the impact of demand on the prevalence of human trafficking. It is true that in the Netherlands there is a broad range of instruments outside the criminal law that are used to monitor and regulate the sex industry with the aim to prevent exploitative practices taking place. On the other hand, we have seen that even with this set of instruments cases of human trafficking occurred in the licensed sex industry. Furthermore, also in other regimes a broad spectrum of measures to protect and support sex workers can be established. Even the Dutch regulation becomes more and more restrictive. Regarding the Croatian system the criminalisation of sex workers is problematic because it places a burden on sex workers in cases where they may become subjected to criminal acts such as sexual violence and abuse and human trafficking. What follows from the desktop research is that none of the case study countries are 'human trafficking-free' and that there are further steps required in order to ensure that each regulatory approach is effectively implemented. Therefore, rather than taking an either/or approach, it is preferable to see what options each system offers to strengthen the position of persons selling sex that will ultimately have a preventive effect on human trafficking.

### **Conclusions on the perceptions of the impact of the regulatory approach and the risk of sexual exploitation in the sex industry**

1. **According to respondents, the sex industry functions regardless of the legal framework within which it is situated.** That is why countries should focus on non-legislative measures to eliminate violations of right or exploitation that might occur in sex industry.
2. According to all group of respondents, persons involved in the **sex industry remain vulnerable to sexual exploitation**, regardless of the legal framework.
3. **Some persons selling sex and buyers did not know the law regulating the provision, facilitation and purchase of sexual services.** Some persons selling sex were happy with very general knowledge whether what they do is legal or not. Some buyers expressed their lack of interest in such knowledge, claiming they would do it no matter the legal regulation.
4. **Respondents believed that criminalising the purchase and sale of sexual services does not affect the scale of the sex industry.** Criminalisation will not reduce the demand for these services.
5. **Respondents found it difficult to understand the dichotomy between criminalizing the purchase of sexual services on the one hand, whilst on the other hand the provision of such services were legal.**
6. **Respondents believe that when purchasing and providing sexual services is criminalised then the sex industry will increasingly operate "underground" which will bring more risks for sex workers.**
7. **According to respondents, the legalization of prostitution in practice means that sex workers are less vulnerable.** Legalization of sex work will help sex workers to work officially. The sex industry will be more transparent and situations when someone

<sup>136</sup> DESIRE, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, DESIRE project Deliverable 3.2, November 2018, p. 68.

is forced to provide sex services would be avoided. That means better control of sex business.

8. **Decriminalization of non-abusive third parties (facilitators)** was perceived by respondents as a way to reduce exploitation. The criminalization of abusive facilitators should remain unchanged.

*Country specific conclusions:*

9. **Alternative forms of sexual services are not the subject of state interest.** It is an unseen issue. There is no clear policy on prostitution and on providing other sexual services (except in **the Netherlands**).
10. **Street sex workers** (in **Poland** and **Croatia**) are the most vulnerable groups according to the findings.
11. **Private apartments where single sex workers provide services** (in **Poland**) are considered by the respondents as the most dangerous places for sex workers.
12. In countries where the provision of sexual services is illegal (**Croatia**) or the facilitation of the prostitution of others is criminalised (**Poland**), interviewees tend to view the **existing law and policy framework as a source of unsafety/danger for persons selling sex and to identify legalisation or decriminalisation as major actions that would make persons selling sex feel safer.**

**Conclusions on additional measures needed to complement the legal regulation of sex industry in order to minimise exploitation and the risk of trafficking**

1. **Criminal law alone is not an adequate tool to regulate the provision, facilitation and purchase of sexual services.** A comprehensive approach which combines criminal, administrative and labour laws and social policies is preferred. The fight against human trafficking should be dealt with on various levels and various scales. There must be a synergy between the legal framework adopted, the awareness of the public of that legal framework and of the 'values' of the public.
2. Sex workers are predominantly in support of regulation and legalization, but they **did not like the trend of over-regulating the industry** (the need for intakes and registration/ the inability to delete their past from the register). However, most sex workers were still in support of **decriminalization** overall.
3. Respondents, in general, consider the provision of **sexual services as both a private and public matter**. It is private when it comes to the decisions whether to sell or to buy and it becomes a public matter as far as safety is concerned.
4. According to the respondents, especially sex workers and victims there is **very limited support for victims of human trafficking.**
5. **The Internet has become a major platform for the provision and facilitation of sex services,** requiring different mechanisms and competences for monitoring.

*Country specific conclusions:*

1. **Legalization does not mean normalization,** the sex industry can't be "normalized" even when legalization has taken place. This is an important finding coming from the **Dutch** research. There are still problems like lack of labour protection, and inability to open business bank account.
2. **Sex workers seemed quite aware of the legal regulations on prostitution in the Netherlands.** The lack of the unified legal system is a problem in the field.

3. There is a lack of unified policy in the Dutch municipalities regarding sex workers. **Consequently, policies are unclear and differences between municipalities are big.**
4. In the **Netherlands sex workers are not likely to register** at chamber of commerce to protect their privacy.
5. In countries such as **Croatia** and **Poland**, both the illegality of the provision (HR only) and facilitation (PL & HR) of sexual services and the desire for privacy amongst sex workers makes it **less likely for crimes or exploitation to be reported.**
6. **The implementation of legal and political solutions does not always correspond to their objectives (Croatia).**
7. In **Poland**, respondents believed that **sex work is work** and that it should be introduced as a new occupation in the labour legislation. However, as has been seen in **the Netherlands**, in order for sex work to be truly normalised as a profession, sex workers must become subject to all social benefits including unemployment allowances, pension, etc.

## 6. MOVING BEYOND THE LAW TO COMBAT HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION: SOCIAL PRACTICES AND ALTERNATIVES TO LEGISLATION

Besides the legal and policy frameworks on the provision, facilitation and purchase of sex services whose impact on combatting trafficking in human beings for the purpose of sexual exploitation is rather uncertain, other non-legislative avenues that directly seek to tackle trafficking in human beings exist.<sup>137</sup> Most of them can be used regardless of the regulatory framework in place while maximising their impact. The current section builds on the desktop research that considered the non-legislative measures that could be used to reduce the vulnerability of individuals to exploitation and trafficking. In addition to alternatives to legislation, the findings of the fieldwork also identified the importance of social practices that are required to ensure that the protection and support available to those who are vulnerable to exploitation and trafficking is premised on a solid social-institutional infrastructure. This section will outline the views of the research participants as to i) how social practices can be improved without further recourse to legal reform (section 6.1) and ii) how social practices can eliminate the human trafficking in the sex industry (section 6.2)

In both instances, the responses of the research participants corresponds to the alternative non-legislative measures that were identified in the desktop research that can be used in addition to legal measures, to ensure that human trafficking prevention is effective.<sup>138</sup> Whilst many tools with different purposes exist, they can be divided along three broad lines according to when they can be used in the trafficking process: prevention, identification and reporting/outreach.

<sup>137</sup> DESIRE Project, *Briefing paper on the use of technology to combat trafficking in human beings*, September 2018. DESIRE Project, *Briefing paper on non-legislative measures that can discourage and reduce the demand that fosters sexual exploitation related to trafficking in human beings*, September 2018. DESIRE Blogpost, *Providing direct field assistance: Programs for sex workers in Croatia*, May 2018. DESIRE Blogpost, *Empowering Public Authorities in the Technological Fight Against Human Trafficking*, September 2018.

<sup>138</sup> Ibid.

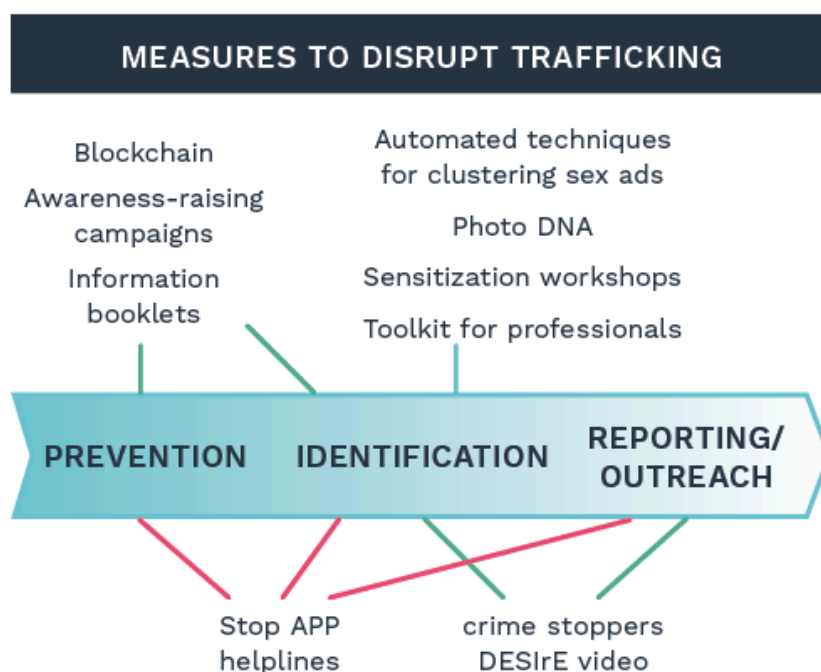


Figure 3: Technological and non-technological tools to combat human trafficking

This section ends with two concrete examples of alternatives to legislation that can assist in preventing human trafficking that can be applied regardless of the regulatory approach adopted regarding the provision of sexual services and regardless of the form of human trafficking (section 6.3 and 6.4). These examples will be provided and make reference to their applicability in the context of prevention efforts of other forms of human trafficking such as labour exploitation.

### 6.1. Social practices: improving the protection of victims of sexual exploitation without recourse to legal reform

#### CROATIA

In Croatia, interviewees mention a lack of organisations specialised in the provision of support and assistance and in understanding sex work, sexual exploitation and trafficking – which they relate to the general lack of public debate on the topic. The future development of such organisations should be encouraged according to the respondents in both countries. At the moment, in Croatia, support towards sex workers – victims of violence is mostly provided by NGOs, most often in shelters for violence victims. Only selected victims are provided free legal and medical assistance. Several respondents stress out that there are few support providers and insufficient on a national level.

#### THE NETHERLANDS

In the Netherlands there are several points that are worth paying closer attention to. Firstly, improvement of labour conditions for sex workers since the strengthening of the position of sex workers (one of the aims of the legalisation policy) has not received enough effort to realise labour rights for sex workers.<sup>139</sup> Secondly, informing sex workers about their rights and about the policy in the Netherlands and in the specific municipality as well as informing about

<sup>139</sup> See also DESIrE, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, November 2018, p.63.



organisations and persons they can turn to in case of need.<sup>140</sup> Thirdly, training for sex workers before entering the industry and that would give information to new starters on what to expect when working as a sex worker, what their rights are, where to seek assistance. Fourthly, better regulation of some sectors of the sex industry (e.g., home prostitution) that are now not regulated at municipality level or that are regulated in only a few municipalities. The new Wrp that is currently being drafted will hopefully address this aspect.

## POLAND

The most frequently presented ideas are twofold: good education and system solutions that would establish smooth cooperation between non-governmental organizations and law enforcement to exchange data, and support sex workers. The respondents especially sex workers, NGO representatives and law enforcement officers, pointed out that there is a need to sensitize the law enforcement to the suffering of victims of sexual violence. One of them, when asked about the meaning of sexual abuse, responded that this phenomenon is related mostly to children – see section 4.3 on the lack of public debate on the issue in Poland. Nevertheless, the important role of law enforcement in increasing social and legal awareness among persons selling sex is evident where sex workers reported that their knowledge of the regulatory framework came from a law enforcement officer. In order, to galvanise the role of law enforcement, sensitization workshops on the rights of sex workers and human trafficking awareness<sup>141</sup> are especially important in this regard, particularly where the Polish findings (also in Croatia) are indicative of a dual role of the police, that are both seen as a repressive agent (often by persons selling sex themselves, who complain often about police harassment), threatening them, but at the same time, the police was described as first resort when persons selling sex have a problem -see section 5.5.

### 6.2. Social practices: eliminating human trafficking in the sex industry

The safety of people providing sexual services depends on a number of factors, but also depends on the activities of all actors operating on the market of such services. Regardless of what the sex work regulation system is, the list of these actors remains unchanged: state, local governments, civil society, sex workers, buyers and facilitator. When it comes to the safety of sex workers and the elimination of the risk of trafficking in human beings, each of these actors has a role to play in this regard. To gain more knowledge on that we asked the respondents who participated in the research, what they think are the best ways to eliminate the threat of trafficking in the sex industry. The following outlines the views of the research participants as to the measures that should be further adopted in their own domestic context:

## CROATIA

Croatian experts involved in the research thought that public institutions can help a person to exit sex work and most of them would give a contribution as a citizen if sex worker asks them.<sup>142</sup> The most important strategy for support from public institutions would be providing a new employment opportunity followed by providing housing, financial assistance and health care.<sup>143</sup>

<sup>140</sup> See also DESIRE, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, November 2018, p.63.

<sup>141</sup> DESIRE, *DESIRE Handbook on demand in the context of human trafficking for sexual exploitation*, December 2018; DESIRE Project, *Briefing paper on non-legislative measures that can discourage and reduce the demand that fosters sexual exploitation related to trafficking in human beings*, September 2018 see examples of Peru, Kyrgyzstan, India or Ireland.

<sup>142</sup> DESIRE, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, *DESIRE project Deliverable 3.2*, November 2018, p. 67.

<sup>143</sup> *Ibid*, p. 64.

Respondents also find important inclusion into support provided by civil society organisations. If they are asked as citizens or professionals to help a sex worker, they could provide inclusion into civil society organisation or psychosocial support, financial assistance or police protection or appointing to social welfare centre, bureau for employment and providing an accommodation in the shelter.

## THE NETHERLANDS

Sex workers in the Netherlands recommended the facilitation of trainings in order to prepare and inform those who have autonomously decided to enter the sex industry.<sup>144</sup> This would consequently result in sex workers being aware of their rights and prepared for the potential dangers that they may encounter making them less vulnerable to exploitative practices.

Buyers often mentioned a lack of knowledge regarding the reporting of human trafficking, a situation which could be improved with increased use of anonymous reporting systems.<sup>145</sup> Posters and flyers could be distributed in the red light district which provide information on identification targeting buyers.<sup>146</sup>

One of the proposals was to improve labour standards of sex workers especially taking into account the fact that the sex industry is a risky and vulnerable sector. As was mentioned by one of the respondents (NL-E06) we should treat the industry as one of the dangerous sectors. For instance, one NGO representative in one of the Northern provinces reported that some of the sex workers are, in fact, living at their working places behind the windows, a situation which was also observed by the research team during a field visit to Groningen, where a sex workers appeared to be living in their room.

One of the suggestions to increase labour standards was to create an NGO that would facilitate sex services, but not receiving profits from doing so. In this way it was proposed to make financial gain by third parties impossible (also for the Government).

Slightly different, but similar is the initiative in the municipality of Amsterdam, called My Red Light. It is a window brothel owned by the municipality, but run by sex workers. Although the initiative is innovative our respondents from the municipality did admit that it is very difficult to run the place, since the sex workers encounter similar problems as any other ordinary brothel owner.

The lack of possibilities to hire sex workers from third countries is seen by some respondents as one of the problems that is partly pushing the sector underground, because third country nationals cannot obtain a work permit for working in the sex industry

Since intake interviews with brothel owners were considered problematic for several reasons, they suggested to still perform intake interviews, but done by social workers rather than brothel owners.

It was also proposed to have better surveillance and established cameras in the Red Light Districts. Some municipalities are better in making their regulated sectors safer than others.

As it is clear that home sex work is inherently vulnerable sector that requires attention, some of our respondents proposed several measures on how to assist home sex workers:

*“I would always want to ensure that there is an information stream towards the sex workers, that that is implemented as efficiently as possible. And that is really about victims of human trafficking that they receive the information necessary and know where they can go” (NL-E15).*

<sup>144</sup> Ibid, p. 64.

<sup>145</sup> DESIRE Project, *Briefing paper on the use of technology to combat trafficking in human beings*, September 2018.

<sup>146</sup> DESIRE Project, *Briefing paper on non-legislative measures that can discourage and reduce the demand that fosters sexual exploitation related to trafficking in human beings*, September 2018.

*“for the sex workers that want to work from home, well I would simply like to engage in a lot of dialogue with them. What is needed to work safely and what is the reason that they do not work within the permitted branch” (NL-E08).*

A policy respondent recommended ‘love hotels’, where sex workers can take their buyers to neutral grounds in which they can provide their services in a safe and monitored space. In this way they could organize to meet buyers for an hour or two, and have the guarantee of safety for them and their buyer.

## POLAND

According to respondents, there is an urgent need for high quality education on human sexuality and in the field of sexual exploitation. For instance, social workers should be offered education in the field of sexual exploitation covering legal regulations, the nature of sexual exploitation, parameters of personal autonomy, assertiveness, dynamic of the interaction and some security issues.

Respondents also mentioned the organization of social actions directed at sex workers so that they would feel social support and would not be afraid to apply for help.<sup>147</sup> They proposed to open in bigger cities easy-accessible community centres run by local NGOs where one can get medical, psychological or legal advice/support. They do not need to be open 24/7 but few times a week for few hours would be sufficient.

According to the interviews conducted, sex workers in Poland are not always aware of their rights but also the risk of human trafficking. The development of a new international, anonymous application for sex workers providing relevant information<sup>148</sup> could increase the awareness of those people and thus serve better their safety. Such an application would consist of minimum 4 tabs: “regulations”<sup>149</sup>, “human trafficking”<sup>150</sup>, “where to look for help”<sup>151</sup> and “forum”.<sup>152</sup> Potentially additional tabs such as “contraception”, “venereal diseases” or “alert” can be added.

Another idea is to start a social debate on sexual exploitation, as it is still an unspoken topic in Polish public discourse, to the extent that some policy respondents or those who act as public trust continue to downplay the problem of human trafficking or bypass the problem of sexual exploitation.

### 6.3. Alternatives to legislation: Anonymous reporting system and naming and shaming

The Dutch research displayed that in some cases victims were too scared to report crimes due to the illegality of their work. For instance, a sex worker worked from home due to uncertainty as to whether her operation is legal or not. In response to this anonymous reporting systems

<sup>147</sup> DESIRE, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, DESIRE project Deliverable 3.2, November 2018, p. 63.

<sup>148</sup> The idea of such application was presented by intern of the Center Aleksandra Szumny.

<sup>149</sup> In the “regulations” tab there would be a map with information on the legal regulation of prostitution in countries both in Europe and in the world. After clicking on the country, specific legal acts and information about applicable regulations would be displayed.

<sup>150</sup> The “human trafficking” tab would provide simple and practical information about human trafficking, what it is, what are the forms of it, what are the indicators of human trafficking and how to avoid become a victim.

<sup>151</sup> In the “where to seek help” tab, there should be telephones for all organizations supporting victims and fighting against human trafficking and all other contact details for institutions where one can get psychological or legal help. This tab should contain an anonymous notification system for selected non-governmental organizations about suspected trafficking in human beings.

<sup>152</sup> The “forum” tab would be a place where people providing sexual services could exchange information and experiences. Sex workers could ask questions, support each other, warn or make contacts. Such a “forum” would not only serve as a tool to exchange information but also fight against stigmatization and exclusion.

were suggested.<sup>153</sup> Similarly, in the case of labour exploitation, workers may refrain from reporting crimes out of fear of losing their income or ability to reside in the country. Furthermore, some workers may have general distrust in the authorities or simply do not feel responsible for identification. A similar application is currently in use in the United Kingdom operated by Unseen<sup>154</sup> as they deemed essential in the fight against labour exploitation. The relevance of a such an application to the sex industry, is that it is already identified as being applicable to monitoring both the supply chain of large corporations as well as smaller businesses such as car washes.<sup>155</sup> However, as previously expressed, many victims are not aware of human trafficking in general and may therefore fail to report it as such. As outlined in section 6.1 where an application was recommended for awareness raising of human trafficking, it would be essential to incorporate awareness raising into an anonymous reporting system. By keeping the concept broader, a more extensive group is reached that includes those who do not self-identify as victims of human trafficking.

Furthermore, in order to increase the willingness of workers to document the working environment in which they are located, photos or statements should be made publicly available. This way, employees can also warn each other about potentially harmful or abusive environments which they urge other workers (or those considering working there) to avoid. Photos or statements could be linked to companies and corporations. When individuals are considering accepting an employment opportunity (especially involving migration), they can research the company or agency in this application and view whether there have been any complaints or photos regarding the relevant working conditions. Employees can then avoid places in which they may be vulnerable to exploitation or unfair conditions and corporations will be deterred from operating with such practices in use. Employers can also avoid using facilitators such as employment agencies that have had negative or concerning reports directed towards them. Consequently, due to the increase in public documentation of working environments and potential exploitative situations, work sites may be more inclined to avoid risking the use of such practices in turn decreasing demand for exploitation.

Although workers may not necessarily be aware that they are being exploited, by the reporting of negative experiences third parties could monitor to review whether there are indeed signals of human trafficking present. As is a commonly mentioned problem regarding victims of human trafficking, many have never heard the term 'human trafficking' and are unaware that there are laws that recognize and protect them.<sup>156</sup> Consequently, a worker may upload content without being aware that there are in fact signals of trafficking in the information shared. Independent organizations that are exposed to these signals will then have the opportunity to intervene or investigate.

This system could be embedded in a framework of corporate responsibility, as it would aid in ensuring human rights are respected throughout the entire supply chain. When corporations are confronted with conditions that are concern their supply chain, they may need to act in order to address violations of human rights. Additionally, such a system could be directly attached to a system of European Quality labels. Employers that are plagued with images that display concerning signals could be at risk of losing their Quality Label after an inspection by an independent organization. Furthermore, it would facilitate a bottom-up approach towards labour standards with minimal corporate influence down the entire supply chain. A ranking system could be constructed which addresses labour conditions. The ratings of subsidiaries that are directly attached to corporations could affect the ratings of these corporations also. Consequently, exploitative or harsh conditions down the supply chain would in turn reflect

<sup>153</sup> DESIRE Project, *Briefing paper on the use of technology to combat trafficking in human beings*, September 2018. DESIRE, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, DESIRE project Deliverable 3.2, November 2018, pp55-56.

<sup>154</sup> Hodal, K. (2018, July 30). Anti-slavery app will help users' spot potential victims of labor exploitation. *The Guardian*.

<sup>155</sup> Ibid.

<sup>156</sup> Okech, D. Whitney, M. Benson, K. (2011). Human trafficking: Improving victim identification and service provision. *International Social Work*, 55, 488-503.

badly on the larger cooperation. Organizations which have lower ratings could be subject to more intensive monitoring by third parties. Through such independent and anonymous reporting of labour conditions, organizations with relation to exploitative conditions may be exposed more often. The exposure of conditions down their supply chain may lead to public approval or condemnation.

#### **6.4. Alternatives to legislation: distributing information and training directly to the source**

As the desktop research has shown,<sup>157</sup> training has been recommended as a tool of further informing individuals of their rights. This was also raised in the fieldwork<sup>158</sup> where persons selling sex in the Netherlands recommended trainings before entering the industry in order to ensure individuals are prepared for potential danger and know their rights. Polish interviews<sup>159</sup> also displayed how the building of awareness through education is of vital importance. Nine out of 15 Polish sex workers directly stated that education was needed in order to prevent exploitation. The Croatian findings also reiterated this point. Education could also help regarding practical issues such as managing finances and advice for migrants about rules and regulations in the Netherlands, Poland and Croatia. Importantly, trainings can also aid in the detection of signals in human trafficking considering workers have such unique insight into the sector they are involved in.

Such recommendations could be applied in relation to labour exploitation also. For example, employment agencies could ensure that workers are informed about their rights prior to taking on employment. This is especially important regarding vulnerable groups such as migrants, who may be faced with a language barrier and cultural differences. By ensuring individuals know their rights, they are more able to identify when these rights are breached. Such trainings could also aid in the integration of migrants into other European country's workforce and culture. Consequently, agencies that prepare individuals for the entering of the work force could become preferred by employers. Providing of such education (or minimally information) to workers could be attached to quality standards required to receive a European Quality Label. Such an incentive may lead to a process of self-regulation.

The use of hotlines in addressing the demand for human trafficking in sexual exploitation has been identified.<sup>160</sup> A hotline is a telephone line that provides quick access to information or assistance. A hotline has two main goals. Firstly, the prevention of human trafficking. Such prevention is implemented by providing information on how to avoid and address risks for victimization; for example, in many cases, situations of human trafficking have been avoided by buyers inquiring about certain businesses or organizations that have provided them with offers for work. Such dialogue also allows for organizations behind the hotline to maintain up to date about changing trends and patterns in recruitment. Secondly, a hotline can assist in the identification and provision of services to victims of human trafficking. Individuals may call to self-identify or to report someone who is in a situation of human trafficking or has just emerged from this.

Whilst victims remain unaware of the phenomenon, they will be less likely to self-identify as victims of human trafficking as they will not associate their own situation with this term<sup>161</sup>. This proposition is relevant for all forms of human trafficking and must therefore be kept in mind with regard to the application of tools such as hotlines. For this reason, such a hotline could

<sup>157</sup> DESIRE Project, *Briefing paper on non-legislative measures that can discourage and reduce the demand that fosters sexual exploitation related to trafficking in human beings*, September 2018.

<sup>158</sup> DESIRE Project, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, November 2018, p. 65.

<sup>159</sup> Ibid, p.62.

<sup>160</sup> See DESIRE Project, *Briefing paper on the use of technology to combat trafficking in human beings*, September 2018.

<sup>161</sup> Okech, D. Whitney, M. Benson, K. (2011). Human trafficking: Improving victim identification and service provision. *International Social Work*, 55, 488-503.



be attached to the previously mentioned application designed to report working conditions. Furthermore, it is recommended that the hotline is able to provide information in multiple languages. Considering the vulnerability of migrant workers and the language barriers they face, they should be able to receive information in their own language. Another practical point is that the hotline should be accessible outside of normal working hours.

### 6.5. Conclusions on social practices and alternatives to legislation

1. Both **technological and non-technological tools can be used** in a supplementary capacity taking into account the legal approach to sex work in a particular country. They can also be used in conjunction with one another, indeed, the research findings do not favour any particular tools/approaches over another, instead it calls for a holistic approach to anti-trafficking, whereby tools/measures adopted are used in conjunction with each other.
2. The respondents especially sex workers, NGO representatives and law enforcement officers, pointed out that there is a need **to sensitize the law enforcement to the suffering of victims of sexual exploitation**.
3. There is a need for **high quality education** and awareness raising focused on sexual education, sexual exploitation and trafficking to inform the public, raise-awareness about the risks of exploitation for themselves and others, and potentially change the general punitive discourse on the sex industry to one of dialogue and problem-solving. These information campaigns should also take the new trends in the sex industry into account (shift in the sex industry from outdoor to indoor, from visible to invisible, and migration of the industry to the online world).
4. The respondents highlighted the need for the organization of **social actions<sup>162</sup> and safe spaces directed at sex workers** so that they would feel social support and would not be afraid to apply for help.
5. Respondents emphasised the importance of providing **new employment opportunity** as well as other forms of social support such as housing, financial assistance and health care both for persons selling sex but also for victim of human trafficking. And as such law regulating the provision of and the sale of sexual services, must be framed in such a way that it works **hand in hand with employment policy, social welfare law, etc.**

#### *Country specific conclusions:*

6. In **the Netherlands**, it was also proposed to have better surveillance and established cameras in the Red Light Districts. Some municipalities are better in making their regulated sectors safer than others.
7. **Croatian** sex workers indicated that for them it would make a difference if the police would stop harassing and prosecuting them, especially on the streets.
8. Sex workers in **Poland** refuse to be perceived as victims. They don't want to be saved. They also want to separate sex work from human trafficking for sexual exploitation.

<sup>162</sup> See: [https://thenib.com/feminists-should-support-decriminalizing-sex-work-here-s-why?utm\\_campaign=web-sharelinks&utm\\_medium=social&utm\\_source=facebook&fbclid=IwAR2mH69qRelDZ7rsH1hk2te9BBZr3PZWsbU2O7TYHKmAh43UdZLANUAfScA](https://thenib.com/feminists-should-support-decriminalizing-sex-work-here-s-why?utm_campaign=web-sharelinks&utm_medium=social&utm_source=facebook&fbclid=IwAR2mH69qRelDZ7rsH1hk2te9BBZr3PZWsbU2O7TYHKmAh43UdZLANUAfScA)

## 7. Recommendations

Demand reduction is a recognised anti-trafficking strategy, given prominence in numerous regional legal instruments, providing States with the legal obligation to implement measures that seek to “discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings”. This report has presented the findings of both desktop and empirical research in four countries that are indicative of very different regulatory approaches towards sex work. The presented conclusions were developed with the wide variety of demand reduction measures in mind, as outlined in Article 18 of the EU Anti-trafficking Directive and Article 6 of the Council of Europe Anti-trafficking Convention.<sup>163</sup>

Undoubtedly, the added value of the research conducted under the auspices of the DESIRE project has been to seek an understanding what is meant by demand for sexual services in very different contexts, where the political, economic and social context has a marked impact on how the sex industry is perceived, and as a result, how it should be regulated.<sup>164</sup>

Notwithstanding, the existence of exploitation in the sex industry, regardless of the regulatory approach<sup>165</sup> means that any framework and accompanying measures should be focused on ensuring the safety and protection of sex workers, with a view to identifying parts of the sex industry where the risk of exploitation or exposure to violence is heightened. As a result, the existing legal approaches require supplementary measures from administrative and labour laws and social policies.<sup>166</sup>

Finally, the research concludes that social practices and alternatives to legislation must be galvanised, with a focus on raising awareness, providing information, training and education that will seek to sensitize relevant actors and encourage the provision of support and assistance in a safe environment free from stigma. Such measures would then increase trust in authorities to report exploitative or abusive situations.<sup>167</sup>

Taking into account the conclusions of the research, the following recommendations have been formulated, with the emphasis on the **need for policy recommendations to acknowledge socio-cultural differences between countries**. Thus, whilst the recommendations formulated here could theoretically be applicable to all European Union Member States, their impact might vary according to the legal framework in which they are applied and according to perception of sex work and how to improve the safety of sex workers.

### Framing of the issue in law and policy

1. To better facilitate social dialogue it is necessary to **change the language of the public debate about sex work** from the language of punitive repression and sanctions into the language of dialogue, empathy and problem solving. The purchase and selling of sexual services should not be discussed as a social matter to be discussed with respect for those involved.
2. As there is **very little evidence that show that the legislation on sex work impacts human trafficking** it is recommended to disconnect the debate and policy on the

<sup>163</sup> Research on best practices, methods and strategies; Raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of human trafficking; Target information campaigns involving, as appropriate, inter alia, public authorities and policy makers; Preventive measures including educational programs for boys and girls during their schooling, 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>164</sup> See conclusions on demand for sexual services and the role of law in section 3.

<sup>165</sup> See conclusions on the role of the state in preventing exploitation in the sex industry in section 3 and conclusions on the perceptions of the impact of the regulatory approach and the risk of sexual exploitation in the sex industry in section 5.

<sup>166</sup> See conclusions on additional measures needed to complement the legal regulation of sex industry in order to minimise exploitation and risk of trafficking in section 5.

<sup>167</sup> See conclusions on social practices and alternatives to legislation in section 6.

provision, purchase and facilitation of sexual services from the prevention of human trafficking.

3. Where sex work is perceived as work, then **persons selling sex should be equally treated as all workers** while taking into account the specific vulnerabilities of those working in the sector, including stigmatisation.
4. In a democratic decision-making process, it is essential that **persons selling sex are treated as the subject of this debate and not as its object and thus should be involved in the decision-making process.**
5. Due to the complexity of such terms as demand and sexual exploitation it is recommended to **continue an open debate** on these issues, supported by new research projects.
6. In solving problems of sex business, respondents recommended **not limiting the instruments used to criminal law only**, but to use also administrative law, labour law and social services legislation.
7. It is quite common opinion when addressing sex work that one **cannot achieve much by radical changes of the law**, it is recommended to consider alternative solutions as well. That is why countries should focus on non-legislative measures to eliminate exploitation that might occur in the sex industry.
8. Except in the Netherlands, there is **no clear policy on providing alternative forms of sexual services** such as web cameras, peep shows or lap dance. It is recommended to place this issue on the agenda of the state authorities.

#### *Country Specific Recommendations*

9. Since the majority of the respondents in **Croatia** appear to agree that legalising the selling of sex services will make persons selling sex less vulnerable it was recommended to continue an open debate on that issue.
10. In the specific regulatory regime of **the Netherlands**, a better protection of persons selling sex can be obtained by working towards **clear labour standards, and a more comprehensive and less fragmented legal framework**, according to the interviewees.
11. In **the Netherlands**, there is a need for **organisations and interventions that address the specific problems** and demands of male persons selling sex: one of them mentioned that he felt particularly under-represented and under-acknowledged.
12. 'Under-regulation' of newer or illegal sectors such as escort services and home sex work is denounced by respondents in **the Netherlands**. Better regulation of these sectors should be achieved.
13. Since in the Netherlands the municipal regulations are changing quite often and new counter-trafficking mechanisms are being implemented, some **persons selling sex find it difficult to follow and appreciate such changes, and do not necessarily perceive them as protective.**
14. In **Poland** where the facilitation of the sex work of others is criminalised, interviewees tend to view the existing law and policy framework as a source of unsafety for persons selling sex involved in managing services (third parties) respondents identified **decriminalisation** of third parties as major actions that would make sex business better organised.

#### **Moving beyond the law: alternative measures and social practices**

### ***Awareness raising***

1. **Awareness-raising campaigns to inform the public about sex work** could not only deepen the knowledge of the public on these issues but, by doing so, also help them to better identify signs of exploitation for themselves or others, and make them aware when they, themselves, could participate to an exploitative situation.
2. The **lack of awareness on the applicable legislation on the provision, facilitation and purchase of sex services** suggests a need for information campaigns on the applicable legal framework targeting the general public.
3. **Awareness raising campaigns also directly for buyers** are recommended. By being aware of the regulations (and especially exploitation/trafficking regulations) buyers can assist in the identification of victims and become “more conscious” about the problem of exploitation.
4. It is recommended to **conduct information campaigns and training for persons selling sex on their rights and risk of human trafficking** with particular emphasis on vulnerable groups (immigrants, young male, transgender, etc.).
5. **Sensitization workshops for the law enforcement** appears to be essential both in light of accounts of persons selling sex in Poland and Croatia about the lack of sensitivity of some law enforcement agents, combined to the account of trafficking victims in the Netherlands who reported being informed about their rights by the law enforcement. The law enforcement is thus one of the first resort of the victims of trafficking and of persons selling sex to access and apply their rights, as well as, in some cases, to get to know them. Increasing the sensitivity and awareness of the law enforcement when in contact with these persons selling sex or victims of trafficking is of utmost importance. These sensitization campaigns should also raise awareness on the specific needs of particularly vulnerable groups (e.g. migrant persons selling sex).
6. There is a need for **high quality education** in general, on human sexuality and in the field of sexual exploitation. Education based on current medical and legal knowledge could provide a sense of responsibility of the actors of sexual act, respect for other people (regardless of their origin, gender, sexual orientation, way of expressing their sexuality, etc.), assertiveness, security, also break untrue stereotypes regarding sexuality which leads to the formation of complexes understood as feelings of guilt, uncertainty and inferiority.
7. There is a need to **combine the different existing tools**, bearing in mind the purpose(s), target audience(s), strengths and shortcoming of the tools to be used as well as the legal framework of the country where they will be applied.
8. There is a need to **combine the tools with other tools and with legal and regulatory measures** (ex. Accessibility to authorities: easier legal pathways + reporting apps)

### ***Country Specific Recommendations***

9. In **Croatia**, where sex work is illegal and therefore underground, new trends are brought as tourism develops and organised sex work is moving towards hotels and resorts. **Training for hotel staff should be envisaged in Croatia.**
10. Persons selling sex in **the Netherlands** suggested that **trainings would also be useful even in the process of considering entering the sex industry.** In this way, those that enter the industry by choice can do so in a fully informed manner, know their rights, understand the judicial framework within which they operate, and be in general prepared for the difficulties that the industry might bring. This training could possibly also aid in the detection of signals of exploitation, among persons selling sex and in the industry in

general. Considering the existing obstacles that victims face for reporting signs of exploitation and human trafficking to the authorities, such training could provide persons selling sex who are reluctant to report with the tools to minimise harm individually.

11. Since sex workers in **Poland** are reluctant to report crimes or exploitation to **law enforcement**, mostly to protect their privacy and to avoid other problems **new model of such communication should be further developed and the use of crime-stoppers encouraged**.

#### ***Technological facilitation of monitoring and identifying risks of exploitation***

1. The Internet has become a major platform for the provision and facilitation of sex services requiring an **increased focus on regulation and monitoring of online activities**.
2. Because of the increasing role of the internet in the sex industry, the use of **new technology in identifying risks and fighting instances of sexual exploitation and trafficking** becomes increasingly important.
3. It is recommended to **create new apps or widely use the existing ones to inform sex workers** about legal regulations in different countries and to provide them with practical information on accessible sources of information and assistance.
4. A wider use of the **system of effective alerting law enforcement or NGOs for victims of sexual exploitation** is recommended.

#### ***Social practices focusing on safety, well-being and socio-economic prosperity***

1. It is recommended to **pay more attention to health problems and social care for persons selling sex**.
2. Persons selling sex in Poland recommended **establishing a network of community support centres** (in bigger cities) where they can obtain basic information on existing legislation or any other support if needed (psychological, social, labour). It would be sufficient such centres to operate for few hours a week.
3. Persons selling sex wishing to exit should be offered **alternative employment opportunities**. In the opinion of experts, the role of the government, the police and civil society is to make people aware that sex work is not the only way to earn money. State authorities, local governments and NGOs should raise their professional qualifications in society and assist them in finding another job outside the sex industry.
4. It is advocated by some of the persons selling sex that they can ensure their safety through **self-defence courses and using safety and panic buttons**.
5. **“Safe spaces”** for persons selling sex and their buyers should be created but should be adapted according to the national context taking into account the perception of sex work as a public or private matter and the relevant actors required to provide such space.
6. In **Croatia** and **Poland**, interviewees mention a lack of organisations specialised in the provision of support and assistance and in understanding sex work, sexual exploitation and trafficking. The trafficking survivors especially insist that civil society organisations can play a crucial role in helping persons selling sex in exiting the sex industry and helping victims of sexual exploitation and /or trafficking in particular (with finding shelter, housing, a job, welfare benefits, etc). The future development of such organisations should thus be encouraged according to the respondents in both countries.



### *Country specific recommendations*

7. In Croatia where the provision of sexual services is illegal, interviewees tended to view the existing law and policy framework as a source of unsafety/danger for persons selling sex **respondents identified legalisation as a major action that would make persons selling sex feel safer.**
8. In Croatia interviewees suggested **establishing an organisation specialised in the provision of support and assistance and in understanding sex work, sexual exploitation and trafficking.** The trafficking survivors especially insisted that that civil society organisations can play a crucial role in helping persons selling sex in exiting the sex industry and helping victims of sexual exploitation and /or trafficking in particular (with finding shelter, housing, a job, welfare benefits, etc.). The future development of such organisation should thus be encouraged.
9. Taking into account population and size of **Poland** interviewees suggested establishing of the **network of organisations understanding sex work, sexual exploitation and trafficking but specialised in the provision of support and assistance for victims.** The trafficking survivor admitted that civil society organisation helped her to escape from sexual exploitation and saved her life. Similar NGOs can play a crucial role in helping persons selling sex in exiting the sex industry and helping similar victims of sexual exploitation and /or trafficking in particular (with finding shelter, housing, a job, welfare benefits, etc.).
10. Since anti-trafficking legislation in **the Netherlands** calls on brothel owners to do intake interviews to see if a person is forced into sex work it is recommended that these **interviews are conducted by social workers** and not brothel owners or managers.
11. In **the Netherlands, better surveillance of Red Light Districts** was also mentioned as one the solutions to enhance safety of sex workers.

### **Preventing human trafficking for the purposes of sexual exploitation**

1. To prevent sexual exploitation and human trafficking for the purpose of sexual exploitation the following means are recommended:
  - a. **increased legal protection of persons selling sex**, including improved labour conditions where the provision of sexual services is legal,
  - b. **increased accessibility of sex workers to the authorities** and better protection by the authorities,
  - c. **increased awareness raising and sensitisation among law enforcement** on the needs and rights of persons selling sex and the risk of human trafficking,
  - d. effective and well targeted **judicial action against exploiters and traffickers** and the sectors of organised crime in which they operate,
  - e. wide range of various **alternatives to legislation and policy**, as explained in the report, especially effective social practices offered by local authorities and NGOs.
2. A **system of anonymous information on indicators of sexual exploitation and human trafficking for buyers** is strongly recommended. Buyers are not interested in getting services from victims of human trafficking and are ready to inform, provided they can preserve their privacy.
3. Law enforcement and **social services should be sensitised to the special needs of victims of human trafficking**, especially those belonging to particularly vulnerable groups such as foreign nationals, street workers, and sex workers using private apartments.
4. It is recommended to pay more attention to **real and effective support to human trafficking victims** such as shelters, psychological support or legal advice.

## Annex 1: List of Deliverables

DESIRE Project, Working paper: *A holistic approach to conceptualising demand for sexual services*, Deliverable 1.1, May 2017.

DESIRE Project, Working paper: *Towards a comprehensive definition of sexual exploitation beyond the context of human trafficking*, Deliverable 1.2, May 2017.

Emilia Rekosz-Cebula, What is prevention?, *Bulletin of Polish Society of Criminology*, no.24, 2017, pp.9-23 (Deliverable 1.3).

DESIRE Project, *Report on Demand for Sexual Services that can fuel Sexual Exploitation in the Context of Human Trafficking*, Deliverable 1.4, June 2017.

DESIRE Project, *Summary and Presentations from workshop in Warsaw*, 13 June 2017.

Brière C., Weatherburn, A., *Regulating Desire, The impact of law and policy on demand for sexual exploitation in Europe, Ex Ante 1/2017* (Deliverable 2.1).

Lasocik, Z., Wieczorek, Ł. *Academic article on alternative forms of sexual services*, Deliverable 2.2, (accepted for publication forthcoming in Polish Archives of Criminology).

DESIRE Project, *Report on legal and regulatory approaches towards sex work in four EU countries*, Deliverable 2.3, October 2017.

DESIRE Project, *Summary of the validation workshop in Tilburg*, Deliverable 2.4, 17 October 2017.

DESIRE Project, *Video on the differences in sex work legislations*, Deliverable 2.5, November 2017.

DESIRE Project, *Report on Understanding demand for sexual services, human trafficking for sexual exploitation and existing law and policies in three European countries (Croatia, The Netherlands and Poland)*, Deliverable 3.2, November 2018.

DESIRE Project, *Summary of the validation workshop in Zagreb*, Deliverable 3.3, 19 June 2018.

DESIRE Project, *Briefing paper on the use of technology to combat trafficking in human beings*, Deliverable 4.2, September 2018.

DESIRE Project, *Briefing paper on non-legislative measures that can discourage and reduce the demand that fosters sexual exploitation related to trafficking in human beings*, Deliverable 4.3, September 2018.

DESIRE Project, *Video involving buyers of sex services in fighting sexual exploitation*, Deliverable 4.1, October 2018.

DESIRE Project, *DESIRE Handbook on demand in the context of human trafficking for sexual exploitation*, Deliverable 5.1, January 2019.

DESIRE Project, *Online training package on demand reduction in context of human trafficking for sexual exploitation*, Deliverable 5.2, available at: <https://project-desire.eu/learn/>.

DESIRE Project, *Final Report and Recommendations*, Deliverable 5.4, January 2019.

DESIRE Project, *Summary of final conference*, Deliverable 6.3, January 2019.

DESIRE Blogpost, *Providing direct field assistance : Programs for sex workers in Croatia*, Human Trafficking Center Blog, May 2018, available at: <http://humantraffickingcenter.org/providing-direct-field-assistance-programs-for-sex-workers-in-croatia/>.

DESIRE Blogpost, *Empowering Public Authorities in the Technological Fight Against Human Trafficking*, Human Trafficking Center Blog, September 2018, available at: <http://humantraffickingcenter.org/empowering-public-authorities-in-the-technological-fight-against-human-trafficking/>.

DESIRE Blogpost, *An Insight into Croatian Sex Work: Results from a Study*, Human Trafficking Center Blog, 9 January 2019, available at: <http://humantraffickingcenter.org/an-insight-into-croatian-sex-work-results-from-a-study/>.