



**DESIRE**  
Demand  
for Sexual  
Exploitation  
In Europe

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## Deliverable No. 2.3: Legal and regulatory approaches towards sex work in four EU-countries

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<b>Abstract</b>	<p>The report highlights the policy approaches to the regulation of the sex industry and counteraction of trafficking in human beings in four states presented in the DESIRE project, namely in Croatia, The Netherlands, Poland and Sweden. Since all states have different approaches to the regulation of the sex industry, it is essential to understand what underlies the adoption of such legislative models. The report explores three main analytical themes. First, the report focuses on legislative elements that constitute the given approach to the sex industry and the regulation thereof and how these elements are practically implemented. Secondly, it outlines the discourse behind the adoption and impact of the given models. Since the sex industry consists of the variety of sectors that are not always covered in the state policy and legal documents, the report undertakes an exploratory research on markets and sectors of the sex industry (both direct and virtual) in each of the countries.</p>

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**Table of Contents**

**Change Records** ..... 3

**Acronyms** ..... Error! Bookmark not defined.

**Executive summary** ..... 4

**Introduction**..... 5

**1. Terminology** ..... 6

**2. Beyond Trafficking in Human Beings for Sexual Exploitation** ..... 7

**3. Defining the sex industry in the law of Croatia, The Netherlands, Poland, and Sweden** .... 8

    3.1. Croatia ..... 8

    3.2. The Netherlands ..... 9

    3.3. Poland ..... 10

    3.4. Sweden ..... 11

**4. The scope and scale of the sex industry** ..... 12

    4.1. Croatia ..... 12

    4.2. The Netherlands ..... 13

    4.3. Poland ..... 16

    4.4. Sweden ..... 17

**5. Approaches to regulate the sex industry** ..... 19

    5.1. National Legislation and Policies in the sex industry ..... 19

        5.1.1. Croatia ..... 19

        5.1.2. The Netherlands ..... 21

        5.1.3. Poland ..... 25

        5.1.4. Sweden ..... 25

    5.2. National Legislation and Policies on Human Trafficking and Sexual Exploitation .... 26

        5.2.1. Croatia ..... 26

        5.2.2. The Netherlands ..... 28

        5.2.3. Poland ..... 29

        5.2.4. Sweden ..... 30

    5.3. Implementation of Legislations and Policies ..... 31

        5.3.1. Croatia ..... 31

        5.3.2. The Netherlands ..... 33

        5.3.3. Poland ..... 35

        5.3.4. Sweden ..... 35

**6. Historical Background and Discourse around regulative approaches in Croatia, The Netherlands, Poland, and Sweden** ..... 36

    6.1. Croatia ..... 36

    6.2. The Netherlands ..... 37

    6.3. Poland ..... 40

    6.4. Sweden ..... 41

**7. Conclusions** ..... 44

**References** ..... 46

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## Executive summary

This report aims to provide an overview of different policy approaches to the regulation of sex industry and anti-trafficking measures in four European countries, namely Croatia, The Netherlands, Poland, and Sweden. It acts as a stepping-stone towards the future understanding of the interaction between such legislative models and trafficking in human beings for sexual exploitation.

The report is divided into seven sections, with Sections 3-6 outlining three prominent analytical themes. Before addressing these themes, an attempt to define the use of various terms in different contexts have also been made in order to negate any confusion that might arise regarding the usage of certain terms throughout the report (Sections 1 and 2).

To begin with, Section 3 is dedicated to addressing legislative elements of the policies on the regulation of the sex industry in each country. In this section, we see that except for The Netherlands, the three other countries do not have specific legal definitions for sex industry or sex services. However, all the countries do in fact have laws related to the provision of sex work, and these laws are in practice exercised differently on a case-by-case basis, as the understanding of sex work is quite vague, and therefore open to interpretation.

Section 4 deals with the scope of the sex industry in each country in terms of the number of sex workers, clients, facilitators, and sectors in the industry. However, the report acknowledges that it is not possible to provide exact figures for this industry due to the nature of its legal status in some countries. Some of the identified sectors are street sex work, escort services, erotic massage parlours, sex clubs, online sex services (internet based), and pornography. These sectors exist across the four states of interest in this report, but as mentioned earlier, the legality of these sectors differ depending on the country.

Following this, Section 5 examines the national legislation and policies in the sex industry, against human trafficking, and against sexual exploitation and sexual violence along with its implementation. In the Republic of Croatia, sex work is illegal, and sex workers are punished for misdemeanour while facilitators are punished under a particular legislation called "crime of 'prostitution'". However, clients are not criminalised unless they knowingly use sexual services of a person who is a victim of sexual exploitation. Voluntary sex work by adults is legal in The Netherlands, but also subject to a strict regulatory regime: for instance, Dutch local municipalities have the freedom to design their own regulatory system for the sex industry. Clients and facilitators are not criminalised either, however, depending on the local regulation, facilitators are required to obtain a permit from their municipality in order to legally operate a sex business. Poland has legalised sex work and the provision of sexual services, but facilitating in this industry is illegal. Therefore, sex workers and clients are not criminalised. Also, voluntary adult pornography is not punishable by law. Finally, providing sexual services is not a criminal act in Sweden, but buyers (clients) and facilitators are criminalised and are punished by law if found guilty.

As for legislation and policy on human trafficking and sexual exploitation, it is interesting to note that Croatia and Poland make a distinction between the two and have corresponding laws in their penal code to address each separately. On the other hand, the Netherlands has incorporated laws on both trafficking against human beings and sexual exploitation. Whereas, Sweden deals with human trafficking separately but defines sexual exploitation only in contexts where minors are involved. As for the implementation of these laws and policies, each country uses a combination of various institutions such as the police, special task forces, and other non-governmental institutions.

The final analytical theme elaborated in this report, in Section 6, is that of the discourse which has shaped the present regulatory approaches in all four countries. This section has tried to offer an outline of the present attitudes and developments with regards to sex work, human trafficking, and sexual exploitation. In conclusion, the report found that each of the four countries that were studied have different approaches towards sex work, and the sex industry and that none of the four has been able to eradicate trafficking in human beings. The question that remains is whether approaches to the sex industry do in fact affect measures aimed at preventing human trafficking.

Interestingly, when it comes to the regulation of the sex industry there are similar trends in all countries e.g. from outside prostitution to indoor prostitution, from visible to less visible forms of prostitution, increased use of the Internet. Since these trends occur in all countries we can conclude that policy approaches have not been decisive for these trends to occur. However, based on this report we cannot draw far-reaching conclusions. Further research is needed in order to be able to draw firmer conclusions on a possible relationship between approaches to sex work and the occurrence of human trafficking and to see the impact on the position of sex workers of the different approaches to sex work.

## Introduction

This report aims to give a background information on the regulation of the sex industry and anti-trafficking measures in the four countries participating in the DESIRE project, namely, Croatia, the Netherlands, Poland and Sweden. All states have different approaches to regulate the sex industry and measure aimed combating human trafficking for sexual exploitation within this industry. We based our report on information provided by all partners in their respective country reports. The sex industry policy and following legislation is inherently connected to ideological (moral) stances towards sex work that are generally prevalent in a specific country. Therefore, we also focused on the discourse and justification behind the certain approach. Although we slightly touch upon the link between regulatory regimes and human trafficking, this report does not provide a study on the linkages between these two.

The report aimed to compare the data in four main themes: (1) legislation/policy; (2) implementation (cases, administration); (3) context, namely historical background and discourse; (4) exploratory research on non-traditional sex services. For this purpose, **data collection** entailed a report based on a questionnaire that addressed the main themes (mentioned above), and contains legal and policy analyses submitted by each country. **As for data analysis**, thematic and some elements of discourse analysis were conducted. We chose to define the term **policy** as: *the laws, rules, administrative procedures (practices) states define and implement to regulate the sex industry*. In some cases, we also use the term **legislation** that refers primarily to the hard law. Since all researched states have different approaches to the regulation of the sex industry and human-trafficking counteraction, we identified several limitations of our research: (1) not all countries have legislation concerning the sex industry, therefore, analysis could not be extensive; (2) not all countries can provide reliable data to understand the implementation and consequences of the certain policy/legal approach;

In sections 1 and 2, we present general understanding of the sex industry adopted for the purpose of the project. More precisely, we realised that to be able to compare four different states, there is to determine some general definitions of sexual services, or sex work, since these terms might be defined differently in each state context. Section 3 gives a first exploraton of the relevant legislation in the four research countries. Section 4 gives the scope and sectors of the sex industry in the respective four countries. Section 5 describes and analyses the policy approaches in the countries followed by a review of the discourse on those approaches in section 6. Finally, the report provides some preliminary conclusions in the closing section.

## 1. Terminology

One of the first important steps in comparative policy research is to define what exactly is meant by the studied phenomena, especially considering the fact that the phenomena might be understood differently in different contexts. In our case, we have to define what is meant by the sex industry, and how we understand the term “prostitution”. Because of the contextual differences concerning the definitions of the mentioned terms, we first of all attempted to address the issue more generally by analysing the literature and using the insights of the work done in the Work Package 1.

The sex industry is a highly debated field of academic interest, as was pinpointed by Green (2016):

*“Deciding what should count as prostitution is not likely to be easy. The concept of prostitution is deeply embedded within complex cultural, moral, and legal constructs, all highly contested. Indeed, there is probably no type of sexual offence the moral and legal status of which has generated broader disagreement among scholars and legislatures alike. There is controversy even about the term ‘prostitution’ itself.” (Green, 2016, p.66)*

The term ‘prostitution’ from Latin means “to expose publicly” and it does not necessarily invoke the idea of “buying or selling sex”. As Green (2016) emphasized, one can prostitute oneself in spheres that do not involve sexual relationships. However, because of associations with the term, it often evokes negative or derogatory reactions. Therefore, prostitution is often considered as an inappropriate or “degrading” term when discussing the sex industry.<sup>1</sup> If one thinks of a “prostitute”, it is mainly associated with street prostitution, brothels, and escorts.<sup>2</sup>

The term prostitution is often used when describing different types of sexual intercourses that are provided for an arranged price, and in most cases, it is direct sex worker-client contact (not virtual). This term is therefore difficult to define, and the definition highly depends on the state legislation.

A different way to deal with definitions is to refer to sex related enterprises as the sex industry that consists of many sectors. These sectors provide different kinds of services (direct and indirect sexual services) and products (adult movies, indecent images). If we refer to the industry, people working in it can be referred to as “workers”, disregarding legal or illegal working conditions, or exploitative conditions. It is believed that the term “sex worker” was proposed (invented) by Carol Leigh (a.k.a. The Scarlet Harlot), one of the first pro-sex work rights activist in the early 1980s. By proposing to refer to former “prostitutes” as “sex workers”, she wanted to stress the agency of people involved in sex business. In contrast, there is an opposing view that “work” implies a voluntary choice only, and does not cover the incidents of coercion. In some cases, where the whole industry is considered as exploitative, it is difficult to operate with the term “sex work” (e.g., Swedish, Norwegian cases). Although this term is broadly advocated by human rights activists, Green identified several problems derived from the utilization of the term.<sup>3</sup> For instance, this term is too broad because sex work or work in the sex industry can sometimes be associated not only with exchanging sex (intercourse) for money, but with other activities that surround sex, such as pimping, running brothel, dancing in a strip club, acting in a pornographic movie, working for a telephone sex service, or advertising sex services. Even though some activities that surround sex services are not associated with sex work in the first place, sex work implies that all activities that cover actual performance (either as a service provider or as a porn, theatre actor) can be considered as such. There is one more way to refer to sex work/prostitution is to call it “commercial sex”. The term commercial sex is used in the US Commercial Sex Act, meaning: “any sex act on account of which anything of value is given to or received by any person.”<sup>4</sup> Comparing to the “sex work” term it does not seem to include products of sexual character and is specifically focused on sexual interactions, it is just a different way to refer to prostitution.

<sup>1</sup> Ditmore, M. H. (2011). *Prostitution and sex work*. ABC-CLIO.

<sup>2</sup> Although there are some debates whether escort services represent “a traditional” sector of prostitution, because many escorts propose other than sexual services: e.g., accompanying for events, galas, dinners.

<sup>3</sup> Green, S., (2016) *What Counts as Prostitution?* Bergen Journal of Criminal Law and Criminal Justice, Volume 4, Issue 1, Pp. 184-202, 2016 . Available at :SSRN: <https://ssrn.com/abstract=2801620>

<sup>4</sup> Pursuant to 22 USCS § 7102 (3) [Title 22. Foreign Relations and Intercourse; Chapter 78. Trafficking Victims Protection.

From an economic perspective, we can refer to the sex industry as a business, irrelevant of whether it is legal or illicit.<sup>5</sup> Moreover, even if workers were exploited in the industry, they would still be considered as workers (because they did provide services). However, as was emphasized earlier, not all sectors that are associated with the sex industry are focused on providing services directly to client for payment.

Although we acknowledge the fact that the term “sex worker” is a rather broad one, we will only use it when describing direct service providers, or actors (models) in case of the “adult movies”, webcam shows.

The International Labour Organisation in 1982,<sup>6</sup> determines people in “employment” to be those “above specified age who during a specified period, either in one day, or in one week were in the categories: 1) paid employment; 2) self employment”. It was further elaborated that work should be performed for the wage/salary or in kind.<sup>7</sup> The definition provided by the ILO resolutions is rather broad as it aims at protecting all workers from exploitation. However, when studying sexual interactions, we have to differentiate between “personal” interactions and business related ones. Therefore, we view the latter as repetitive and/or as an arranged interaction involving an economic component that reveals itself either with monetary or nonmonetary benefits. Nonmonetary benefits, refers to payments in kind,

Sexual service refers to a transaction between a client and sex worker for payment of a service, either real or virtual, for an arranged – monetary or nonmonetary – price. We propose to refer to sexual services when describing all sexual activities that provided by sex workers, and not limiting it to the specific kinds of intercourses only. Therefore, telephone sex and web cam will be referred to as sexual services in this project.

Considering the products of a sexual character, we acknowledge that there is no direct interaction between the sex worker and client, but clients are still able to and continue to purchase products (e.g., DVDs, internet subscriptions for porn channels). However, live sex shows are somewhere in between sexual services and products of sexual character. In some cases, private interaction between porn actors and spectators in live sex shows is possible (both in real and virtual worlds), and this interaction then stands somewhere in between the definitions of sexual services and sexual products (shows). Notably, there are many more actors involved in the preparation and distribution of products of a sexual character, and it certainly requires more elaborated analysis on which markets they are active in this specific sector of the sex industry. Consequently, we will touch upon the production of such products in our legal and policy analyses, but it might not be included in the empirical data collection planned further in the project.

Since we have defined what we consider to be the sex industry, and which sectors are the focus of this project, the next section will analyse how each country regulates sex work, taking into account the given understanding of sexual services.

## 2. Beyond Trafficking in Human Beings for Sexual Exploitation

In Work Package 1 (WP1) of the DESIRE project, we explored the definitions of demand/supply terminology (D1.1), clarified what is meant by sexual exploitation (D1.2) and what constitutes prevention (D1.3). While working on WP1, we came to the important conclusion that the sex industry should be understood holistically, meaning that certain economic elements although very important, only constitute the basis of the sex industry as a whole. Notwithstanding, the decisions of economic actors are influenced by many factors that can be further studied through a variety of disciplines (e.g. psychology, sociology, criminology). The activities performed in WP1 provided a solid basis for the further analysis of the legislative and political approaches in the given countries. Furthermore, as a result of our wide interdisciplinary analysis we have found that, in fact, trafficking in human beings for sexual exploitation is representative of a “migratory process” (*Deliverable 1.4, WP1*).

<sup>5</sup> Because it represents an activity of “buying” or “selling” goods for profit, see DESIRE, Deliverable 1.4, available at DESIRE website;

<sup>6</sup> International Labour Organization (ILO) Resolutions Concerning Economically Active Population, Employment, Unemployment and Underemployment Adopted by the 13th International Conference of Labour Statisticians, October 1982, para. 9.

<sup>7</sup> refers to goods, services, and transactions not involving money or not measured in monetary terms.

Moreover, commonly used definitions of trafficking in human beings<sup>8</sup> do not provide a definition of sexual exploitation, making it unclear as to whom is considered to be an exploiting party. Therefore, we started looking beyond the definition of trafficking in human beings by focusing on exploitation that might occur without a clear “trafficking element”, in some legislative approaches such exploitation is also viewed as “forced prostitution” (e.g., Poland, Croatia). Moreover, from the extensive literature review of the markets and actors in WP1, we found that facilitators in the sex industry often exploit sex workers but other actors can exploit them as well. In some cases clients might also exploit sex workers by making inherently unacceptable sexual requests. This is one of the reasons why we gave a specific focus to the facilitators<sup>9</sup> in the following legal and policy descriptions of the given countries. Clients are also highlighted since they represent consumers who “feed” the industry. In some instances clients receive a specific legal attention, as, for instance, in Sweden and the newly proposed legislation in the Netherlands. Finally, we explore how different models create safe conditions for sex workers, especially considering risks of exploitation and trafficking in human beings.

Although we decided to look more broadly into sexual exploitation, trafficking in human beings remains the primary focus of the project. Especially considering the fact that in many states counter-trafficking legislation is used to address sexual exploitation. However, as was stated in the report of WP1 it may be difficult to establish the dividing lines between exploitative and non-exploitative conditions in the sex industry, and therefore it may be difficult to protect the rights of sex workers that are being exploited and/or abused by means of counter-trafficking legislation.<sup>10</sup> Notably, victims might enter the exploitative relationship after joining the industry voluntarily, and in some contexts it might be difficult to operate with trafficking legislation only. Therefore, in the following sections we will explore different legislative and political tools that are used to regulate the sex industry, fight trafficking in human beings, and address sexually related violence in the four different European states.

### 3. Defining the sex industry in the law of Croatia, The Netherlands, Poland, and Sweden

In this section we primarily focus on the terminology related to the sex industry as it stands in Croatia, Netherlands, Poland, and Sweden. As was indicated earlier, the terminology used to describe the sex industry varies in different contexts; therefore, it is essential to highlight the definitions that are prevalent in the legislation of the given state. As specified in section 1, we will study sexual services in the context of “real” and virtual interactions.

In general, it is evident from the country reports that it is not clear what activities are exactly performed in the sex industry. A great variety of sexual activities, the production of services or goods with a sexual nature and other related activities can be found in the sex industry, which is often used as an umbrella term. Despite the use of the term prostitution in the state legislation it was however not specified which activities constitute prostitution. Consequently, these specifications depend on the case law or are defined in administrative procedures.

#### 3.1. Croatia

Croatian legislation does not provide a conclusive definition of sexual services. Nevertheless, the term “prostitution” (*Croatian: prostitucija*) is mentioned in the Croatian Criminal Code.<sup>11</sup> Since the sex industry is generally criminalised in the country, the legal descriptions (definitions) are based on criminal offences and the case law. For example, the definition of “trafficking in human beings” adopted in Croatian legislation contains “*other models of sexual exploitation, pornography included*”, which can in principle be interpreted quite broadly. Other references to “prostitution” are found in both the Criminal Code<sup>12</sup> and

<sup>8</sup> UN Palermo Protocol, EU Trafficking Directive 2011/36/EU.

<sup>9</sup> By facilitators we imply: (1) agencies; (2) associates; (3) contractors.

<sup>10</sup> For example, the stigmatizing attitude of police or criminalization of the industry may make sex workers reluctant to report exploitation.

<sup>11</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”).

<sup>12</sup> Ibid., Section 90(1)(7) – crime against humanity, Section 91(2)(22) – war crime, Section 106 – trafficking in human beings, Section 157 – prostitution, Section 177 – violation of the rights of child.



the Misdemeanours against Public Order Protection Act.<sup>13</sup> Although there is no clear legal definition, some criminologists have attempted to define “prostitution” as:

*“a negative social or socio-pathological phenomenon with different social evaluations, known in different cultures from ancient times. Prostitution is harlotry done by male or female person, for financial or other compensation, with a circle of already selected people”<sup>14</sup>.*

Even if prostitution is mentioned in the Croatian legislation, it is still unclear which sexual services can be referred to as “prostitution”. Consequently, the courts are responsible for such interpretation. 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.<sup>15</sup> Furthermore, courts apply the same stance in cases concerning both sexual exploitation for commercial or non-commercial purposes.

Trafficking in human beings is a separate criminal act, criminalised in section 106 CC.

When it comes to pornography, the available case law exclusively deals with sexual exploitation of minors. Adult pornography is legal in Croatia. In the criminal provision, the following two elements are examined: i) were the pornographic materials with children made by the defendant and ii) was it the intention of the defendant to commit a criminal offence. Furthermore, courts will describe in detail what the modalities of pornography are. For instance, graphic materials are of “extremely pornographic nature” when it focuses on the sexual organs of the persons depicted.<sup>16</sup> Sexual exploitation of children related to pornography may involve sending SMS messages to a child containing explicit sexual content and asking the child to masturbate in front of the adult.<sup>17</sup> Once again, there is no definitive list of when an act is labelled sexual exploitation of a child, therefore, the decisions are often based on the case law.

The examined case law and hard law shows that courts rely on direct sexual services (not virtual) when it comes to judging sexual exploitation and prostitution offences, therefore, virtual sexual services are neither defined, nor receive a lot of attention from the law enforcement authorities.

### 3.2. The Netherlands

The Netherlands is known for its liberal attitude to the sex business and legalisation of voluntary sex work performed by adults. The word “prostitution” (*Dutch : prostitutie*) is widely used across policy documents and in the Criminal Code especially the provision on human trafficking, article 273f DCC. Prostitution is defined as “*making oneself available for performing sexual acts with or for a third party for remuneration*”. The definition is broad and does not only cover vaginal intercourse, but includes oral services, masturbation, erotic massages and other similar sexual interactions. As a result, certain services provided in massage parlours may be viewed as prostitution.

Each municipality has slightly different legal and administrative approaches to regulating the sex industry, therefore, the interpretation of what constitutes prostitution might differ across municipalities. Since there is no unified legislative system besides the national legalisation of the sex industry, to be able to define all supportive terminology, we refer to the forthcoming administrative law, more specifically the Bill for the Regulation of Prostitution and Suppression of Abuse in the Sex Industry (hereafter, the Bill or WRP).

Originally, ‘sex business’ was an umbrella term which referred to different kinds of facilitating organizations, sex business institutions, or even independent sex workers. However, the term ‘sex business’ was nuanced later in the Bill (WRP).

*Sex business*: the activity of commercially (1) providing opportunities for prostitution or sexual acts for another person in return for payment or (2) display a show of an erotic-pornographic nature in a sex institution.

Activities that fall under the umbrella term are:

<sup>13</sup> Misdemeanours against Public Order Act (Official Gazette nos. 5/90, 30/90, 47/90, 29/94; hereinafter referred to as: “MAPOA”), Section 12.

<sup>14</sup> Modly D., Korajlić N. (2002). *Dictionary of Criminology*. Tešanj: Centre for Culture and Education

<sup>15</sup> Croatian Supreme Court decision no. I Kž 212/12-4 of 31.01.2013, Croatian Supreme Court decision no. I Kž 428/15-6 of 03.11.2015.

<sup>16</sup> Croatian Supreme Court decision no. I Kž 1178/08-4 of 05.02.2009.

<sup>17</sup> Croatian Supreme Court decision no. I Kž 572/09-4 of 17.09.2009.

*Prostitution business*: the activity of commercially providing (*facilitating*) opportunities for prostitution.

*Escort business*: the activity of commercially providing opportunities for prostitution by acting as an intermediary between clients and prostitutes.

*Sex facility*: A publically accessible, enclosed space, which is part of a sex business.

Persons who play a crucial role in the sex industry are:

*Operators*: The person who is responsible for and liable to a particular sex business and the one who has to apply for a licence.

*Managers*: The person who is appointed by the operator to manage his or her sex business.

*Customers*: The person who makes use of the sexual services provided by the operator of a prostitution business or by a prostitute.

The official criterion for being designated as a sex business is ‘operating like a business’ (*bedrijfsmatig werken*). This is, however, quite broad. Advertising (every commercial expression in a medium that draws public attention to a sex business or a prostitute on the internet for example) is already an indicator for ‘operating like a business’, which implies that independent sex workers can also be considered to run a sex business. If so, they need to register at the chamber of commerce as self-employed entrepreneurs.

The word *pimp* or *pooier* (*Dutch*) in the Netherlands has always had a negative connotation. It is commonly used to describe someone who forces another person into prostitution to exploit that person which is punishable as human trafficking according to the Dutch Criminal Code (Article 273f CC). Nevertheless, the new Dutch government has announced a separate prohibition of pimping and criminalisation of pimps.

Sexual exploitation as such is not separately criminalised in the Dutch Criminal Code but in many cases can be accommodated under human trafficking since this article is broadly defined. However, the requirement that sexual acts are ‘performed for a third party’ makes it complicated to prosecute the person who directly sexually exploits a person. However, article 273f para 1 sub 6 criminalises the trafficker who profits from the exploitation of another person.

Adult pornography has been decriminalised in the Netherlands since 1984, and it encompasses sex theatres and shows. Although decriminalised, sex theatres have to comply with similar regulations as regular sexual services facilitators and providers.

The term sexual exploitation is very often used when addressing children. Also, it is highlighted in the counter-trafficking legislation. A famous Victim Support Organisation (in Dutch Slachtoffer Hulp in Nederland) indicates that sexual exploitation can happen regardless of age, status or gender. According to this organisation, one becomes a victim of sexual exploitation if (1) one is forced to have sex against one’s will; (2) one partner forces another partner to have sex with other people (strangers, friends); (3) one is forced to participate in the production of pornographic material;<sup>18</sup>

Concerning child pornography, the production, distribution, exhibition, importation, forwarding, exportation, possession, providing access to, as well as “sexual penetration” are criminal offences under the Article 240b of the Dutch Criminal Code.<sup>19</sup>

### 3.3. Poland

Although there are no established legal definitions of different sectors and types of the sex industry, terms such as: *prostitution*, *pornography*, *indecent sexual acts* are still mentioned in the legislation, albeit only in the Criminal and the Petty Offence Codes. For example, prostitution and pornography are mentioned under the definition of human trafficking.<sup>20</sup> Nevertheless, sexual services as such are not

<sup>18</sup> Slachtoffer Hulp Nederland, available at: <https://www.slachtofferhulp.nl/Delicten/Mensenhandel/Seksuele-uitbuiting/>

<sup>19</sup> BNRM Prostitutie en mensenhandel (2016).

<sup>20</sup> Article 115 § 22 of the Polish Penal Code, Human trafficking is recruiting, transporting, delivering, transferring, storing or accepting people by using: (1) violence or the unlawful threat of violence, (2) kidnap, (3) deceit, (4) misrepresentation or exploiting an error or inability to properly comprehend a decision, (5) an abuse of a dependence, exploiting a critical position or a state of helplessness, (6) the grant or acceptance of material or personal incentives, or the promise of such to a person with supervision or custody over another person in order to use them, even with their consent, in particular in prostitution, pornography or other forms of sexual exploitation, for forced labour or services, for begging, for slavery or other forms of degrading human dignity, or

viewed as exploitative, therefore, Polish legislation does acknowledge voluntary engagement in sexual activities.

Other terms related to the sex industry are highlighted in the Polish Criminal Code, such as, for instance, forced prostitution (Article 203) which means: *Anyone who, by force, illegal threat or deceit, or by abusing a relationship of dependence or by taking advantage of a critical situation, subjects another person to practice prostitution is liable to imprisonment for up to 10 years.*

Pimping or procurement is criminalised by the article 204 of the Polish Criminal Code. More precisely, “procurement manager” is: *“Anyone who, in order to derive a material benefit, induces another person to practice prostitution, or facilitates the practice, is liable to imprisonment for up to three years.”*

There is also a special provision regarding “recording/photographing a naked person without consent” that is highlighted in the Article 191a of the Polish Criminal Code. According to that provision, *“anyone who records the image of a naked person or a person during sexual activity, using violence, the unlawful threat of violence or deceit for this purpose, or who distributes the image of a naked person or a person during sexual activity without his or her consent, is liable to imprisonment from three months to five years.”*

Furthermore, the Polish Petty Offence Code contains specific regulations concerning offenses against public morals such as, an “indecent sexual act that violates public order” (Article 142). The article states that: *“Whoever insistently, by imposing himself or otherwise violates public order, proposes to another person to commit an indecency (indecent sexual act) with a view to obtaining a material advantage, is subject to the penalty of arrest (up to 3 month), restriction of liberty or fine.”*

There is no unified legislation that focuses on the sex industry, and consequently, no precise legal definitions. Therefore, courts have the power to interpret and define the sex industry sectors if required. Moreover, although forced engagement in the production of products of sexual character, or engagement in the indecent sexual act are punishable by law, it is not clear what is meant precisely by these activities. Therefore, in the analysis of the Polish prostitution market, we will use the general explanation presented earlier.

In the Polish law trafficking for sexual exploitation is a separate crime.

### 3.4. Sweden

As in the other countries, there is no precise definition of sexual services in the Swedish Penal Code. Nevertheless, the current provision on the purchase of sexual services is highlighted in the Chapter 6, section 11 of the Penal code. Wong presented and translated this provision as follows: *“A person who - in cases other than those previously provided for in this Chapter - obtains casual sexual liaison for payment shall be sentenced for purchase of sexual service to fines or imprisonment up to one year.”* Although this provision in most of the cases is associated with male clients of female sex workers, Wong specified that linguistically it is “entirely gender-neutral”. The most important element in the provision is “sexual liaison” (from Swedish *sexuell förbindelse*). This term requires some kind of physical contact, but it is not limited to sexual intercourse.<sup>21</sup> Pornography or “naked posing” are not viewed as sexual liaisons and, therefore, spectators are not criminalised. Sexual services such as webcam sex, striptease or live masturbation are not considered as sexual liaisons, and consequently, it is not criminalised. For example, if clients are paying for a live sex show, but are not touching sex workers, it will not be criminalised. However, pornography does become a crime if violence is displayed, or if the material is executed or displayed in public places and if minors are part of the material. Similar to the situation in other countries, courts are responsible for interpretation of sexual liaison.<sup>22</sup> Wong argued that:<sup>23</sup>

*“The case law does not show us where the line between sexual and non-sexual is to be drawn in relation to the ‘purchase of sexual service’. It is unclear, for example, whether practices like ‘spanking’ or some other (in the practitioner’s perspective) sexual fetishes should be deemed to be sexual touching, if they deviate too greatly from an ‘objective’ view of ‘mainstream’ sex/sexuality.”*

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for obtaining cells, tissues or organs contrary to the provisions of law. If the actions of the offender involves a minor, it constitutes trafficking even when not using the methods or measures referred to in sections 1-6.

<sup>21</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>22</sup> See, e.g., judgment of Stockholm District Court of 27 July 2006 in Case B 3158-05, judgment of Huddinge District Court of 23 December 2005 in Case B 1666-05 and judgment of Stockholm District Court of 22 September 2003 in Case B 3470-03 (cited in Wong, 2014).

<sup>23</sup> Wong (2014), p. 186.

The provision is also applied in cases where the payment was promised or given by third parties. The payment can be both monetary or nonmonetary, and the latter for instance, might imply drugs or alcohol. The attempt or intention to obtain a casual sexual intercourse in exchange for payment is also punishable by the Swedish Penal Code (Chapter 6, Section 15 of the Penal Code).<sup>24</sup>

The lack of a common definition of what exactly can be regarded as sex work is also illustrated by the study conducted by The National Board of Health and Welfare.<sup>25</sup> It was reported that definitions of what should count as sexual liaison differed among the police, social services, researcher, and non-governmental organizations<sup>26</sup>.

Forced sex work and human trafficking is criminalised under the Swedish Criminal Code.<sup>27</sup> Trafficking in human beings is defined as the procuring and purchasing of any sexual services or products obtained through force, coercion, abuse of a position of vulnerability, deception regardless of where the services are offered and/or bought (street, hotels, brothels, internet, escort services, massage parlours).

Child pornography is regulated under section 7 of Chapter 16 (10) of the Swedish penal code as follows: *“If a person sexually touches a child under fifteen years of age otherwise than as previously provided in this Chapter, or induces the child to undertake or participate in an act with sexual implication a fine or imprisonment for at most two years shall be imposed for sexual molestation”*. Interestingly, the production and distribution of sexual pictures and films of oneself is legal, even if the producer is minor. There are ongoing discussions among Swedish policy makers about how to “protect personal integrity”.

#### 4. The scope and scale of the sex industry

In this section, we focus on the scope of the sex industry in Croatia, The Netherlands, Poland, and Sweden. We acknowledge the fact that the data is often incomplete, and it is very difficult to provide reliable numbers of the sex workers who are active in a given country or to provide figures on sex businesses, especially if they operate illegally. The overview in this section is based on the literature available. Since there is a difference in the availability of the secondary data, the information about the countries does differ.

##### 4.1. Croatia

In 2016, there some attempts were made to estimate the scope of the sex industry in Croatia. It was estimated that there were about approximately 7,000 sex workers in Croatia and 100,000 clients.<sup>28</sup> However, since the sex industry is illegal in the country, there is no official register that could provide information on the exact number of sex workers. Nevertheless, the criminalisation of the sex industry in Croatia, makes it possible to get the data on how many sex workers received criminal and administrative provisions.

The available statistical data of the Ministry of Interior (hereafter, Mol) can be tracked from 2010. Notably, the methodology of data collection has been changed several times by the Ministry, and, unfortunately as a result, some data sets are not comparable. More precisely, the dataset refers only to those who have been counted in the criminal justice system from 2010 to 2016. Also, it is not possible to get an exact number of sex workers representing different sectors of the sex industry (e.g., phone/internet sex, pornography, etc.). Although it is difficult to draw definitive conclusions based on the data provided by the Ministry, it is possible to provide the data on convicted persons.

For the criminal offence of “prostitution” (formerly referred to as “pimping”), the Mol has registered 817 criminal offences. This number does not necessarily reflect the number of offenders, since one offender may commit more than one criminal offence. Pimping of a child remains a separate

<sup>24</sup> Chapter 6, Swedish Penal 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>25</sup> Socialstyrelsen, 2007.

<sup>26</sup> Socialstyrelsen (2007), Prostitution in Sweden 2007. Accessed online at: [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>27</sup> Section 1a of Chapter 4 of the Swedish Penal Code.

<sup>28</sup> From the public notion made by Ms. Branka Žigante, judge of the Superior Misdemeanour Court of the Republic of Croatia, source: <http://net.hr/danas/hrvatska/prostitucija-sto-je-to-imamo-oko-7000-seksualnih-djelatnica-i-100-000-korisnika-njihovih-usluga/>, last accessed on July 30, 2017.

criminal offence and in the represented period, there have been 80 criminal offences. This shows that among all criminal offences of “prostitution”, 8.8% of offences are committed against children.

When it comes to misdemeanours, there have been 1,372 offences of “prostitution” (note that misdemeanour does not refer to “pimping” but to the direct provision of sex services, thus criminalising the person who provides sexual services). In the observed period, there have been 53 offences of “allowing prostitution”. For the purpose of this analysis, the misdemeanour of “prostitution” has been analysed closer in order to determine the gender of convicted persons and to understand the sanctions imposed. The analysis of existing datasets show that in the period from 2011-2016 (data is not available for 2010) female sex work is the most prominent with 1,042 cases, while there have been only 60 cases of male sex work which constituted misdemeanours. However, some studies estimate that 20-30% of all sex work is provided by males in big cities. From the current statistics, it is not possible to derive data on transgender offenders. In most of the cases (1,132) the police have filed indictments to the misdemeanour courts, which coincides with most of the cases concerning street sex workers (1,052).

As for the sex industry sectors in the country, one of the most popular is **street sex work**. Street sex work is predominantly the focus of criminal justice system, while other forms, although illegal; pose a greater challenge for law enforcement in discovering offenders. Consequently, street sex workers are more vulnerable to criminalisation, abuse and secondary victimization.

**Escort services** are usually advertised online, however, advertisements of sexual services using media is a crime. Nevertheless, the services are still actively advertised. For instance, on social media websites such as Facebook, Twitter, Badoo, Planetromeo. If someone places the advertisement of the sexual services on the website, it constitutes a criminal offence with a maximum sentence of three years imprisonment. Interestingly, the motivation or intent of the person who is advertising is irrelevant, so it is not required for the advertiser to actually receive any benefits from the advertising activities.

Furthermore, some people prefer using social media websites or dating sites to advertise their escort services themselves. It is popular among male sex workers. For example, an international dating website called Planet Romeo was used by men who have sex with men (hereafter, MSM) because they can register themselves as “escorts” for free. There are up to 99 male “escorts” who offer their services in Croatia<sup>29</sup> during the period of writing this report on Planet Romeo. Hypothetically, the owners of such websites will face criminal provisions, however, it is unlikely, due to the nature of the crime and difficulties in international criminal investigations, that the prosecution would be pursued.<sup>30</sup>

Since pornography is legal in Croatia, sex shops can be found in different cities. According to the wikisex guide, there are at least five **sex shops** in Zagreb.<sup>31</sup>

There are no official studies done on the **erotic massage parlours**, but the wikisex guide does mention that it is possible to find massage services via the **Plavi Oglasnik newspaper**. However, in the newspaper not all massage services are of an erotic nature, it is often possible to negotiate about sexual services. Also, some escorts include erotic massage in their services.

## 4.2. The Netherlands

As was indicated earlier in the report, the sex industry in The Netherlands is legalised, therefore it is easier to study it. Moreover, due to the continuous debates around sex work in the country, there are many governmental and independent studies that attempt to analyse the scope and nature of the Dutch sex industry.

### *Window sex work*

The window sex work business is one of the most well-known sectors of the Dutch sex industry. The idea behind it is that sex workers display themselves through the windows of specially designed rooms that are equipped to provide sexual services. Sex workers are able to rent rooms from operators at a fixed rate on a daily basis (in most cases). All sex workers who work behind the windows are self-employed and are free to determine their own working hours (*in some cases they might have an informal relationship with a pimp, but as was mentioned earlier it is not legal*). If self-employed a sex worker in this sector is obliged to register in the Chamber of Commerce (Kamer van Koophandel) and pay taxes. We will see below that the freedom of sex workers is often curtailed, also in the legalised part of the sex industry.

<sup>29</sup> <http://www.planetromeo.com>, last accessed on June 28, 2017.

<sup>30</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>31</sup> Available here: [http://www.wikisexguide.com/wiki/Zagreb#Erotic\\_Massage\\_Parlors](http://www.wikisexguide.com/wiki/Zagreb#Erotic_Massage_Parlors)

Window prostitution is only permitted in twelve municipalities, namely in the cities of: Alkmaar, Amsterdam, Den Haag, Eindhoven, Groningen, Leeuwarden, Haarlem, Heerenveen, Doetinchem, Deventer, Nijmegen and Almelo.<sup>32</sup> Amsterdam and Den Haag have the biggest red light districts that host more than 300 windows (in 2015).<sup>33</sup> In Utrecht, a big area that used to host many window boats was closed presumably because of criminal activities; on 27 October 2017 four persons were convicted of human trafficking at Zandpad.<sup>34</sup> In Rotterdam, red light districts were closed in 1981, and in Arnhem it was closed in 2006. The population of sex workers in the window prostitution is very diverse. According to the latest reports, the majority consists of migrant sex workers from Eastern Europe, Central and South America.<sup>35</sup> Window sex workers are usually female or female transgenders, and there is no evidence about male sex workers.

During the last decade the number of window rooms has decreased significantly. For example, in 1999 there were 2096 windows available in the country, but between the period of 2007 - 2009 many windows were closed and the general number of available working places dropped to 1466. Consequently, in 2016, there were only 1300 workplaces left.<sup>36</sup> Moreover, the number of licenses issued in 2006 was 507,<sup>37</sup> and as Daalder reported, in 2014 the number dropped to 195 licenses issued that year.<sup>38</sup> Wagenaar and colleagues associate such a decline in the visible sex work sector with intensified regulation, innovation in the sex industry (internet sex work, massage parlours), urban renewal, and economic crisis.

#### *Street sex work*

Nowadays street prostitution (*or straat-/tippelprostitutie*) in the Netherlands does not exist in its traditional form is rarely reported nowadays.<sup>39</sup> Instead, street prostitution represents a well defined/closed outside area equipped with specially designed parking spots where sex workers can provide services in the cars of their clients. Each area has a lounge where sex workers can rest, and consult a doctor who visits them regularly to carry out a set of STD testings. Historically, the areas were designed for sex workers who suffered from drug addiction. Although the initial consideration was to provide support and health care to sex workers with addictions in these zones, very soon more and more Eastern European sex workers appeared on the territory.<sup>40</sup> As was noted by Wagenaar and colleagues, from the interviews with outreach workers, it became evident that they saw many signs of exploitation. Consequently, the municipalities of Amsterdam, Rotterdam, and The Hague prohibited any forms of street prostitution in their local policies.

Although, in most of the municipalities street prostitution, in any form, is forbidden according to the General Local Regulation<sup>41</sup> (*Algemeen Plaatselijke Verordening, APV*), it does exist in four Dutch municipalities.<sup>42</sup> In Arnhem it is still possible to work in the designated street areas, but only if sex workers received a specific pass issued by the municipality. According to Soa, the prices for sexual services in these areas range from 35 to 50 euros for oral and vaginal sex.<sup>43</sup>

#### *Escort services*

<sup>32</sup> In Groningen there are up to 100 windows and in Leeuwarden - 120 places. In Alkmaar, there are up to 70 window rooms and almost 50 in Eindhoven.

<sup>33</sup> BNRM, Prostitutie en Mensenhandel, 2016.

<sup>34</sup> Wagenaar, H., Altink, S., & Amesberger, H. (2017). *Designing Prostitution Policy: Intention and Reality in Regulating the Sex Trade*. Policy Press., <https://nos.nl/artikel/2200005-celstraf-voor-mensenhandel-op-utrechtse-zandpad.html>

<sup>35</sup> Wijk, A., van, Ham, T., van, Hardeman, M., & Bremmers, B. (2014). *Prostitutie in Nederlandse gemeenten: Een onderzoek naar aard en omvang, beleid, toezicht en handhaving in 2014*. Arnhem: Bureau Beke.

<sup>36</sup> Wagenaar et.al., (2017).

<sup>37</sup> Flight, S., Hulshof, P., Soomeren, P. van, Soorsma, P. (2006). *Evaluatie opheffing bordeelverbod: Gemeentelijk beleid*. Amsterdam: DSP-groep/WODC.

<sup>38</sup> Daalder, A.L. (2015). *Prostitutie in Nederland anno 2014*. Den Haag: WODC.

<sup>39</sup> See for instance letter municipality Amsterdam on 'Meldingen betreffende straatprostitutie in de Amsterdamse binnenstad', 9 January 2017, reference number: 2017000045. Also information provided by one of the outreach workers representing a Christian Organization Youth With Mission.

<sup>40</sup> Brants, C. (1998). The fine art of regulated tolerance: prostitution in Amsterdam. *Journal of Law and Society*, 25(4), 621-635. Wagenaar et.al., (2017)

<sup>41</sup> General Local Regulation represents a set of local municipal regulations in the area of public order and safety. Each municipality has its own APV.

<sup>42</sup> namely in municipalities of Arnhem (Kleefse Waard), Groningen (Bornholmstraat), Nijmegen (Nieuwe Marktstraat) and Utrecht.

<sup>43</sup> Soa Aids Nederland is part of Stichting Aids Fonds - STOP AIDS NOW! – Soa Aids Nederland. Our organisation is structured on a programme basis. We work in programme teams that specialise in particular target groups. Website: <https://www.soaaids.nl/en/about-us>

An escort business/office is a facilitating agency that takes the role of a mediator between clients and sex workers. For example, the agency arranges meetings of sex workers and clients, transportation to the houses of clients, or hotel rooms. In addition, some escort companies provide security services and backups in case it is necessary.

According to van Wijk<sup>44</sup>, in 2014, 247 municipalities required a special license for the escort companies. In comparison with window prostitution or generally location based sex companies, the number of escort services has increased. In 2006, only 80 escort companies received licenses, and in 2014 it increased to 125.<sup>45</sup> Nevertheless, the increase in number of legal escort services coincides with the number of municipalities who introduced such licensing schemes, which may be the reason why the number has increased.<sup>46</sup>

Notably, hotel prostitution is forbidden in the Netherlands. In particular, it is not permitted for sex workers to rent hotel rooms to meet with clients due to the municipal zoning plans.

#### *Sex clubs and private houses*

Sex clubs and private houses are brothels in its traditional understanding. In sex clubs, sex workers provide services in the same building and when clients enter the facility they can choose a sex worker. In private houses, sex workers normally stay in their rooms and clients choose them by checking inside the rooms. To be able to run a sex club or a private house, it is obligatory to receive a license from the municipality.<sup>47</sup>

According to Soa Aids, there are up to 400 sex clubs in the Netherlands, and they all propose different kinds of facilities - from luxurious to quite basic ones. Therefore, the price sex workers ask from clients often depends on how expensive the facilities are.

Interestingly, according to Dekker and colleagues (2006)<sup>48</sup>, who studied sex workers in sex clubs and private houses<sup>49</sup>, most of the respondents were born in the Netherlands. A more recent study conducted by Bleeker and colleagues (2014)<sup>50</sup> illustrated that 47 percent of interviewed sex workers were born in the Netherlands, 20 percent came from Eastern Europe, and 15 percent from Central and South America, only 9 percent were originally from Asian countries.

The number of sex clubs and private houses has been decreasing over the last five years.<sup>51</sup> This may be due to a combination of factors, including more restrictive prostitution policies and the increased popularity of escort services and internet sex work.

#### *Home-based sex work*

Home-based sex work refers to sex workers who receive clients at home, this can be their own house or another house that is used for sex work. At the moment, most of the municipalities do not have a policy on home-based sex work.<sup>52</sup> However, when you run a business in a house it should be in conformity with the local zoning plan (*bestemmingsplan*). It is extremely difficult to change the zoning plan in order to formally allow a sex business in a house. Since 2010, municipalities have issued around 300 sanctions and 200 administrative reports, and notably the majority of those were directed at home-based prostitution.<sup>53</sup>

#### *Internet as an advertising tool*

The most famous websites for escort or homeworking advertisements are: <http://www.kinky.nl>, <http://www.sexjobs.nl>, [Sexplezier.net](http://www.Sexplezier.net), <https://www.speurders.nl/>. In addition to traditional advertising websites, there are also more advanced ways to promote sex services, by using mobile social

<sup>44</sup> Wijk, A., van, Ham, T., van, Hardeman, M., & Bremmers, B. (2014). *Prostitutie in Nederlandse gemeenten: Een onderzoek naar aard en omvang, beleid, toezicht en handhaving in 2014*. Arnhem: Bureau Beke.

<sup>45</sup> De escortbranche: toezicht, handhaving en naleving; 2016 WODC, ministerie van Veiligheid en Justitie

<sup>46</sup> Prostitutie en mensenhandel, Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen (2016), currently 75% of the municipalities have prostitution policy, 99% of which requires a permit for escorts.

<sup>47</sup> more in the section of the legislative approaches in each country.

<sup>48</sup> Dekker, H., Tap, R. and Homburg, G. (2006) *Evaluatie Opheffing Bordeelverbod, De Sociale Positie van Prostituees*, Amsterdam: Regioplan.

<sup>49</sup> n: 354 sex workers in 79 sex clubs and 103 in private houses.

<sup>50</sup> Bleeker, Y., Heuts, L., Timmermans, M., & Homburg, G. (2014). *Sekswerkers aan het woord: De sociale positie van sekswerkers in Nederland in 2014*.

<sup>51</sup> Daalder (2015).

<sup>52</sup> Prostitutie en mensenhandel, Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen (2016)

<sup>53</sup> Policy response baseline Wrp from The Minister of Security and Justice,

G.A. van der Steur, available at: <https://www.government.nl/binaries/government/documents/parliamentary-documents/2015/06/01/letter-to-parliament-about-regulation-of-prostitution-and-combating-abuses-in-the-sex-industry-wrp/policy-response-baseline-wrp.pdf>

networking applications such as: Grindr and Ohlala <sup>54</sup>. Facilitators who wish to hide from the police for instance because they use Tor-network or “deep web” <sup>55</sup>.

To be able to reach sex workers who operate exclusively via the internet, health center organizations are conducting “online fieldwork” where they share information with sex workers about STD checks and basic health (e.g., Soa Aids). At the same time, police also search for unlicensed sex businesses by arranging “fake dates” with escorts and home based sex workers. <sup>56</sup>

#### *Internet and telephone as working domains*

The Internet can also serve as a virtual working place and not merely as an advertising tool. The same applies to telephone and messaging applications. As webcam modelling can be considered as adult pornography in the Netherlands, it is not criminalised. To our knowledge, webcam and telephone services are not necessarily monitored or particularly targeted by the Dutch policy makers or police.

Mediating agencies provide a platform for telephone chats, sms, video calls. From the websites we reviewed <sup>57</sup>, a popular price for virtual sexual services ranges from is 0.36 - 40 euro cents per minute. Sometimes there a separate price list for sms and voicemails. <sup>58</sup>

#### *Massage Parlours*

Massage parlours represent one of the sectors in the Dutch sex industry identified by NGOs and municipalities. Sexual services including body-to-body massage, masturbation, oral intercourse are often provided by the massage specialists. If clients order sexual services, it qualifies as prostitution and the owners of such massage parlours have to obtain a license from municipalities, if the municipality has a prostitution policy that include such businesses. <sup>59</sup> Most of the time it is also not allowed because of the municipal zoning plan.

The prices might differ per massage parlour and in most of the cases they are displayed on the price list. However, specific requests of a sexual character are not advertised, but arranged on site. Very often, sexual services are referred to as “happy ending.”

#### *Adult Pornography (sex theatres, cinemas)*

Adult pornography was legalised in 1984. Sex theatres, sex shops, and cinemas started blooming in the Red Light Districts after this date. However, as it happens with all visible sex facilities, the number of sex theatres, cinemas and strip clubs is currently decreasing. <sup>60</sup> The audience is also quite diverse and consists of females, males, groups, and couples.

People usually pay hourly or per show. Each municipality decides whether or not these businesses require a permit to operate.

Although it is not perceived as prostitution according to the law, it is perceived as a part of the sex industry and they operate under the licensing system.

### **4.3. Poland**

Sex work is currently not regulated in Poland, meaning that although sex workers are not criminalised, their professional status is not negotiated or regulated on the state level. In 2003, the Polish Government estimated that there were circa 7.300 prostitutes in the country. Six years later, the US Department of State in 2009 Country Reports on Human Rights Practices stated: “According to police there were an estimated 3,300 prostitutes in the country; however, NGOs estimated that there were 18,000 to 20,000 women involved in all aspects of the sex industry.” <sup>61</sup>

<sup>54</sup> developed in Germany, not referred to as prostitution, but as a paid online dating platform, “if you want to date me” - you pay.

<sup>55</sup> Nijkamp et al., (2014), p. 148.

<sup>56</sup> Wagenaar et al., (2017).

<sup>57</sup> list: <https://www.thuis.nl/performer/7075/profile>

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

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

<https://www.club-sense.nl/>

<sup>58</sup> examples of prices :<https://www.club-sense.nl/>

<sup>59</sup> Since sex services in massage parlours are forbidden in many of the Dutch municipalities, there were special methods of inspection developed such as UV light inspection of towels and bed linen for the remainings of sperm. (e.g., in Amsterdam) <https://www.parool.nl/amsterdam/van-der-laan-stuurt-mystery-guests-naar-massagesalons~a4481368/>

<sup>60</sup> Daalder, A. L. (2007). *Prostitutie in Nederland na opheffing van het bordeelverbod*. Den Haag: Boom Juridische Uitgevers/WODC.

Daalder, A.L. (2015). *Prostitutie in Nederland anno 2014*. Den Haag: WODC.

<sup>61</sup> The US State Government <https://www.state.gov/j/drl/rls/hrrpt/2009/eur/136051.htm> (last accessed: August 17, 2017).



There is no reliable data on how many sex institutions are operating in the country. One of the reasons is that the facilitation of the sex industry is criminalised, another reason is that it is currently not possible to track occupation in the registration process of new companies. Nevertheless, in line with the former labour legislation, it was necessary to inform relevant authorities about the kind business they planned to start. Therefore, in 1996 there were 300 escort agencies registered officially in Poland. In 2003, this number more than doubled and it rose to 750.

There are several sectors of the sex industry in Poland, namely: brothels, escorts, informal self-organised businesses run by sex workers, street/outdoor sex work. The virtual sex industry, whilst not regulated in Poland, is quite popular. There are online live sex tv shows and webcam modelling. Erotic massage parlours are also represented in the Polish sex industry. The wikisex guide provides a detailed description of how many massage parlours are operating in each major Polish city.<sup>62</sup> Only in Warsaw, according to the website, there are six massage parlours that provide erotic massage services (e.g., tantra).

#### *Brothels*

Brothels represent a property where female, rarely male, sex workers meet their clients. Often, they are legally classified as an "entertainment facility". In some cases, such brothels operate illegally. Two types of brothels have been identified in Poland. The first one represents a house (villa) located outside of urban areas. Sometimes, such houses are called nightclubs and they operate 24/7. Another type represents an apartment that is located in the city itself. Normally, such brothels are hidden, however, there are informal ways for clients to obtain information about such services, for example, through snowball, or internet forums. Rarely, such apartments have any visible signs.

Sex workers are considered to be "employees", although the employer-employee relationship is not properly negotiated. Sex workers are not paid by managers, however, they are expected to share a part of the payment with the owner. The amount or percentage varies from place to place but in general it is between 30 and 50 %.

#### *Informal sex workers' enterprises*

Brothels in the traditional understanding are not as popular in Poland as they used to be. Instead, independent work through the internet becomes more and more popular. Moreover, it is observed that sex workers tend to cooperate and organise small informal enterprises. This self-organization can take two forms, in the first one, the sex worker is in charge of a house or apartment that is rented from the owner (who might not be aware of the activities performed in her/his property). The sex worker places an online advertisement about the place that is available for provision of sex services. Through such advertisements, sex workers might join the newly created enterprise. A different scenario will represent a group of sex workers who rent a house together. They have equal relationships and manage the administration (appointments) by creating a common schedule.

#### *Escort agencies*

Escort agencies in Poland can serve either as a platform for online advertisements<sup>63</sup>, or as brothels. When serving as a platform for online advertisements, sex workers simply put their pictures online and attract clients. To contact sex workers, potential clients call direct numbers that might be provided on the website, or arrange the visit to the sex worker through operators. Many of the websites are focused on the international scene, therefore, websites are translated to English.

#### *Street/outdoor sex work*

Street sex work is also very common in Poland. However, it is less visible on the streets of big cities, but can be more often encountered on the regional roads, or next to gas stations where truck drivers are resting. Such road sex workers even received a special nickname: *tirówki*. The nickname originated from the abbreviation of *Transports Internationaux Routiers*.

### **4.4. Sweden**

There are different sectors of the sex industry presented in Sweden. Traditionally there are two main domains where sexual services are provided in Sweden: (1) street sex work; (2) escort (advertising via

<sup>62</sup> Retrieved from: <http://www.wikisexguide.com/wiki/Warsaw>

<sup>63</sup> e.g., <http://www.happyescorts.com/escorts/poland>

internet); Notably, in line with the report of County Administrative Board in Stockholm,<sup>64</sup> up to 77 % of escort advertisements on the internet indicate that they have a different nationality than Swedish. On the street, Romanian and Nigerian women are overrepresented.

In the last decades, technological development and criminalisation of buyers (clients) of sex workers since 1999 facilitated the creation of new indoor “working spaces”, and increased provision and advertisement of services via internet.<sup>65</sup> For example, the National Board of Health and Welfare reported (in 2004 and 2007) that sex workers who were previously active on the streets, at the moment of the publication were working indoors (e.g., in studios, restaurants, and clubs). However, the National Board of Health also warned that these changes in the sex industry required some caution in interpretation since the respondents to the survey had given similar information already prior to the introduction of the new legislation in 1999. In 2009, it was therefore still considered uncertain whether the changes from “outdoor” to “indoor” and from “offline” to “online” sex work are direct consequences of the criminalisation of buyers.

There are also other places where indoor sex work is performed in Sweden, as reported by Holmström,<sup>66</sup> these are sex clubs, massage parlours, video clubs, solariums, hotel bars, casinos and private apartments.

The police confirmed that the sex industry had indeed been “moving” online, where the Internet serves as an advertising tool and as a working domain. More precisely, according to regional investigations performed by the several Regional Boards in 2016<sup>67</sup> of the cities Norrbotten, Västerbotten, Västernorrland and Jämtland, in the period between January and May 2014, there were identified 4,894 profiles of sex workers and 8,234 advertisements on 10 different web-platforms. In 2016, the figures changed to 2,036 profiles and 9,694 advertisements.

Moreover, as was mentioned in the Police Report in almost 214 criminal offences concerning the purchase of a sexual act, the offenders represented Swedish nationals who mainly arranged the meeting with sex workers via internet. According to the police, the internet is also used to advertise the services of those who were trafficked and forced into the industry.<sup>68</sup>

#### *Sexting (distribution of images of sexual character)*<sup>69</sup>

Producing and distributing of images of sexual character is legal in Sweden. Jonsson and colleagues (2015) performed a quantitative study (survey)<sup>70</sup> focused on Swedish young people in their third year of high school (circa 18 years olds). The survey mainly questioned the internet behavior, internet-related sexual harassment, sexuality, health, and sexual abuse. They found that 20.9 percent<sup>71</sup> of young people reported experiences of voluntary sexual exposure online. Other voluntary activities are: (1) recording via the web-cam or the smartphone camera (girls were subjected to such behavior more than boys); (2) posting pictures or films of themselves being (partially) undressed (more common among boys than girls); (3) less often, but still listed was masturbation shown via the webcam of recorded on the mobile phone; (4) only 2.2 percent of the young people reported recording themselves while having sex with someone (more prevalent among boys). However, the study does not determine whether such recordings were made to receive a specific monetary or nonmonetary benefit. This information was provided in the study of Svedin & Priebe who reported that 1.8 percent of boys and 1 percent of girls in the third year of the high school sold sex for money or other reimbursements.<sup>72</sup>

<sup>64</sup> Coutry Administrative Board. Last accessed (27.10.2017) : <https://nmtsverige.se/sites/default/files/prostitution%20kartlaggning%202014.pdf>

<sup>65</sup> And also see: [National Board of Health and Welfare 2004 and 2007](#), National Police Authority 2007, [Swedish National Council for crime prevention BRÅ 2008](#), National Board of Health and Welfare 2010, [Regional Board of Stockholm 2014](#)). The [Swedish Police Authority \(2016\)](#). Månsson, S. A., & Söderlind, P. (2004). *Sexindustrin på nätet: aktörer, innehåll, relationer och ekonomiska flöden*. Égalité.

<sup>66</sup> Holmström, C. & Skilbrei, M-L (red.)(2008). Prostitution i Norden. Forskningsrapport. TemaNord 2008:604. Nordiska ministerrådet. Köpenhamn.

<sup>67</sup> The result available at: <https://nmtsverige.se/sites/default/files/prostitution%20kartlaggning%202014.pdf>

<sup>68</sup> The results are available at:

[https://polisen.se/Global/www%20och%20Intrapolis/Människohandel/Manniskohandel\\_Lagesrapport\\_17webb.pdf](https://polisen.se/Global/www%20och%20Intrapolis/Människohandel/Manniskohandel_Lagesrapport_17webb.pdf)

<sup>69</sup> This section is mainly based on the finding of Jonsson and colleagues (2015) : Jonsson, L. S., Bladh, M., Priebe, G., & Svedin, C. G. (2015). Online sexual behaviours among Swedish youth: associations to background factors, behaviours and abuse. *European child & adolescent psychiatry*, 24(10), 1245-1260.

<sup>70</sup> n 3503.

<sup>71</sup> 19.2% boys and 22.3% girls.

<sup>72</sup> Svedin, C. G., & Priebe, G. (2007). Selling sex in a population-based study of high school seniors in Sweden: Demographic and psychosocial correlates. *Archives of sexual behavior*, 36(1), 21-32.

#### *Sexual services provided via web-camera*

The official data on webcam modelling is also mostly focused on minors. As was indicated in the Regional Youth Survey in the Skåne (Southern Sweden), three quarters of minor respondents (n.985) report to have webcam sex, but not necessarily for remuneration. One third of people aged 22 and older (again n.985) performed sexual activities via the webcam to generate income. The respondents receiving remuneration were mostly women. The main reason for providing sexual services via webcam among the respondents was the possibility to have sex with somebody who is anonymous and far. The boys experience more benefits than the women who primarily see the possibility of getting attention.<sup>73</sup>

#### *Lap dance, table dance and individual striptease (in clubs)*

There are no legal clubs in Skåne (Southern Sweden), since such performances have been banned since 1982. Although as was mentioned earlier, pornography is not criminalised in Sweden, “pornographic shows” were outlawed (Chapter 2, Section 14).

#### *Erotic massage*

Extensive data regarding the scope and nature of erotic massage parlours is not available. Nevertheless, some media reports demonstrate that such sexual services are provided.<sup>74</sup>

#### *Luxury call-girls/escorts*<sup>75</sup>

The sex industry in Sweden is moving indoors., An indicator of this shift is the number of escort advertisements from female sex workers that have increased significantly (from 304 to 6.965 ads) over a period of eight years (between 2006 and 2014). The majority of escort advertisements are primarily aimed at male people. In addition, some advertisements are focused on male sex workers proposing services for male clients, such advertisements have also increased from 190 advertisements to 702 in about four years (between 2010 and 2014). Authorities monitoring internet advertisements have noticed that the number of escort is not proportional to the number of internet advertisements as one escort may post multiple advertisements on several platforms and since some advertisements are inactive.

## 5. Approaches to regulate the sex industry

### 5.1. National Legislation and Policies in the sex industry

#### 5.1.1. Croatia

The provision of sex services is a crime in the Republic of Croatia. Sex workers are punished for misdemeanour if they are found guilty of providing sexual services. The ‘perpetrator’ can be as young as 14 years.

In Croatia sex workers are considered as offenders, with the aim of such criminalisation being the protection is public order and peace. Clients who buy sex services are not prosecuted, but are in fact produced as witnesses for the prosecution. However, clients can be criminally prosecuted in a specific circumstance: when they knowingly use sexual services from a person who is a victim of sexual exploitation. The punishment for this crime is imprisonment ranging from one to ten years.

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. First, anyone over the age of 14 can be an offender.<sup>76</sup> 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 and has to follow a certain lifestyle for it to be

<sup>73</sup> Olsson N. 2010 with Malmö Municipality, Regional Board in Skåne and RFSL, 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)

<sup>74</sup> Sydvenkan “He buys Sex at the Thai Massage Salon available at: <https://www.sydsvenskan.se/2013-08-18/han-koper-sex-pa-thaisalonger>; SvD (Svenska Dagbladet”) “Thousands Sex-Purchases at 2 Thai Massage Salon in Uppsala, available at: <https://www.svd.se/tusentals-sexkop-pa-massagesalonger>.

<sup>75</sup> Based on the study: Prostitution in Sweden 2014, Magnitude Mapping from Länsstyrelsen in Stockholm Region. Accessed 13.09.2017 at <https://nmtsverige.se/sites/default/files/prostitution%20kartlaggning%202014.pdf>

<sup>76</sup> Misdemeanours’ Act (Official Gazette no. 107/07, 39/13, 157/13, 110/15) Section 9(1).

a crime (provision of sex service on a single occasion will not be convicted). The punishment for this particular crime is either a fine or imprisonment, or both. The preliminary results of the research on Croatian policies regarding sex work conducted by Slovenian Peace Institute (2017) showed that the case law of the Misdemeanour Court in Zagreb is predominantly oriented towards street sex work and re-offenders.<sup>77</sup> This indicates that the criminal policy is mostly aimed at eradicating street sex work.

There is a broad range of facilitators in Croatia, depending on how and where sex services are provided. The most common type of facilitator is an individual pimp, but there are also a number of contractors such as landlords, advertising agencies, or drivers who are employed within the context of the sex industry.<sup>78</sup> Since providing sex services is a crime, it is illegal for any person to facilitate the provision of sex services. Thus, brothels, escort services, and even associations that advocate for sex workers (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 the provision of sex services in any form.<sup>79</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 sex workers. 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 or if forced to provide sexual services. Under the latter circumstance, the sex workers serve as witnesses for the prosecution in criminal trials against their associate. This can be a tricky law to navigate as in some instances the defendants may accuse the sex workers of lying about their role, or sex workers could be reluctant to disclose the details of the arrangement made with the facilitators in order to avoid being prosecuted for a misdemeanour or to avoid the social stigma that comes with sex work.

The basic criminal offence describes the modalities of 'prostitution', offender, victims, and motives. Anyone can be an offender but the modalities of the crime will decide if the offender is a facilitator or a contractor; for example, a pimp would lure a person to provide sex services whereas a landlord would rent a room. A motive of the offence would mean receiving an income or some other benefit, but what that benefit might be is not explicitly defined. Finally, a victim can be any adult, it is important to note that the prostitution of minors is considered in a separate law (see below). Luring, recruiting or encouraging the provision of sex services, organising or allowing sex work are all modalities of this particular offence. The crime is considered to have taken place when any of the described modalities have been carried out, whether the victim provided sex services or not is irrelevant. Also, as long as these activities are committed within the territory of the Republic of Croatia, it will be considered as a crime. Imprisonment as a punishment for this crime ranges from six months to five years.

The national legislation also provides for a qualified criminal offence of 'prostitution' where the sex workers 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, anyone can be the offender but the motive must only be for monetary gain. Forcing or inducing the provision of sexual services 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. For example, a defendant was convicted of a criminal offence after it was established that he was violent towards the victim, and had threatened her into providing sex services, and that there were specific circumstances in the victim's life (poverty, sister's illness, parental neglect) which the said defendant used to force the victim into the provision of sex services.<sup>80</sup>

Advertising the 'prostitution' of another person using a public platform or other media is also a crime as defined by the criminal code. Under this particular offence, the owners of websites and other social media sites can be prosecuted for allowing such advertisements, irrelevant of whether they had an intent or whether they received monetary or non-monetary benefits. In such a scenario, an offender could even be a contractor who is merely the internet service provider.

<sup>77</sup> Mirovni institut Slovenije, 2017. „Prostitucija u Hrvatskoj – preliminarni rezultati istraživanja“, p. 6.

<sup>78</sup> The term „contractor“ is used only for the purpose of this research following its methodology. Under Croatian law the contract to commit an offence would be null and void.

<sup>79</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>80</sup> Croatian Supreme Court decision no. 3 Kž 963/15-7 of 15.12.2015.

According to the statistical data of the General State Attorney's Office ("GSAO") in the period between 01/01/2013 to 31/12/2016, for the basic criminal offence of prostitution (Section 157(1) CC) there were 128 criminal complaints received. Among these, 116 were prosecuted, of which 74 have led to convictions. A further 24 convictions were made in agreement of both parties. The GSAO does not have data on the number of clients (Section 157(2) CC) prosecuted, nor does it have statistical data per modalities of each crime.<sup>81</sup>

If modalities of the criminal offence of "prostitution" are committed against children, there is a separate criminal offence: "pimping a child".<sup>82</sup> According to the GSAO's statistical data, for the basic criminal offence in the period between 01/01/2013 and 31/12/2016 there have been 196 new criminal complaints received, among which 146 cases resulted in criminal charges by the prosecutor and 91 convictions. In 4 cases convictions were made in agreement of both parties.<sup>83</sup>

According to the GSAO statistical data (01/01/2013 – 31/12/2016), users of sexual services provided by children<sup>84</sup> have also been prosecuted. There have been thirteen criminal complaints received in that period for the criminal offence of using sexual services of children. Eleven cases resulted in criminal charges. The courts convicted four cases and in two cases convictions have been brought in the agreement of both parties.<sup>85</sup>

Minors can also be prosecuted for pimping children. According to GSAO in the period between 01/01/2013 and 31/12/2016 there have been 64 new complaints against the minors who committed the basic criminal offence. In 38 cases, the prosecutors proposed sanctions. In 34 cases, extraordinary care measures have been taken and in one case there a conviction. The GSAO received one criminal complaint concerning minor user of sexual services provided by other minor, with no resulting prosecution.

Apart from the criminal offence of "prostitution", sexual abuse of children and trafficking in human beings, "forced prostitution" and "sexual slavery" is prohibited as a crime against humanity<sup>86</sup> and as a war crime.<sup>87</sup> Both criminal offences can occur either during the war or the attack against civilian population by various facilitators who may, but do not have to be connected with the attack against the population or the war. For one of these criminal offences, it is enough that the offender uses the vulnerability of civilian population being attacked or affected with war. When the sexual modalities of crime against humanity are committed, the provided punishment ranges from imprisonment from five years up to forty years, while for war crimes the minimal punishment provided is three years.

### 5.1.2. The Netherlands

Voluntary sex work by adults is legalised in The Netherlands, and those running sex business need to apply for a permit with the local authorities at the municipality.

In general, the sex work policy across the country consists of a licensing system, establishment policy, spatial regulation, maximum number of sex companies, taxation, administrative inspections, regulations for sex business facilitators, and exit programmes. One of the most important aspects of the Dutch legislation regarding sex work is the freedom that municipalities have for the shaping of policies.

#### ***Prostitution in the General Local Regulation of municipalities (APV):***

The Netherlands is divided into 12 provinces and 388 municipalities, and since it represents a unitary state, the relationship between municipalities and state authorities is framed by the 'Municipal Law' (or *Gemeentewet*) (Andeweg and Irwin, 2002). Through this law, municipalities have the possibility to design their own system of the regulation of the sex industry, albeit within the scope of the framework set out by the national legislator. In the beginning of 2000s, the Dutch Association of Municipalities issued a guideline for municipalities, which was meant to serve as a model to make the process of policy development smoother and more organised. The guideline included regulatory mechanisms that can be used by city administrations to control the sex industry. Recently, along with the proposal for nation wide

<sup>81</sup> Statistical data of the General State Attorney's Office of Republic of Croatia, provided upon request to access public data on July 25, 2017.

<sup>82</sup> Criminal Code, Section 163.

<sup>83</sup> <http://www.planetromeo.com>, last accessed on June 28, 2017.

<sup>84</sup> In modalities of two crimes from Criminal Code, Sections 163(1) and (2).

<sup>85</sup> <http://www.planetromeo.com>, last accessed on June 28, 2017.

<sup>86</sup> Criminal Code, Section 90(7)(1).

<sup>87</sup> Criminal Code, Section 91(2)(22).

legislation, the Organisation for Dutch Municipalities (*Vereniging voor Nederlandse Gemeenten*, VNG) developed a new model of local regulation of the sex industry in 2015 (it was updated in 2016). In line with the WRP (explained further below), the APV<sup>88</sup> emphasized an improved licensing system and a stricter control over unlicensed sectors. Licensing should be applicable to all sectors including the ones offering erotic live shows/goods for payment. The VNG supported the introduction of the obligatory registration or/and obligatory in-take interviews conducted by facilitators in all municipalities (although this point was removed from the New Bill, it was kept in the new APV edition). The idea behind such an in-take interview is to find out whether sex workers are voluntarily entering or working in the sex industry and to inform sex workers about their rights. Unfortunately, the fact that municipalities can implement their own policies means that some municipalities are stricter than others, and criminals can work around the restrictions placed by one municipality by taking their “business” elsewhere. Municipalities are also free to decide against having a particular type of sex business or not having any sex business at all on their territory (also referred to as “zero policy”). Around 25% of the municipalities do not have a sex work policy yet. It is essential to note that the license or registration is only valid in one municipality, and is not transmittable to another. Similarly, warnings to a sex worker or the withdrawal of a permit for any illegal activity is only valid in the municipality that issued it. Therefore, the mobility of sex workers is high across the country.<sup>89</sup>

The Dutch law also criminalises the international recruitment of sex workers as human trafficking (art. 273f(1) sub 3), even if the workers want to work in the industry voluntarily.

Child pornography, the production, distribution, exhibition, importation, forwarding, exportation, possession, providing access to, as well as “sexual penetration” are criminal offences under Article 240b of the Dutch Penal Code. Also, sexual services provided by minors are criminalised, and there are four articles that punish ‘sexual penetration’ or ‘indecent acts’ with children: 1) Article 244 CC (sexual penetration of a child under the age of 12); 2) Article 245 CC (sexual penetration of a child between the ages of 12 and 16); 3) Article 248b CC (indecent acts with a minor who makes him/herself available for sexual acts with a third person); 4) Article 249(1) and Article 250 CC (indecent acts with a minor entrusted to the offender’s care or forcing that minor to do so with a third person). Interestingly, sex with children who are aged 16 is not criminalised in the Dutch law, but people who facilitate sexual services provided by children aged 16-18 are liable to imprisonment up to four years (art. 248a DCC). In that case, the consent of the child is irrelevant. Grooming is criminalised in article 248e DCC.

***Bill for Regulation of Prostitution and Suppression of Abuse in the Sex Industry, or WRP:***

Because the Municipal Law led to differences between policy implementations of municipalities, a New Bill or WRP was submitted on the 10th of November 2009. It is still under negotiation after passing the Second Chamber (Tweede Kamer), but it has twice been rejected by the Senate (Eerste Kamer). The most recent revised version was submitted in 2014. Currently, the Bill has not come into force but is expected to do so in the near future. It combines the centralised regulation and is aimed at stricter control of some sectors in the sex industry. It now consists of two proposals: *Bill Regulating Prostitution and combating abuse in the sex industry* and *Criminalisation abuse of prostitutes who are victim of THB*.

The Bill aims to reduce regional differences in prostitution policy by introducing a unified system of sex industry regulation in order to improve forms of regulation, and to allow municipalities to retain some of their individual powers in imposing other demands. In short, it touches upon the following domains: 1) a new centralised licensing system that covers all sectors of the Dutch sex industry, including sex shops/cinemas and theaters, but gives freedom for municipalities to establish additional requirements to the licensing procedure; 2) stricter regulation of home-based sex work (*although dropped in the plans*); 3) human-trafficking counteraction through stricter measures for those proprietors at whose property trafficking was revealed; and through criminalization of those clients who see the signs of exploitation but still choose to use the services; 4) increase of the minimum age from 18 to 21; 5) registration of sex workers and the obligation of clients to check the registration of sex workers (*was dropped in the new edition of the Bill because of sex workers’ privacy issues*); 6) obligatory submission of business plans by facilitators and stricter hygiene requirements; 7) administrative checks performed by other authorities than police (*more details in the section on municipalities*);

Special attention in the Bill is given to home-based sex work, especially concerning the difference between home-based “sex business”/ “sex facility” and home-based sex workers who do not

<sup>88</sup> More information on the new APV: <https://vng.nl/onderwerpenindex/veiligheid/prostitutie/brieven/nieuw-prostitutiehoofdstuk-model-apv>

<sup>89</sup> Wagenaar et al., (2017), Siegel, D. (2015). *Het Zandpad – closing brothels or closing eyes? Utrechtse sekswerkers na sluiting van het Zandpad*. Den Haag: Boom Lemma uitgevers.

operate like a “business” (in other words they do not advertise online, have limited working hours). Because of the widespread use of the Internet, strict regulation and negative consequences of working officially, home prostitution became more and more attractive to sex workers and represents a good alternative to working with the third parties.<sup>90</sup> However, with the introduction of the term “sex facility” and “sex business”, and the possibility for private homes to be classified as such in the current permit system, sex workers who work from home have become subject of the same procedure of licensing as big sex businesses such as sex clubs and window brothels. Furthermore, home-based sex workers have to comply with the same health and safety regulations, monitoring and inspection procedures. In cases where a sex worker is caught providing services without a license, he/she can be punished with a maximum six months in prison or a fine. The same sanctions are applicable for facilitators of unlicensed sex workers.<sup>91</sup> Also, local authorities can enter private property without permission where they have a “reasonable suspicion” about unlicensed prostitution or if there are indications of human trafficking. Home-workers are obliged to have a permit in case they operate a business, which is the case if they are advertising online. It is important to emphasize that, at the moment, municipalities are free to permit home-based sex work on their territory, to forbid it or to not apply the permit system to them. If sex workers provide services at home alone and are not advertising themselves, do not work more than a certain number of hours, there is no need to register as a self-employed entrepreneur or sex facility. They only have to arrange taxes as a freelance worker. In the latest version of the proposed Bill it has been proposed to exclude home-based sexwork from the permit system. This proposal was received with resistance as exclusion complicates the monitoring of home-based sex work. If outside the permit system, neither the police nor local authorities can enforce permit requirements. In addition this monitoring has already been complicated by the fact that a ‘sex business is defined as: *the activity of commercially providing opportunities for prostitution or sexual acts for another person in return for payment*. This implies the presence or involvement of a third person whereas home-based sex work is often between a client and the sex worker. This hampers an effective monitoring and creates a gap in the mandate for enforcement.

Judging from the name of the Bill it is evident that it primarily focuses on exploitation. However, at the same time, it calls for the stricter regulation of prostitution by criminalizing sex workers who operate without licenses. This is the first attempt to criminalise sex workers in the history of the Dutch sex industry. Nevertheless, the implementation can also have a positive effect, because it gives clients responsibility towards sex workers in case there is a suspicion that the workers are forced. Moreover, it is the first attempt to unify the sex work legislation that will be applicable to all municipalities.

***Public Administration (Probity Screening) Act (Hereafter, Wet Bibob):***

The Public Administration (Probity Screening) Act (Wet Bibob) came into force in 2003. Its main goal is to assess the integrity of business companies, with specific attention to sex facilities, gaming centers, bars and restaurants. The idea behind the Bill is to inspect the financial transparency of all mentioned businesses and business partners. Additionally, Wet Bibob can be used to refuse an application or to withdraw a permit and shut down a certain facility if there is a reasonable doubt that the permit will be used or is used to commit criminal activity. In this way, municipalities have the right to initiate investigations and to close sex facilities if they have evidence about their involvement in shady financial operations. Furthermore, the background of applicants and managers, operators etc. are checked and if any accounts of criminality that took place in the past were found, the person can no longer be involved in the business administration.

***Labour and migration regulations***

Although sex workers can officially legally work and possess all labour rights and responsibilities, especially with regard to the tax obligations, sex work is still not viewed as a “generally accepted occupation”. This can be illustrated by the fact that the Labour Service will not advise the sex industry to unemployed citizens; neither will it support the choice of those who are willing to join the sector.<sup>92</sup> 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 mortgage or even to open a business account. According to Wagenaar, well-defined labour regulations concerning the sex industry besides the ones adopted by the tax authorities are absent in the Dutch legislation, with the exception of the opting-in arrangement (more

<sup>90</sup> Wagenaar et al., 2017.

<sup>91</sup> At the moment unlicensed sex workers or facilitators are punished under the Economic Offence Act (Article 1).

<sup>92</sup> BNRM Prostitutie en Menenhandel, (2016).

details below in the section of taxation).<sup>93</sup> Nevertheless, if there are problems with working conditions, sex workers can address SZW (Labour) inspection. However, inspections are primarily done by the police and local authorities however both have limited powers as they can only initiate the protection procedure that is designed for human-trafficking victims who are willing to cooperate with authorities in criminal proceedings against their offenders. In case sex workers have unsafe sexual intercourse they can report it to the Community Health Services, and ask for more information about health concerns.

All workers from outside the EU who are willing to work are obliged to have a valid working permit. However, based on the Aliens Work Act (WAV) a permit will not be issued for working in the sex industry. Therefore, it is not possible to apply for a permit in the sex industry for persons outside the EU. For citizens from states with whom the EU has association agreements, following the decision of the European Court of Justice in the *Jany* case in 2001, it is possible to work as self-employed sex worker.<sup>94</sup> Thus, it is not difficult for EU citizens to start working in the sex industry, since they are allowed to work in any EU Member State, both as employees and self-employed entrepreneurs. For citizens of those states who have an accession status it is only possible to work as self-employed entrepreneurs.

### **Health and hygiene regulations**

Medical check-ups for sex workers are not compulsory in the Netherlands. In practice, sex workers are asked to have medical check-ups four times a year, but it is not obligatory (although sex workers generally follow this practice).<sup>95</sup> The institution that is responsible for STD testing is the Public Health Service (GGD). In addition, there are other organizations that focus exclusively on the health of sex workers. For instance, in Amsterdam, the municipality facilitated the opening of the Prostitution & Health Centre (P&G) where sex workers can get information about STDs, get free HIV testing, and vaccinations against hepatitis B. All services are free and anonymous. If sex workers visit general practitioners (GPs), their anonymity is guaranteed as well.

Hygiene regulations are set by the Centre for Health and Society<sup>96</sup> that developed a checklist and guidelines for sex businesses.<sup>97</sup> Generally, facilitators are required to prepare: (1) washing facility with hot/cold water; (2) soap in the bathroom and all other sinks in the building; (3) garbage bags should be renewed once a day; (4) a first aid kit should be available; (5) bedding, linen, and towels washed at 80 degrees; (6) a regular cleaning of hot tubs; (7) ventilation; (8) disinfection; (9) a regular supply of condoms.<sup>98</sup>

### **Taxation**

All parties working in the sex industry are subject to taxation schemes. There are several ways for sex workers and facilitators to arrange their labour relationship and especially taxation schemes. One way is for a sex worker to be independent and pay taxes in line with tax regulations for self-employed entrepreneurs. In the Netherlands, self-employed workers have to be truly independent,<sup>99</sup> which underlies that sex workers have a freedom to decide themselves which price to ask, how many hours to work, and where to provide services. If sex workers cannot manage administration work by themselves, there are special business companies can provide accounting services (e.g., Red Light Tax).<sup>100</sup>

As stated earlier, it is difficult to qualify the relationship between proprietors and sex workers. On one hand, sex workers do not seem to have absolute freedom in regard to their working relationship with brothel owners. On the other hand, brothel owners declare that sex workers are independent, and that the brothel owners only offer working facilities. They furthermore expected high costs if they had to hire prostitutes as employers because of high costs for sick leave, unemployment benefit and holiday pay. Consequently, a new structural arrangement called the “opting-in arrangement” was developed in 2008 and applied to situations where the relationship between employer and employee is not governed

<sup>93</sup> Wagenaar et al., (2017).

<sup>94</sup> *Jany and others v. Staatssecretaris van Justitie*, 20 November 2001, Case C-268/99, European Court of Justice.

<sup>95</sup> SOA Aids, last accessed 27.10.2017 : <https://www.soaids.nl/nl>

<sup>96</sup> [http://www.rivm.nl/en/About\\_RIVM/Organisation/Centres/Centre\\_for\\_Health\\_and\\_Society](http://www.rivm.nl/en/About_RIVM/Organisation/Centres/Centre_for_Health_and_Society)

<sup>97</sup> Landelijk Centrum Hygiëne en Veiligheid Hygiënerichtlijn voor seksbedrijven December 2013 – met wijzigingen d.d. april 2014 en maart 2016; available

at:<https://www.soaids.nl/sites/default/files/documenten/Prostitutie/Hygi%C3%ABnerichtlijnen%20seksbedrijven%20-%20dec%202013%2C%20met%20wijzigingen%20april%202014%20en%20maart%202016.pdf>

<sup>98</sup> SOA Aids: <https://www.soaids.nl/nl>

<sup>99</sup> Newsletter about taxes for independent sex workers distributed and published by the PIC Amsterdam, available

at:<http://www.pic-amsterdam.com/wordpress/en/files/2014/06/Krant-A3-engels.pdf>

<sup>100</sup> [www.redlighttax.nl](http://www.redlighttax.nl)



by conventional conditions. In this scheme, taxes are deducted from the payment that has to be delivered to workers by the proprietor. As a result, sex workers do not pay social security and neither can they claim social protection rights connected with employment. Basically, sex workers are still considered as self-employed (*although they are not obliged to register with the Chamber of Commerce*). To be able to use this opting-in scheme, employers have to comply with a well-defined set of conditions, such as: offer sex workers freedom to decide their working hours, give freedom to choose what to wear, et cetera. In case facilitators or proprietors do not comply with these conditions, their relationship with sex workers will then be treated as an “employer-employee” arrangement. Accordingly, employees will be entitled to the minimum wage and holiday allowance.

### 5.1.3. Poland

Sex work and the provision of sexual services in Poland has been legal since 1997, but receiving profits from the sex work of another person is illegal. This means that sex workers and clients are not criminalised, however, facilitators are.

Escort agencies and brothels in Poland cannot officially and legally provide sexual services, but they can be considered as entertainment service providers (at least on paper), and therefore, can receive licenses.<sup>101</sup> Strip dancing and lap dancing are not considered to be part of the sex industry; therefore, the facilitation of these activities might be considered as legal. Contractors working in escort agencies and clubs (e.g., cleaners, guard, drivers) have ordinary employment contracts, therefore, there is no distinction between contractors working in the sex industry and any other “regular” sectors. Sex workers are exempt from paying tax as it is not considered a ‘legitimate’ job. In order to benefit from this tax exemption, however, the sex workers have to prove that they are in fact involved in the provision of sexual services.

Adult pornography is not officially banned in Poland, however, there is a distinction between “soft” and “hard” pornography. Yet, as we mentioned earlier it is not allowed to film people without their consent, however in other cases, the production of adult pornography is not punished.

### 5.1.4. Sweden

The purchase of a sexual service is criminalised in Sweden under the Sex Purchase Act and the Swedish Penal 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. The Sex Purchase Act was amended twice after its introduction in 1999, namely in 2005, when some of its articles were added the Penal 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 (“koppleri brott”, Chapter 6, Section 12) are criminalised as well. As was mentioned earlier, 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. This information was retrieved from the discussion threads of the Flashback website, where clients share their attitudes about sex workers.

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”.

The clients of sex workers in the Swedish legislation are referred to as “buyers”. As we mentioned earlier, not only the purchase itself is punished by the Swedish Penal Code, but the intention to do so as well. It is currently debated in Sweden whether the territoriality of the crime should play a role as well. For instance, there are reports that Swedish sex-buyers are purchasing sex abroad through the sex-tourism industry but they are currently not punished by the law as the purchase has taken place

<sup>101</sup> For example, in the Polish List of Business Activities Classification (the 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.

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

outside Sweden. 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) decided to press charges against the offender (in this case - buyer), the women in prostitution might have legal assistance and get financial coverage for harm done. In cases of trafficking in human beings, the mere intention to exploit is a crime punishable by law.

Facilitation in Sweden is criminalized under the Chapter 6, section 12 of the Swedish Penal Code. It is stated in the Penal 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>103</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 penal code.<sup>104</sup>

Sex workers are often seen as victims of male violence against women and this is how the legislation is being advocated. Although the provision of sexual services is not criminalized and sex workers are protected against gross human rights violations, such as rape, abuse, threat, deception, sexual molestation. Levy reports that sex workers are often harassed by police and other state authorities, and their reports of violent crime and/or rape are sometimes not taken seriously.<sup>105</sup> Ideally, as any Swedish citizens, sex workers are eligible for health and social care (*irregular migrant sex workers have to be identified as trafficking victims to receive any assistance*). Nevertheless, such help might come across as conditional upon the willingness of sex workers to leave the industry.<sup>106</sup> More precisely, the Swedish Government has no obligation to provide any kind of special social assistance if the willingness to leave the sex industry from the side of sex workers is lacking. Although this assistance is often perceived as a “harm reduction” strategy, it does not necessarily mean that safe health and social care provision should only be presented as such.

## 5.2. National Legislation and Policies on Human Trafficking and Sexual Exploitation

### 5.2.1. Croatia

Trafficking in human beings is a criminal act. The basic criminal offence<sup>107</sup> describes the offender, the modalities of criminal activities, the anticipated consequences for victims and punishment. Due to the broad scope of modalities of this crime, only those applicable to facilitators, sex workers and clients will be described in this section. From the description of the crime it could be seen that the circle of offenders can be very broad. Every facilitator who knows that he/she mediate in sex work may commit this crime if it's legal requirements 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 the victim. The purpose of both types of activities must be exploitation for “prostitution” or other forms of sexual exploitation, including pornography. The punishment provided for this crime is imprisonment ranged from one to ten years.

<sup>103</sup> Chapter 6, Swedish Penal 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>104</sup> Chapter 6, Swedish Penal 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>105</sup> Levy, J. (2011, July). Impacts of the Swedish criminalisation of the purchase of sex on sex workers. In *British Society of Criminology Annual Conference, Northumbria University, 4th July*.

<sup>106</sup> Levy (2011).

<sup>107</sup> Criminal Code, Section 106(1).

Whoever recruits, transports, takes across the borders, hides, receives victim, exchanges or transfers the supervision over the child for “prostitution” or other forms of sexual exploitation, including pornography, shall be punished by imprisonment ranging from one to ten years.<sup>108</sup> However, when the crime is committed by a person influencing another person having supervision over a child, the punishment provided is imprisonment ranging from three to fifteen years. The same punishment is provided where the 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 a greater number of people, or the danger to one or more persons is caused in a conscious manner.<sup>109</sup>

The clients of sexually exploited persons may be convicted for a crime if they use the sex services by knowing these persons are victims of trafficking in human beings, with the punishment of imprisonment ranging from one to ten years.<sup>110</sup>

Whoever with the purpose to allow the crime of trafficking in human beings keeps, takes away, hides, damages or destroys a passport or identity document of another person, shall be punished by imprisonment up to three years.<sup>111</sup> The attempt of this crime is also punishable by law.<sup>112</sup> The consent of the victim to be exploited does not exclude criminal liability for trafficking in human beings.<sup>113</sup>

According to the statistical data of GSAO in the period between 1.1.2013-31.12.2016, for the criminal offences from Section 106(1) and (2) there have been 28 criminal complaints. Among these, in 27 cases, the prosecutors brought criminal charges, but courts convicted only eight cases. There were no cases where clients or persons who used the services of victims of human trafficking were prosecuted.<sup>114</sup> However, we do find cases where some sex workers who were forced into the industry, were still criminalised. For example, the Slovenian Peace Institute (2017) found that there are cases where women who were forced into prostitution were prosecuted for a misdemeanour.<sup>115</sup>

When it comes to sexual exploitation, as other forms of exploitation, the courts deem that there must be a typical intensity of the crime corresponding to trafficking in human beings. In its core, the courts deem that trafficking in human beings is a crime, which involves “acting with characteristics of intentional and bestial exploitation of other human beings with purpose of achieving different goals”.<sup>116</sup>

The **aim** of sexual exploitation is a constitutive element of human trafficking, and the offence is completed even if the actual exploitation has not taken place. The same offender may later, by organizing the provision of sex services for the trafficked victim, additionally commit the crime of “prostitution” and thus be criminally liable for two offences. These offences, however, must be clearly differentiated.<sup>117</sup> Earlier findings also confirm that “there is no consumption between the offences of trafficking and sexual offences, regardless the fact that the purpose of trafficking can be a sexual exploitation”.<sup>118</sup>

In her research Rittossa observed that normative complexity connected with the crime of human trafficking provides for long-lasting criminal proceedings with a negative impact on the victims.<sup>119</sup> Since 2009, there have been numerous changes in the criminal legislation, including the crime of human trafficking. Still, GSAO statistical data shows that the number of convictions is rather low and the remaining cases that are still ongoing before the courts may confirm that long-lasting criminal proceedings are still in place.

### **Sexual exploitation and sexual violence**

The Criminal Code contains the special heading criminal offences against sexual freedom, these offences are: non-consensual sex, rape severe criminal offences against sexual freedoms, gross indecency, sexual intimidation and prostitution (Sections 152-157). The criminal offence of “prostitution” protects persons who provide sexual services from their facilitators, mostly pimps and thus it is possible for sex workers to file such offence. All the offences from that section are prosecuted *ex officio* and thus there is no need to file a complaint.

<sup>108</sup> Criminal Code, Section 106(2).

<sup>109</sup> Criminal Code, Section 106(3).

<sup>110</sup> Criminal Code, Section 106(4).

<sup>111</sup> Criminal Code, Section 106(5).

<sup>112</sup> Criminal Code, Section 106(6).

<sup>113</sup> Criminal Code, Section 106(7).

<sup>114</sup> <http://www.planetromeo.com>, last accessed on June 28, 2017.

<sup>115</sup> *Ibid.*, p. 7.

<sup>116</sup> Croatian Supreme Court decision no. I Kž 274/13-7.

<sup>117</sup> Croatian Supreme Court decision no. I Kž 428/15-6.

<sup>118</sup> D. Rittossa, 2009. *Trafficking of Minors in Croatia: Present Situation*. European Journal of Crime, Criminal Law and Criminal Justice, vol 17, p. 151.

<sup>119</sup> *Ibid.*, p. 163.

In 2012, the Croatian Government drafted a new law that would, not only criminalize sex workers but also criminalize their clients, for misdemeanour; however, the draft never passed through the Parliament due to disagreements between policy makers. When the issue of criminalizing clients appeared, the minister of interior affairs, whose ministry drafted the law without public consultation, was challenged by the Prime Minister at the session of the Government. The media reported that the Prime Minister was not satisfied that Croatia follows examples of Sweden and Norway, while other European countries like Austria and Germany did not follow that model, and that there was no prior public discussion on the issue.<sup>120</sup>

The case law shows that sex workers may be victims of criminal offences against sexual freedom. In one case, the perpetrator was convicted for two rapes, although the Supreme Court could find only that one rape happened, but it was clear that the sex worker was treated as a victim of rape.<sup>121</sup>

One of the most complex legal issues in the context of human trafficking is non-prosecution of victims of human trafficking who had committed some criminal offence while being victimised. Munivrana Vajda et al. (2016) advocate for strict legislative or instructive reform that would exclude prosecution of victims in these cases, which would provide for avoiding additional victimisation, in line with the non-punishment principle in Article 8 EU Trafficking Directive. They argue that a multi-dimensional and flexible approach is necessary to allow prosecutors and judges to establish an appropriate balance between fundamental elements of the Croatian legal systems and rights of persons to be treated as victims, rather than as offenders.<sup>122</sup>

### 5.2.2. The Netherlands

In the past decade, discussions regarding trafficking in human beings have come to the forefront in the Netherlands, largely due to the connection of organised crime and forced prostitution. Under the Dutch Criminal Code (hereafter, DCC), any person who profits from such exploitation is guilty of human trafficking. Trafficking in human beings is criminalised in Article 273f DCC and as mentioned before is a complicated article. Paragraph 1 includes nine forms of human trafficking, including for labour exploitation and forced removal of organs.

The difficulty in capturing the reality of human trafficking for sexual exploitation arises from the fact that most perceptions of human trafficking, especially in the sex industry, revolve around the idea of vulnerable women being deceived into providing sexual services. However, in many cases, it was found that women who were recruited were aware of the nature of the work they were to be employed in or had previous experience working in the same sector, but it turned into a trafficking situation due to exploitation and deception by third parties after the women started working/earning.

The approach adopted to combat human trafficking in the Dutch sex industry is linked to changes in prostitution policy. The connection between sex work and human trafficking policies is brightly illustrated by the fact that the aim of lifting the general ban on brothels was to regulate and legitimise the sex work industry, thereby providing sex workers 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 prostitution is to combine criminal law that punishes traffickers and labour laws that technically protect sex workers.

There are several laws passed in order to tackle human trafficking on a national, as well as a supranational scale (EU region). First and foremost, under Section XVIII (this section in general addresses "Serious offences against Personal Liberty"), Article 273f of the DCC it is explicitly stated 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. According to this law, any person found guilty of human trafficking shall be required to pay a fine of fifth category (which is not more than 76000 Euros) or shall be imprisoned for 12 years or less. In case the offences specified in the subsection 1 of article 273f are committed by two or more persons together or if it is committed against a child younger than 18 years, the imprisonment shall be for 15 years or less. If those offences causes serious harm and/or might endanger a person's life, the imprisonment shall be up to a maximum of 18 years. Finally, if the offences result in death, then imprisonment shall be a life sentence or less. For all these scenarios, a fine of the fifth category can be imposed as well. The Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence

<sup>120</sup> <http://www.jutarnji.hr/vijesti/hrvatska/vlada-o-prostituciji-milanovic-kazne-za-klijente-prostitutki-to-je-tek-za-raspravu/1351308/>, last accessed on August 4, 2017.

<sup>121</sup> Croatian Supreme Court decision no. I Kž 428/15-6 of 03.11.2015.

<sup>122</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.

against Children has mentioned on multiple occasions that the section relating to human trafficking in the DCC is a complex provision that has elements that can be interpreted differently.<sup>123</sup> This can cause several nuances that will impact on how a case is examined. As expected, 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. Finally, the Dutch policy to combat human trafficking also pays attention to protection of victims by providing them with shelter, medical care (including psychological care), and legal aid. However, there is still room for improvement in terms of protection for victims as they are only offered protection and support under the reflection period for a maximum of three months after which the protection is conditional and depends upon whether or not the victim will cooperate with the authorities in pursuing a criminal charge against their traffickers. In case victims decide not to cooperate with police within three months of reflection period, they will not be supported by the government. Moreover, as we will see later, they also lose the possibility to provide sex services in the given facility and in the given municipality. If migrant sex workers cooperate with authorities, they receive protection under the B8 procedure and can legally reside in the Netherlands until the end of the criminal provision and under some circumstances, their residence permit can be renewed.

Finally, a difficulty with the application of anti-trafficking policies in the context of the sex industry is the differences in perception of what the officials consider as trafficking and what sex workers attribute to trafficking. In her thesis, Verhoeven (2017) writes that some sex workers who had boyfriends or relationships with their pimps did not dare report it to the government due to fear of being banned from pursuing sex work.<sup>124</sup> Moreover, in situations where their partners were abusive (mentally or physically), it was seen as a domestic issue that should be solved amongst themselves, whereas under the anti-trafficking law prolonged abuse of any kind and profits incurred due to exploitation is viewed as human trafficking. Wagenaar and colleagues also pointed out that the issue of exploitation “outside” the traditional trafficking definition is often overlooked by authorities who are mostly focused on the human trafficking signals and do not pay attention to other occurrences of exploitation in the industry.<sup>125</sup>

### 5.2.3. Poland

#### **Human Trafficking and counter-trafficking Legislation and Policies**

The punishment for human trafficking (also for sexual exploitation) is defined in Article 189a of the Polish Penal Code:

1. Anyone who carries out human trafficking is liable to imprisonment for not less than three years.
2. Anyone who makes preparations to commit the offence referred to in 1. is liable to imprisonment from three months to five years.

As for prevention of trafficking in human beings, there are a number of evident attempts to combat trafficking in human beings. For example, the *National Action Plan Against Human Trafficking for 2016-2018*, presents several activities targeting the trafficking counteraction, such as: awareness raising campaigns; trainings for social workers, law enforcement officers and judiciary; assistance programs for the victims of trafficking for sexual exploitation; analysis of the long-term needs and expectations of the victims of human trafficking for sexual exploitation in order to develop a model of the integration/reintegration programs for them.

Unfortunately, awareness campaigns and trainings for social workers, law enforcement officers and judiciary are very limited and not sufficient. Also, the main concern of the government regarding trafficking in human beings is the design of support programs for trafficking victims. According to the US Trafficking in Persons Report, migrant sex workers from Ukraine, Moldova, Bulgaria and Romania are usually identified as victims of trafficking in human beings.<sup>126</sup>

At a regional level, since 2010, voivodes (administrative division in Poland) are responsible for both the prevention of the human trafficking phenomenon and support of victims of trafficking in

<sup>123</sup> National Rapporteur on Trafficking in Human Beings (2012). Trafficking in Human Beings. Case law on trafficking in human beings 2009-2012. An analysis. The Hague: BNRM (2012).

<sup>124</sup> M. Verhoeven (2017), *Government policies and sex work realities Human trafficking in the regulated sex industry*, Ipskamp Printing, Enschede.

<sup>125</sup> Wagenaar et al., (2017).

<sup>126</sup> Trafficking in Persons Report 2016, Accessible at : <https://www.state.gov/documents/organization/258876.pdf> (last accessed 27.10.2017).

humaneings (Social Welfare Act, 2010). Finally, there is the National Consulting and Intervention Center for the Victims of Trafficking run by two Polish NGOs: La Strada Poland and Association PoMoc (*from Polish meaning "help"*). The Center is responsible for helping victims of trafficking and sexual exploitation (both Polish nationals and foreigners).

The General Prosecutor's Office in Poland monitors and coordinates all criminal cases related to the trafficking in human beings (no matter whether this is sexual exploitation case, forced labour or other forms). Simultaneously, in every region of Poland there are special prosecutors responsible for human trafficking cases.

### **Sexual exploitation and sexual violence**

Violence in the sex industry is a very sensitive topic in Poland. Nearly a decade ago, the Deputy Prime Minister and Minister of Agriculture publicly asked "*whether it was impossible to rape a prostitute?*"<sup>127</sup> It was meant to be a "joke" but it can definitely serve an example of perception on sexual violence in Polish society. Nevertheless, it does not imply that Polish Authorities ignore sexual crimes.

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, there is a lack of reliable data and the one presented by the mentioned authorities cannot be proved reliable. Furthermore, the quality of these databases does not allow for the further identification victims of sexual exploitation and sexual violence among sex workers.

Notably, perpetrators of rape are not severely punished in Poland. The statistics from the Polish Ministry of Justice show that one third of court cases related to the sexual violence are suspended sentence<sup>128</sup>. That might be a reason why some victims of rape (in unknown part including sex-workers) do not report this crime to the police or prosecutor's office, because the steps taken by the law enforcement authorities and justice are not sufficient.

#### **5.2.4. Sweden**

The term "sexual exploitation" as it stands in the current Swedish legislation, does not correspond to a crime but it is used in relation to the abuse of minors in Chapter 6 of the Penal Code. Nevertheless, similar offences are highlighted in both the Penal Code and The Sex Purchase Act. According to the Swedish National Council for Crime Prevention, over the last decade the number of reported sexual offences has been increasing, and the reports of rape have more than doubled. This is likely due to a combination of an actual increase together with a rising trend of reporting the crime. The increase is mainly noticeable starting from 2005, when the new legislation on sexual offences came into force.<sup>129</sup> It is important to note, that sex offences in Chapter 6 of the Swedish Penal Code comprise a broad spectrum of offences – everything from minor incidents, such as indecent exposure, to very serious incidents, such as rape.<sup>130</sup>

In 2002, Sweden adopted new legislation that prohibits sex trafficking and forced labour and prescribes penalties of two to 10 years of imprisonment. 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, with the purpose of making use of that person for prostitution or other sexual purposes."<sup>131</sup> For minors, the use of inappropriate measures is not required for the section in the Penal Code on trafficking in human beings to apply. As in other countries studied in this report, 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>132</sup>

All victims are entitled to the 90 days reflection period in Sweden (National Aliens Act). However, afterwards in order to continue receiving support they are expected to cooperate with law enforcement

<sup>127</sup> <http://www.newsweek.pl/polska/od-rzadu-do-nierzadu,12494,1,1.html>.

<sup>128</sup> Retrieved from: <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/> (no English translation available).

<sup>129</sup> For instance, the Chapter 6 of the Swedish Penal Code constitutes such crimes as: rape (section 1), sexual coercion (section 2), sexual exploitation of a person in a position of dependency (section 3); child rape (section 4); sexual exploitation of a child (section 5); sexual abuse of a child (section 4); sexual Intercourse with an offspring or full blood sibling (with consent, the provisions of this Section do not apply to a person who has been made to commit the act by unlawful coercion or other improper means);

<sup>130</sup> BRÅ, Accessed online at: <https://www.bra.se/bra-in-english/home/crime-and-statistics/rape-and-sex-offences.html>

<sup>131</sup> to Chapter 4, Section 1a of the Swedish Penal Code.

<sup>132</sup> Swedish Police Report. Accessed online at: <https://www.brottsoffermyndigheten.se/Filer/Föreläsningspresentationer/Presentation%20Kajsa%20Wahlberg.pdf>

authorities. This stance was supported by the GRETA's report,<sup>133</sup> who visited Sweden in 2013. Municipalities are ideally responsible for providing services to victims, including medical and psychological care, shelter, and social assistance. Nevertheless, NGOs are usually operating most of the shelters with public and private funding. These shelters offer victims assistance with immigration issues, medical care, and educational and employment needs, including Swedish language training; adults could leave the shelters unsupervised and at will. Child victims are referred to children's services, who place them in foster care or group housing. The government has provided training to safe houses and victim support-centres. The national anti-trafficking coordinator provided 15 training sessions for professionals who come into contact with victims. Police received training in victim identification and the migration agency trained 600 staff members; beginning in April 2015, all new migration agency staff received anti-trafficking instruction as part of their introductory training.

According to the 2016 Trafficking in Persons Report presented by the US Government, it was found that 58 sex trafficking cases were filed by the police in 2015 (including 11 child sex trafficking cases).<sup>134</sup> Authorities prosecuted and convicted two sex traffickers. They were sentenced to 26 and 30 months' imprisonment, fined 82,200 kronor (\$9,736) each in damages, and will be deported following the completion of their prison terms. The national anti-trafficking coordinator and national rapporteur noted the ongoing reorganization of the police hindered law enforcement efforts.

### 5.3. Implementation of Legislations and Policies

#### 5.3.1. Croatia

The State Attorney's Office of the Republic of Croatia is authorized to prosecute all crimes. However, due to the specific requirements for special investigations and victim support, where extensive efforts are necessary for organized crimes, including trafficking in human beings and slavery, there is a special office of State Attorney, locally named the "USKOK", established on the basis of the Act on the Office for Combating Organized Crime (hereafter "AOCOC").<sup>135</sup> The criminal offence of "prostitution" would be prosecuted by USKOK only if being organized; e.g. when it would involve organization of three or more persons (facilitators) in luring and seducing into sex services.<sup>136</sup> The financial resources for the work of the USKOK are provided in the State Budget and amounted to 21.464.600,00 HRK in 2016, representing 6,27% of the total annual amount provided for all the prosecutorial bodies in Croatia.<sup>137</sup> Although in the majority of criminal cases the investigation would be led by the police, crimes under the prosecutorial authority of the USKOK are directly investigated by that office, which continuously oversees and directs work to the police.<sup>138</sup> In 2016, the USKOK only received one criminal complaint concerning slavery that was rejected. In cases of human trafficking, in the same year, the USKOK received criminal complaints against five persons, and started criminal investigation against four of them. In the same year, charges against four persons have been brought by USKOK, seven charges have been confirmed by the court and two convicting court decisions delivered. Cases against 19 defendants were still pending before the courts in 2016.<sup>139</sup> The State Attorney's Office runs the database on criminal offences of slavery, human trafficking and trafficking in human body parts and fetuses, enabling the monitoring of these types of crimes. The representative of the State Attorney's Office is member of the National Committee for Combating Trafficking in Human Beings (further: "NCCTHB") and Operative team of the same Committee.

The NCCTHB is a special body established by the decision of the Government in 2011. The competence of that body is to coordinate activities of all bodies, which in the Republic of Croatia are due to combat trafficking in human beings. It remains unclear to which extent that body can coordinate the USKOK, which is established on the basis of the law, except that the representative of the State Attorney's Office is a member of NCCTHB and there is a collaboration between them rather than vertical coordination led by NCCTHB. The NCCTHB:

- provides guidelines for development of national strategies and plans in the field of THB;

<sup>133</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden (2014). Accessible at: [https://polisen.se/PageFiles/162940/GRETA%20SWE\\_2014.pdf](https://polisen.se/PageFiles/162940/GRETA%20SWE_2014.pdf) (last accessed 27.10.2017).

<sup>134</sup> US State Department Trafficking in Persons Report 2016.

<sup>135</sup> AOCOC, Official Gazette nos. NN 76/09, 116/10, 145/10, 57/11, 136/12, 148/13, 70/17, Section 21(1)(3).

<sup>136</sup> AOCOC, Section 21(1)(5).

<sup>137</sup> 2016 Annual Report of the State Attorney's Office of the Republic of Croatia, p. 14.

<sup>138</sup> Ibid, p. 10.

<sup>139</sup> Ibid, p. 53.

- monitors and coordinates implementation of laws, programs, strategies and plans in the field of THB;
- suggests establishing expert task forces for development of laws and strategies in the field of THB;
- organizes Operational teams for acting in implementation of measures of protection and support to victims of THB;
- suggests implementation or changes of positive regulations dealing with THB;
- cooperates with civil society organizations which are active in combating THB;
- organizes thematic sessions on actual challenges in combating THB;
- monitors implementation of international contracts concerning THB which the Republic of Croatia had ratified;
- does other activities placed under its competence.

The NCCTHB has a president and 18 members. Most of its members are representatives of various ministries, but also representatives of civil society and public institutions are involved. The organizational structure implies that there should exist cooperation between law sectors of law enforcement, international affairs, social policy, health, education, employment, civil society and public.

Although we stressed in the beginning that there are evident intentions to eradicate sex work, so far these intentions have been only partially met. As mentioned earlier, only street-based sex workers are subject to investigations and punishments. There are two main reasons behind it: (1) visibility of street sex-workers that makes it easier for relevant authorities to prosecute sex workers; (2) no sufficient financing for the implementation of criminal provisions on the state level. Furthermore, street sex workers do not have legal assistance in criminal trials, therefore in many cases they plead guilty or do not deny the provision of sex services. There is also evidence that they might be pushed, threatened and abused by their clients. The judge of the Superior Magistrate's Court of the Republic of Croatia with an expertise in case law against sex workers for misdemeanours, claims that trials are short, even against minors who can be victims of pimps or human trafficking, and that also sex workers can be occasionally be arrested with the purpose of "cleaning the city". Many of them are "repetitive offenders" and one has been prosecuted 243 times.

Except for the involvement of the criminal justice system much less is known about social based policies used to support women (men and transgender people) to leave sex work. Evidence has shown that there are no special programmes designed, except in situations where sex workers are victims of human trafficking. In these cases, there are victim support services provided by civil society organizations and some support by the ministry of social policy, but those persons falling outside of the human trafficking context would not receive any kind of support than such support that is offered to the general population. In addition to that, self-identifying as a victim to law enforcement bodies may bring into implication a misdemeanour and even other crimes connected with "organizing prostitution", so sex workers are reluctant to seek any assistance, even if they are victims of different crimes and live in extremely difficult situations.

The activities of combating human trafficking are defined by the National Plan for Combating Trafficking in Human Beings. The most recent data available show that in 2015 the amount of 957.019,89 HRK has been spent for the purpose of combating human trafficking.<sup>140</sup> The activities concerning identification of victims are implemented by the Ministry of Interior Affairs, Office on Human Rights and National Minorities, Croatian Red Cross and civil society association "PETRA".<sup>141</sup> Identification, prosecution and sanctioning of offenders is implemented by the State Attorney's Office and the USKOK, Ministry of Justice (which collects data on number of cases pending at courts and judicial decisions delivered) and Ministry of Interior Affairs. Support and protection services to victim of human trafficking are implemented by the Office on Human Rights and National Minorities, Ministry of demography, family, youth and social policies, Ministry of Interior Affairs, Ministry of Health, Croatian Red Cross and civil association "PETRA". Preventive activities have been implemented by the Office on Human Rights and National Minorities, civil association "PETRA", Agency for Education, Ministry of Interior Affairs and local governments. The activities of education on human trafficking have been implemented by the Office on Human Rights and National Minorities, Ministry of Interior Affairs, Ministry of Justice, Judicial Academy, State Attorney's Office, Ministry of Defence, Ministry of demography,

<sup>140</sup> 2015 Annual Report on the implementation of the National Plan for Combating Trafficking in Human Beings 2012-2015, Office for Human Rights and National Minorities, 2016, p. 3.

<sup>141</sup> Ibid, pp. 5-9.



family, youth and social policies, Ministry of International and European Affairs; Croatian Employment Institute, Agency for Education and schools, Croatian Red Cross and civil association "PETRA". The majority of financial resources have been spent by the Ministry of demography, family, youth and social policies and civil association "PETRA".

The prosecutorial competence of USKOK includes counter-trafficking measures; namely specific criminal offences as trafficking in human beings and slavery, illegal cross-border transport and national and international organized crime is proscribed in Article 21(1)(3 and 6) of the Act mentioned. Their competencies are to investigate, with the assistance of the police and to prosecute suspects for the crimes.

With the purpose of identifying victims of human trafficking and providing support to them, the Ministry of Interior Affairs (police) has implemented the National Counter-Trafficking Programme adopted by the Croatian Government. This procedure includes the provisions of assistance to victims in cooperation with other state-based institution and civil society organizations. The main governmental counter-trafficking body is the National Committee for Combating Trafficking in Human Beings, that is composed of an „operative team“ as a sub-committee, where representatives of the Ministry of Interior are obliged to coordinate all activities in any case of identification of victims and providing support and protection. In all police directorates in Croatia (20) and all prosecutorial offices (4) there are police officers who specifically deal with human trafficking and who, in every single case, directly participate in victim identification and finding perpetrator of this kind of organized crime. Also, in the case of minor victims, special police officers who are trained for work with children are engaged. The Ministry of Interiors has continuous international cooperation with INTERPOL, EUROPOL and SELEC in different task forces aimed at suppressing smuggling and human trafficking, with the purpose of effective information sharing and strengthening international and regional cooperation based on bilateral contracts.

The National Committee and its Operational sub-committee are coordinated by the Office for Human Rights and Rights of National Minorities of the Croatian Government. Except operational part that is implemented by the police, the National Committee has competencies in implementation of National Anti-Trafficking in Human Beings Programme, in areas of legislating, identifying victims, finding and prosecuting perpetrators, prevention, education and international cooperation.

### 5.3.2. The Netherlands

In the Netherlands, a wide range of actors are involved in the sex industry policy development, monitoring and direct implementation: city officials of the Department of Public Order and Safety, the police (vice squad), Immigration and Naturalization Services (Vreemdelingendienst), the district attorney, the Chamber of Commerce (where sex workers need to register as self-employed workers), labour inspectorate, public health (different branches), social work and outreach, youth services and the tax office. All actors administer different domains of the sex industry regulation, from inspection and monitoring of licensed facilities to providing health services and investigating/prosecuting trafficking in human beings for sexual exploitation.

Although most of the municipalities are quite hostile towards home-based and escort sex work, the number of municipalities who have implemented regulation of this domain has risen in 2014. As we mentioned earlier, in 2006, only 80 escort companies received licenses, and in 2014 it increased to 125.<sup>142</sup> Van Wijk et.al., notes that there is a clear displacement of traditional visible prostitution sectors by escort and home-based prostitution.<sup>143</sup> However, prior to 2006, although the main attention of local policy-makers was paid exclusively to visible prostitution sectors, there was little evidence found of a displacement effect from licensed to at that time unlicensed sector.<sup>144</sup>

Regular inspections in most of the municipalities are conducted with an interval of one year.<sup>145</sup> These inspections are usually carried out by police and local authorities and sometimes additionally by: the Dutch Tax and Customs Administration, the building and housing inspection department, fire brigade, and the community health services. Inspections of the illegal sectors are mainly carried out by police. All inspections by different authorities are reflected in "administrative reports".<sup>146</sup>

<sup>142</sup> De escortbranche: toezicht, handhaving en naleving; 2016 WODC, ministerie van Veiligheid en Justitie.

<sup>143</sup> Van Wijk et.al., (2014).

<sup>144</sup> Biesma, S., van der Stoep, R., Naayer, H. and Bieleman, B. (2006) *Verboden Bordelen. Evaluatie Opheffing Bordeelverbod Niet-Legale Prostitutie*, Groningen: IntraVal.

<sup>145</sup> Van Wijk et.al., (2014).

<sup>146</sup> Wagenaar et.al., (2017).

Interestingly, only specially authorized policemen are able to perform this kind of surveillance. The Mayor has to give a formal order to the police to let them undertake administrative inspection and supervision activities. Therefore, it is not surprising that in half of the municipalities, the police do not have a permit to perform such administrative checks.<sup>147</sup> Although the main goal behind the administrative checks of unlicensed sectors is to detect minors and forced sex workers, very often inspections result in fines for unlicensed home-based sex workers or operators. On the national level, it is considered that administrative checks do not fit the main responsibilities of the police.<sup>148</sup> Accordingly, as highlighted in the New Bill, municipalities have to develop other ways to perform inspections to allow the police to have more time for investigation of crimes that are more serious in nature. However, from the research of Wagenaar and colleagues, it is clear that at the moment there is a lack of trained employees to substitute the police. In Amsterdam, the municipality introduced Red Light District Managers, but they monitor exclusively window prostitution sectors that are currently being displaced by other sex work sectors and other businesses.

After 2005, when the policy around prostitution turned towards a stricter control, some municipalities implemented obligatory registrations (e.g., Utrecht). It is used to gather information about sex workers in order to prevent cases of severe exploitation. Similar system was proposed by the New Bill, but omitted in the amended version of 2014. Other cities (Amsterdam and The Hague) recently launched so-called intake interviews. Since proprietors or facilitators could get into trouble if human-trafficking was detected at their property, they encourage such practices as well. For instance, in Den Haag proprietors asked police vice squad to perform such interviews. Nevertheless, some business facilitators are actually protesting against being responsible for the intake interview (e.g., obligatory in Amsterdam since 2013). The reason is that they consider such practices to be in violation of the Personal Data Protection Act. Recently, 10 window brothels in Amsterdam won their case against the Municipality of Amsterdam on this matter.<sup>149</sup> Surprisingly, these were brothel owners who filed the case, not sex workers. The new government in its agreement announced to propose to provide for a legal ground for such intakes 'based on health related concerns that might lead to exploitative practice'.

As we will see further, if intake interviews reveal the signs of human trafficking, sex workers will not be able to work in the given facility. Sex workers receive a negative connotation and can no longer work in the facilities where signs of trafficking were found. Proprietors can still rent rooms to other sex workers, but he/she is under the risk of being fined or of losing the license. Therefore, as Verhoeven argued, many sex workers in Amsterdam hide all details about their personal life, so as to not lose their license or the ability to start working.<sup>150</sup> Sex workers are often asked about their personal life, and in case it is found that they are in a relationship, it could be interpreted as a sign of trafficking in human beings.

As we outlined earlier, in cases where a sex worker is suspected to be a victim of humantrafficking, the police tries to persuade the sex worker to cooperate with the police or to press charges against traffickers. Any victim of trafficking is given a maximum of three months for reflection in line with the European legislation. During this time all migrant victims can reside legally and receive all kinds of social assistance (e.g., shelter, psychological help). When the reflection period comes to its end, the victim should decide to cooperate or not. If the sex worker does not want to cooperate, no further assistance is provided.

To develop sex work policies, Dutch municipalities followed the guidelines issued by the VNG. A famous NGO that for a long time has been fighting for the rights of sex workers, namely Rode Draad,<sup>151</sup> was invited to contribute to the policy development process. Dutch municipalities have a long history of a collaborative policy development and implementation, therefore often city officials consult NGOs, and brothel owners in the process of creating a license system. Shove and colleagues described that the regulation of prostitution on both state and local levels became a political culture where participation and consultation with stakeholders became a regular and normalised process.<sup>152</sup>

Right after the formal legalization of the third parties, it was expected that sex workers, who became officially legalised would also organize themselves in labour unions (or join existing ones) to

<sup>147</sup> Daalder (2007) and (2014).

<sup>148</sup> Van Wijk et.al., (2014).

<sup>149</sup> AMSTERDAM'S PROSTITUTION POLICY VIOLATES PRIVACY LAW: COURT 4.08.17

<http://nltimes.nl/2017/08/04/amsterdams-prostitution-policy-violates-privacy-law-court>

<sup>150</sup> Verhoeven (2017). This insight pretty much corresponds with the blurred line between consent and psychological coercion.

<sup>151</sup> The organization was closed in 2012 because it stopped being financed, archive version of the website can be found here:

<https://web.archive.org/web/20110510021221/http://www.rodedraad.nl/>

<sup>152</sup> Shove, E., Pantzar, M. and Watson, M. (2012) *The Dynamics of Social Practice. Everyday Life and How It Changes*, Thousand Oaks, CA: Sage Publications.

negotiate their labour position. However, sex workers were not necessarily interested in this and were not represented at advisory meetings organized by city councils.<sup>153</sup> It is essential to mention that different municipalities approached different stakeholders and, as it often happens, these stakeholders promoted their own interests. For example, as mentioned by Wagenaar and colleagues, the practice of collaboration with brothel owners, influenced the removal from the agenda of the state negotiations around labour rights of sex workers and made it possible for facilitators to resist some of the developments concerning the legal position of sex workers.

Almost all big cities in the Netherlands established a fruitful collaboration with internal (different municipal organizations) and external stakeholders (NGOs, brothel owners). According to Wagenaar et al., this collaboration has been formalised in the so-called “chain management”.<sup>154</sup> In this system, all services and responsibilities are linked in a sequential chain led by a “chain manager”. For instance, in 2001 The Hague city administration started regular consultations with facilitators of major sex companies. In the same way, Rotterdam city officials primarily consulted NGOs (e.g., Rode Draad). As for the collaboration with municipal organizations, in Rotterdam it was represented by seven actors who organized regular meetings. The main actors included: social workers, police, the district attorney, labour inspectorate, municipal health services, youth services, and the tax office. Each actor or partner was entitled to make decisions concerning their own domain and provided administrative capacities for the implementation of such decisions. In case of exploitation, the consortium of different partners discussed, and still do, the order of activities to assist victims. This small union of the municipal stakeholders organized cooperation with outside stakeholders as well. In this way, Rode Draad assisted in identifying the cases of exploitation among their network of sex workers.

Recently, some municipalities initiated new projects that are focused on the wellbeing and safety of sex workers. In 2012, the Municipality of Amsterdam launched another initiative called the “prostitution programme”. Through this project, the municipality financed a health care center in the Red Light District to promote independence, healthy lifestyle, and education among sex workers. At the same time, it called to identify and fight human trafficking. Finally, in 2015 a new project “My Red Light District” was presented by the mayor of Amsterdam, Eberhard van der Laan. My Red Light District is represented by 14 windows that are operated by sex workers (or the majority of the staff are sex workers). All sex workers can join the team of workers or simply rent windows. There is also a common room where they can drink a cup of coffee or chat. The project was supported but not financed by the municipality. It attracted several investors, among others, the Rabobank. Yet, these initiatives are not widely supported by the sex work rights’ activists (both PROUD and individual activists).

### 5.3.3. Poland

Legislation is enforced by several institutions such as law enforcement bodies (Police, Border Guard), labour inspectorate public prosecutor’s office and courts in Poland.

When it comes to law enforcement authorities, such as the Police and Border Guard, their duties include human trafficking counteraction and victims’ identification. In many cases, there is a special unit under the criminal investigation bureau that is responsible for such crimes. Luckily, more and more law enforcement officers are trained in terms of human trafficking, yet the system of identifying potential victims of trafficking is not as sufficient as it should be.<sup>155</sup>

If the police is mainly responsible for criminal provisions, the labour inspectorate takes a lead on administrative offences, such as illegal employment. However, such administrative examinations are not carried out on a regular basis. This might partly explain why brothels can operate in such a semi-legal way. Consequently, both specific legislation monitoring the sex industry and implementation of existing sex-related regulations are absent in Poland.

### 5.3.4. Sweden

The Swedish Police and the Prosecutor’s office are responsible for the investigation and management of human trafficking cases and on law enforcement activities targeted buyers of sex worker. Mentioned authorities have a duty to both prevent and punish all sexual crimes, including the one of trafficking in human beings.

<sup>153</sup> Wagenaar et al., (2017).

<sup>154</sup> Wagenaar et al., (2017).

<sup>155</sup> Lasocik Z., et al. (2015): Filling the Gaps in the System of Combating Human Trafficking in Poland. Research Report. Warsaw: Human Trafficking Studies Center of the University of Warsaw.

On January 2015, the police authorities were restructured and there is not yet a renewed procedure on combating the trafficking in human beings, therefore, for the purpose of this report, we will make use of the previous procedures. The police has a special counter-trafficking unit that is mainly focused on organized crime and prevention. This is done predominantly through monitoring of criminal networks. Other authorities are also taking part in trafficking counter-action. For example, the Police is cooperating with the Migration Board, the Social Service, the Work Environment Authority, the Public Prosecutor's Office, the Swedish Tax Agency, the County Administrative Board in Stockholm (which has the national mission to coordinate work on human trafficking) and the Ministry of Foreign Affairs (where the office of the Ambassador against trafficking is located). Furthermore, the police cooperates with municipalities, public institutions (schools, hospitals, etc) and with private citizens and businesses (especially with the hospitality industry). Awareness raising campaigns on responsible buying of goods and services as well as elimination of the sex industry are aimed at changing the public attitude and behaviour towards both labour and sexual exploitation. International cooperation is becoming increasingly important in the day-to-day work of prosecutors and of the police authority. Cross-border cooperation has existed in the Nordic countries for many years and has also become established in the EU during the 2000s. Examples of EU measures that have contributed to this are the European arrest warrant and Eurojust.<sup>156</sup>

## 6. Historical Background and Discourse around regulative approaches in Croatia, The Netherlands, Poland, and Sweden

### 6.1. Croatia

Sex work in Croatia has not always been criminalised. When Croatia was the part of the Monarchy of Croats, Serbs and Slovenians, sex work was legal, although only until 1934. The work of public brothels had been regulated starting from 1899 by a special law. However, in the capital city of Zagreb, the Police Directorate banned public brothels and all sex workers had to be registered in a special register kept by the police. By the Act on Prevention of Sexual Diseases the sex work was completely banned in 1934.

Currently, there is a clear tendency to eradicate sex work in Croatia. This claim is supported by political and legislative approaches adopted in the country (e.g., criminalisation of the industry). Although perceived by many as "the oldest profession", sex work is seen as morally unacceptable and this is how it is often portrayed by media, NGOs and academic community. Generally, the sex industry is highly stigmatized. It is hard to tell to what extent the criminalization of sex work is supported, as the law stems from 1977 and no changes to the law had happened even 27 years after Croatia fought for its independence. The public discussions initiated by the academic community and civil society organizations mostly concern modelling the legislation in accordance to foreign solutions rather with local systemic response to sex work, the position of sex workers and their rights.

The sex work in Croatia is not being actively discussed in the Government. In 2012, the legislative reform concerning the criminalization of both sex workers and their clients almost passed parliamentary procedure without public discussion. However, the draft never passed Parliament due to disagreements between policy makers. The only visible intervention of the Prime Minister was his support for the withdrawal of the draft law from the procedure. Nevertheless, the PM stated that he was not convinced which regulation model is the most suitable for Croatia. He did admit that he does not necessarily supports criminalisation of clients and believes that Germany and Austria could serve as a good practice in regulating the sex industry. Although the PM is not advocating the criminalisation, he does believe that the issue around the sex industry should be discussed publicly, however, such discussion has never been initiated by the Government.

Media coverage shows a relatively high interest for publishing and investigating stories about criminal offences connected to sex work or life stories of sex workers. 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>157</sup>, "*Students and Prostitution: By day they learn, by night they earn 3.000 kuna*"<sup>158</sup>, "*I do not give easy, I am a businesswoman*"<sup>159</sup>. On the other hand, others

<sup>156</sup> The Swedish Judicial System. Accessed online at:

<http://www.government.se/49ec0b/contentassets/9ebb0750780245aeb6d5c13c1ff5cf64/the-swedish-judicial-system.pdf>

<sup>157</sup> <https://www.express.hr/life/zg-prostitucija-za-dan-s-tajkunima-zaradim-1000-eura-1159#>, last accessed on July 30, 2017.

<sup>158</sup> <https://www.express.hr/life/studenti-i-prostitucija-danju-uce-nocu-zaraduju-3000-kuna-1584>, last accessed on July 30, 2017.

<sup>159</sup> <https://dnevnik.hr/vijesti/hrvatska/isповijest-hrvatske-prostitutke-za-provjereno-nisam-radodajka-ja-sam-poslovna-zena---455895.html>, last accessed on July 30, 2017.

stress the criminal and marginalising components: *“Prostitutes in Croatia want better police conduct”*<sup>160</sup> or *“At margins – prostitution in Croatia: we have old laws and general lack of care, which solutions are offered?”*<sup>161</sup> the latter is encountered more rarely.

NGOs take different positions concerning the sex industry. It usually depends on the socio-cultural context of their interests and aims. For instance, feminist associations often portray sex work as a violence against women. They view the industry to be inherently harmful, especially in terms of physical and psychological well being of sex workers.<sup>162</sup> These organisations also have a strong position against the legalization of the sex industry, claiming that it will increase criminality. Moreover, they usually advocate for criminalisation of clients and in some cases support decriminalization of sex workers.<sup>163</sup> 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 of STDs.<sup>164</sup> The health care organisations also protest against abuse and violence against sex workers,<sup>165</sup> in this way they do not seek full “eradication” of consensual sex-work nor absolute criminalization of clients.<sup>166</sup> The male sexual work is still unknown in Croatia. The only NGO that is promoting health care programmes for men having sex with men (MSM) in Croatia, does not focus specifically on male sex workers. Interestingly, most of the health-oriented academic studies focused on MSM do not take into account buying/selling sex as a key indicator in transmitting HIV or other STDs.<sup>167</sup> Therefore, although male sex workers are active in the country, as could be seen from online advertisements, not much attention is paid to them.

The academic community in Croatia focuses exclusively on criminological and sociological aspects of sex work. More precisely, Milivojević et al. (2013) consider sex work as negative and socially dangerous behaviour.<sup>168</sup> Derenčinović (2004) concludes that sex work is a lifestyle which is a consequence of free choice of person, while freedom is often relativized and in some cases completely denounced under the influence of numerous causes; difficult socio-economic conditions of life, alcohol and/or drug dependence, or fear of violence inflicted by pimp or a partner.<sup>169</sup>

The prominence of “pro vs contra” arguments depends on the positions of social powers and influence. Established feminist associations who promote the abolitionist model are receiving much more attention, they are financially supported by the Government and participate in eradication of criminal forms of sex work where sex workers are victims of trafficking in human beings. As being a partner to the authorities these associations and their arguments would always have greater visibility and more attention paid to them than to those who would, for example promote decriminalization and destigmatization of sex work. There is no association of sex workers in the Republic of Croatia that would oppose the abolitionist approach.

Identification of human trafficking victims is not widely spread among relevant governmental authorities. Therefore, there is still a lack of discussion and information concerning the trafficking phenomenon.

## 6.2. The Netherlands

The discourse around the regulation of the sex industry in the Netherlands can be approximately divided in two periods, namely, the first one will represent the period prior the legalisation of brothels in 2000,

<sup>160</sup> <http://www.index.hr/vijesti/clanak/prostitutke-u-hrvatskoj-zele-bolji-odnos-s-policijom/971913.aspx>, last accessed on July 30, 2017.

<sup>161</sup> <http://www.lupiga.com/vijesti/na-marginama-prostitucija-u-hrvatskoj-imamo-zastarjele-zakone-i-opcu-nebriгу-a-koja-se-rjesenja-nude>, last accessed on July 30, 2017.

<sup>162</sup> Kolarec Đ., ed., 2007. „Uzroci prostitucije i trgovanja ženama: rasprave u Hrvatskoj i u svijetu“, Centar za žene žrtve rata Rosa, ISBN: 978-953-7331-04-7

<sup>163</sup> <http://www.h-alter.org/vijesti/legalizacija-prostitucije-zeleno-svjetlo-za-zlocin>, last accessed on July 30, 2017.

<sup>164</sup> Jovović I., 2014. „Priručnik za provođenje vanjskog rada u populaciji seksualnih radnica/ka i njihovih klijenata“, ISBN: 978-953-99866-6-5.

<sup>165</sup> <http://www.udruga-let.hr/novosti/medunarodni-dan-borbe-protiv-nasilja-nad-seksualnim-radnicama/>, last accessed on July 30, 2017.

<sup>166</sup> From personal correspondence with Ms. Iva Jovović, executive director of Life Quality Improvement Organisation “FLIGHT”.

<sup>167</sup> From the author’s correspondence with Mr. Zoran Dominković, Iskorak – Center for Sexual and Gender Minorities’ Rights, August 2, 2017.

<sup>168</sup> Milivojević Antoliš L., Mihajlović P., Štrk D., 2013. “Prostitucija u hrvatskom prekršajnom i kazenom pravu”, *Policajska sigurnost* vol. 22, no 2, pp. 284-296.

<sup>169</sup> Derenčinović D., 2004. „Uvod u kriminologiju i socijalnu patologiju s osnovama kaznenog prava.“ *Pravni fakultet u Zagrebu*.

and the second one refers to the time after the revelation of the striking cases of trafficking in human beings in 2006.<sup>170</sup>

Although it is commonly perceived that the sex industry in the Netherlands was legalized in 2000, sex work and particularly prostitution in the traditional understanding (e.g., street prostitution, brothels) was never criminalized, but rather tolerated. Starting from Middle Ages till the beginning of 20th century the regulation of the sex industry took many different forms. However, in none of these forms sex workers were severely punished.<sup>171</sup>

However, as described by Brants, Wagenaar and colleagues, the liberalisation towards sex work in the second half of the twentieth century made it difficult to control the sex industry in big cities. Many Dutch/German sex workers moved away from big Red Light districts and started working in escorts or sex clubs. For example, in Amsterdam, Dutch sex workers were replaced by representatives of former colonies, such as the Dutch Antilles, Suriname, and South-East Asia.<sup>172</sup> In the 90s, after the fall of the Soviet Union, women from former the Soviet Republic started arriving in Amsterdam. Since former Soviet Republics were not a part of the EU, there were also many sex workers who resided in the Netherlands illegally. Moreover, in the end of 80s, heroin abuse was quite alerting and many men and women with heroin addiction were providing sexual services to be able to buy drugs. Usually, such sex workers could not afford to rent a window, or a hotel room, so they provided the services on the street and in other public places.<sup>173</sup> As a result, the policy on regulated tolerance was no longer effective.<sup>174</sup> Therefore, municipalities attempted to make stricter regulation policies, that as we mentioned earlier consisted of unwritten and written rules about how to proceed incidents within the sex industry. Regulated-tolerance was especially visible in attempts of municipalities to create policy tools to be able to reduce criminality and gain the control over the sex industry.

While the official legislation concerning the legalization of sex work was negotiated at the national level, some municipalities started developing their own mechanisms in order to address sex work. To be able to create and implement prostitution policy it was essential for municipalities not only to develop guidelines and procedures, but also to collaborate closely with the prosecutor, the police, public health agencies, firemen, and tax authorities. Moreover, famous NGOs who were promoting the rights of sex workers were also actively involved in the debates. Political parties<sup>175</sup> also influence the regulation policies of municipalities as well as national policies, especially considering the maximum number of sex companies on the municipal territory, human-trafficking prevention, and regulation of the unlicensed sector.<sup>176</sup>

Finally, after many debates on a national and local level, the legalisation of brothels and voluntary adult sex work was adopted in 2000. The discourse in the Dutch policy negotiations has always been around human trafficking and criminality in the sex industry. Consequently, regulation of prostitution is seen as an effective method to control criminality and human trafficking in particular. Nevertheless, as stated earlier, a narrow focus on human trafficking sometimes hindered authorities to address exploitation from the side of facilitators or clients.

One of the turning moments in the discourse on the regulation of the sex industry took place after the Sneep case in 2006.<sup>177</sup> More precisely, in 2006, the police discovered a big gang of Turkish criminals who forced women to work in the sex industry. Around 120 women were thought to be influenced by the Sneep gang, and 78 of them were considered as trafficking victims. The fact that it happened in the licensed prostitution sector was shocking for politicians and police. Moreover, as Goraj (2012) described overnight prostitution became synonymous with violence and crime. Consequently, trafficking in human beings became situated within the prostitution policy discourse.<sup>178</sup>

<sup>170</sup> more information on the case here: [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); examples, media report in one of the biggest Dutch newspapers Het Parool: <https://www.parool.nl/alle-nieuws-over-vrouwenhandel/?offset=1456224039517-50>

<sup>171</sup> Brants, C. (1998). The fine art of regulated tolerance: prostitution in Amsterdam. *Journal of Law and Society*, 25(4), 621-635.

<sup>172</sup> Brants (1998), Wagenaar et.al., (2017).

<sup>173</sup> Brants (1998), Wagenaar et.al., (2017), Bureau Nationaal Rapporteur Mensenhandel (2016).

<sup>174</sup> Wagenaar et.al., (2017).

<sup>175</sup> religious parties: CDA, Christen Unie, Reformed Political Party - SGP), also some of more secular parties such as PvdA (Labour Party), Socialist Party (SP), and PVV (Party for Freedom).

<sup>176</sup> A comprehensive English source: <http://www.amsterdamredlightdistricttour.com/news/dutch-political-positions-on-prostitution/>

<sup>177</sup> more information on the case here: [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); examples, media report in one of the biggest Dutch newspapers Het Parool: <https://www.parool.nl/alle-nieuws-over-vrouwenhandel/?offset=1456224039517-50>

<sup>178</sup> Wagenaar et.al., (2017).

Around the same time, the story of “lover boys” (or pimps who have personal relationship with sex workers) became very popular. Although there is evidence of the existence of such phenomenon, Bovenkerk and colleagues suggested it was not as widespread as was believed to be.<sup>179</sup> In fact, the phenomenon of “lover boys” is rather representative of a traditional model of unregulated pimping. The narrative about loverboys was picked up by party officials (especially the ones listed above), media, and the police. Consequently, as Verhoeven mentioned in her study, it became one of the trafficking indicators in the Netherlands. Some representatives of political parties became dedicated and concerned about the problem.<sup>180</sup>

What is clear from these two examples is the fact that monitoring and licensing that were implemented by the Dutch municipalities has not prevented exploitation. Wagenaar and colleagues argue that the reason for the failure was that monitoring was only administrative in character, and in most cases focused on the inspection of sex workers’ papers, but not necessarily on signals of exploitation. Although women from the Sneep cases were inspected by the police, signals of exploitation were entirely missed. Consequently, municipalities took a turn towards stricter control. The methods of control chosen by municipalities targeted human-trafficking signals and detection of unlicensed prostitution sectors, and did not necessarily prioritize the improvement of the position of sex workers, especially concerning the exploitation coming from proprietors.<sup>181</sup>

To be able to fight human trafficking in all existent prostitution sectors especially after the Sneep case, a new “enforcement” tool started being widely implemented and discussed. Many visible sectors of the industry were closed down. Although it was dropped from the new edition of the Bill, the obligatory registration was also introduced in some cities. In general, even more attention was payed to the counteraction of trafficking in human beings.

An example of such restrictive policies is the situation in the municipality of Utrecht. For example, in 2010 the city of Utrecht was the first city in the Netherlands that implemented an obligatory registration system of sex workers who decided to work in the Zandpad window prostitution area.<sup>182</sup> Although the registration was implemented in Utrecht, the municipality still decided to close the window prostitution sector in 2013. The reason stated was that the administrative report by city officials revealed “abuses”, such as high rental rates, and exploitative behaviour towards sex workers by employers (window brothel owners) and indications of human trafficking. Surprisingly, there were no trafficking incidents found so far as reported by the police.<sup>183</sup>

As a result of the discourse around trafficking in human beings in the regulated sex industry, similar tendencies as in Utrecht were implemented earlier in Amsterdam, especially with regard to the project “1012”<sup>184</sup> that was officially focused on the gentrification of the Red Light District (see the section on implementation). The idea behind the project was to diversify the neighborhoods by changing and reconstructing the composition of the streets. These goals were implemented by closing prostitution windows and coffee shops, and facilitating other business projects like cafes, hotels, and shops. Consequently, since 2007, 26 coffee shops in the area were closed. Traditional window brothels were also heavily affected by the project. In 2007, there were 470 licensed windows in Amsterdam, and throughout the following years, 126 windows were closed.<sup>185</sup> Many of the Dutch political parties, as well as the Minister of Social Affairs: Lodewijk Asscher, supported the project (e.g., PvdA). In contrast, during the last five years, Mayor of Amsterdam Eberhard van der Laan has been more willing to put efforts in normalizing sex work as a profession. Additionally, the mayor rejected the idea of obligatory registration and initiated possibility to insurances and business bank account for sex workers. The Mayor also encouraged the collaboration with sex workers themselves, giving them a voice in the political debates. Several committees were established consisting of sex workers who took an advisory body for the responsible municipal authorities. There are different groups of sex workers represented in such committees, namely, transgender sex workers, male sex workers, and female sex workers.

<sup>179</sup> Bovenkerk, F. M., Van San, M., Boone, M., Boekhout van Solinge, T., & Korf, D. J. (2006). *Loverboys of modern pooierschap.[Loverboys or modern pimps]*. Amsterdam: Amstel Uitgevers BV.

<sup>180</sup> Verhoeven (2017).

<sup>181</sup> Wagenaar et.al., (2017), van Wijk et.al., (2014).

<sup>182</sup> Additionally, the number of hours allowed to work was limited to 12 a day, while the number of inspections increased to 40 per year, and support services started working longer. All sex workers who wished to be registered had an obligatory intake interview organized by the registration officials (public health service).

<sup>183</sup> Interestingly, Siegel (2015) made a follow up research and illustrated that many sex workers from Zandpad entered unlicensed prostitution sectors.

<sup>184</sup> The name of the project represents a zip code of one of the streets where the Red Light District is located.

<sup>185</sup> More information can be found at the official website of the Amsterdam Municipality.

It is not surprising that the project 1012 received negative reactions from sex workers and sex business operators in the Red Light District. In April 2015, a famous Red Light blogger and Romanian sex worker Felicia Ana organized the protest against the "1012".<sup>186</sup> Around 250 protesters, mostly migrant window workers joined the protest. Among other things, Felicia Ana delivered a personal message to the mayor van der Laan:

*Citation 1: "You always say you care so much about sex workers," she told the mayor. "And that you care about what's happening to us. This is what we want. These are our wishes. If you really care about us, now is the time to prove it. We don't want to hear anymore just nice words, we want to see the changes."*

*Citation 2 "But beyond that, what is a business bank account, or an insurance for your company worth, if you can't work because you don't have a place to work anymore?" she asked. "And how can we pay for an insurance, that he would so kindly give us, when we can't make any money because he closed down our windows?"<sup>187</sup>*

It is evident that although municipalities make attempts to normalise prostitution as profession, it is still difficult to do so in light of the continuous discourse between abolitionists, radical sex positive feminists,<sup>188</sup> and the ones who stand in between (respect human rights of sex workers but do not share sex positive philosophy).<sup>189</sup>

Moreover, although all parties agree that exploitation should be eradicated, there is still no common understanding between municipal organizations, governmental parties, NGOs, and even sex workers about what includes "normalisation" and what underlines "exploitation". 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 questions of morality and the definition of morality might differ between the main voices in the sex work debate around the country.<sup>190</sup>

### 6.3. Poland<sup>191</sup>

As we mentioned earlier, it is legal in Poland to work in the sex industry, although sex work is not a subject of labour regulations. Plywaczewski (2006) described that a drastic change in the composition of the sex industry in Poland became noticeable after the fall of the so-called "iron curtain" in the beginning of 90s. For instance, many escort/brothel agencies started operating as legal businesses (although facilitation was criminalised). For example, brothel owners arranged properties, guards, and comfortable facilities for both sex workers and clients. These facilities attracted sex workers and the industry was growing. In many ways, the situation in 90s resembled the regulated tolerance. Furthermore, many workers who came to work in mentioned facilities were not necessarily Polish nationals, but represented residents of the neighbouring Ukraine, Moldova, and Belarus. The sex industry was often associated with criminality and forced prostitution. The corruptive systems that were prevalent in Poland at the time were only supporting the growth of criminality in the industry. More precisely, many businesses were "covered" by Polish political and law enforcement authorities (Plywaczewski, 2006). Although such brothel/escort agencies are still active in Poland, the situation is changing especially considering new technological possibilities and more strict regulations. The emerging online sectors of the sex industry are not highlighted in academic or governmental sources and only occasionally in media. Also, when Poland became a part of the European Union, it started serving as a transit country for Romanian, Moldavian, Bulgarian sex workers and as he sending country for Polish sex workers who were heading to Western Europe.<sup>192</sup> The biggest migrant group that is still active in Poland, according to Tampep International, represents Ukrainian sex workers.

<sup>186</sup> blog: <http://behindtheredlightdistrict.blogspot.nl/>

<sup>187</sup> News item: <https://news.vice.com/article/save-our-windows-amsterdams-plan-for-the-red-light-district-pisses-off-sex-workers>

<sup>188</sup> More on sex positive feminism: [Queen, Carol](#) (1997). *Real live nude girl: chronicles of sex-positive culture*. Pittsburgh, Pennsylvania: Cleis Press.

<sup>189</sup> by promoting the protection of sex workers' rights as human beings, but not supporting sex positive ideology.

<sup>190</sup> by main voices we understand: political parties, sex rights' activists, municipalities, counter-trafficking NGOs, health and care centers.

<sup>191</sup> the section is mostly focused on the work of Plywaczewski (2006).

<sup>192</sup> Sex Work in Europe. Tampep International, retrieved from:

<http://tampep.eu/documents/TAMPEP%202009%20European%20Mapping%20Report.pdf>



Although there is not an active ongoing discussion around prostitution 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 (2006), 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. As was mentioned earlier, 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 is 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 sex workers 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 power 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, for instance, “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>193</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 we did illustrate some discussions that have been present in Poland throughout last decades, 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 Imieliński (1990) 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>194</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 sex workers.

#### 6.4. Sweden

The Swedish approach to regulate the sex industry is a differentiated model of asymmetric decriminalization, more precisely, the provision of sexual services is decriminalized but, on the contrary, the purchase of sexual services is punished. The Model is based on the idea that it is the demand for sexual services coming from male clients that contributes to the expansion of the sex industry and trafficking for sexual exploitation. The Swedish legislation was adopted in 1999 and was the first one in its kind, because it problematized the traditional understanding of criminalisation of sex workers that was popular at the time.

Historically, prostitution was not a criminal offence in Sweden, whereas the facilitation of such services has been criminalized for decades.<sup>195</sup> The political 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>196</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. As Wong argued, although the proposal had a chapter on “gender equality”, it was still unable to pass in the Parliament.

However, the Government introduced the Sex Purchase Act (criminalisation of clients/buyers) to the Parliament in 1998, it was proposed not to criminalise sex workers, 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

<sup>193</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>194</sup> Imieliński, K. (1990). *Manowce seksu: prostytutki*. Res Polona.

<sup>195</sup>it was introduced in 1965, and highlighted in the current Penal Code, 1962

<sup>196</sup>Wong (2014). 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.

safety and wellbeing of people in prostitution (primarily women); (3) to reduce demand for sexual services from male clients 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>197</sup> At first, the articles of the Act were not highlighted in the Swedish Penal Code, but were added to it shortly after. As any new legislation, 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>198</sup> The main criticism targeted the difference in ideological stances and the lack of empirical underpinning for the adoption of the model.<sup>199</sup> Nevertheless, as was argued by the Cecilie Høigård, who was drafting the legislation:

*“The debate that followed served as a large-scale educational campaign. In Sweden, the attitudes towards the law changed rapidly in a positive direction, and the proportion of Swedish men buying women’s bodies has decreased.”<sup>200</sup>*

As was mentioned earlier, 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 sex workers will ultimately exploit him/her. From this perspective, the eradication of sex work market through the implementation of measures targeting the ones who demand sexual services will consequently abolish all sexual activities performed for remuneration. Finally, if the market is eradicated, it will no longer be profitable to traffic or exploit sex workers. It is an interesting and important understanding, but nevertheless, it requires a full change of attitudes and does not necessarily accept contradictions. Therefore, the discourse around the Swedish Model is always touching upon the question whether there is a possibility of the voluntary engagement in the industry. In this section we will explore the discourse as it stands in the available academic literature, governmental, and NGO reports.

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:<sup>201</sup>

*“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”*

In general, among positive characteristics of the approach<sup>202</sup>, we can pinpoint the reduction of sexual exploitation through the eradication of the sex industry as such. Moreover, although clients are often not directly responsible for violence against sex workers, they contribute to the growth of an exploitative industry, therefore they have to carry the responsibility for their actions.<sup>203</sup> In this case, it is understood that facilitators would not force sex workers to provide services when there is no one to buy them. Evidently, it will become unattractive to run the criminal business in the country when the buyers of sexual services are criminalised. The approach also facilitates a power imbalance in the relationship between sex workers and facilitators to the benefit of sex workers, it means that sex workers become the power holders, because they can freely report the police about abuse or violence. It is also argued by the proponents of the model that sex workers choose to work in the industry due to the limited employment options and/or as a result of many factors including poverty, abuse, child abuse, violence/coercion/force, and childhood sexual exploitation. Therefore, the integral part of the Nordic Model is governmental support for programmes that assist sex workers, sexually exploited women and girls including income support, the provision of exit strategies, access to services (for example, transition and permanent housing, healthcare, employment programs, re-training) and public awareness and

<sup>197</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>198</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>199</sup> Wong (2014).

<sup>200</sup> Cited on the website "Nordic Now", translated by Daisy Sjørød, can be accessed at <https://nordicmodelnow.org/what-is-the-nordic-model/>

<sup>201</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>202</sup> The findings are based on the report submitted by Waltman (2011) and The Government Report SOU 2010:49: The Ban against the Purchase of Sexual Services. An evaluation 1999-2008 (last accessed, 11.10.17)

<sup>203</sup> Dempsey, M. M. (2010). Sex trafficking and criminalization: In defense of feminist abolitionism. *University of Pennsylvania Law Review*, 158(6), 1729-1778.

prevention programmes. Moreover, it aims to educate the general public on the issue of gender equality, and by doing this, it aims to reduce the intentions to buy or provide sexual services. Research demonstrates that the public education campaigns have indeed affected attitudes in Sweden, for example Waltman stated that in 1996, only 45 percent of women and 20 percent of men were in favour of criminalising the purchase of sex.<sup>204</sup> By 1999, this had increased to 81 percent of women and 70 percent of men in favour of the new law. In 2014, the number of women supporting the law had risen to 85 percent although the percentage of men supporting the law dropped to 60 percent.<sup>205</sup>

Concerning the impact of the legislation, even if it is indeed quite difficult to understand and prove scientifically whether there is a causal or even correlative relationship between legislation and sexual exploitation (or prostitution), some researchers have attempted to study this relationship. For example, Kuosmanen illustrated that about 8% of men reported that they have bought a sexual service once in their life.<sup>206</sup> The Månsson's study cited by Kuosmanen, reported that at the time approximately 13% of male respondents indicated that they bought sexual services once in their lives.<sup>207</sup> However, Kuosmanen is careful to draw conclusions based on these figures, meaning that there may be elements of under-reporting in 2008, especially considering the fact that Mansson's results were published prior the criminalization of clients. Nevertheless, it is evident that criminalization will have some effect on how clients make decisions to use the sexual services or to report the use of such services.<sup>208</sup> The last claim is supported by the Governmental report of 2010, where it was stated that less men are buying sexual services in Sweden.

As we outlined earlier, the discourse around the approach is developed around the differences in ideological stances of people. Similar tendencies are also noted in other countries, such as The Netherlands and Croatia. Therefore, people who are opposing the Swedish model believe that not all people regard sexual services as inherently exploitative.<sup>209</sup>

One more important point of critique concerns the ability of sex workers' to make decisions. Scaramuzzino and Scaramuzzino argued that decisions of sex workers are often not considered by social workers.<sup>210</sup> Dodillet and Östergren argued that this kind of attitude adds to the stigmatization of sex workers.<sup>211</sup> Moreover, Levy reports some cases of harassment of sex workers by police and other state authorities. He further states that their reports of violent crimes are not taken seriously.<sup>212</sup> The claim of Levy is, however, contradicting the findings of Kjellgren and colleagues who report that people who have received support by police and social services have generally positive attitudes to the authorities, they appreciated the efforts of the police and viewed that as "positive" and "valuable".<sup>213</sup> Other studies, for instance, the one of Dahlborg and Hulusjö also reported positive feedback on the work of social workers.<sup>214</sup> Since Levy, Danna<sup>215</sup>, and Larsdotter and colleagues<sup>216</sup> report that the provision of sexual services is conditional to the decision to leave the industry, we might hypothesize that this condition influenced the responses of sex workers, however, it is not evident from the literature.

It was pinpointed by some opponents of the model that criminalization of clients has moved the sex industry online, increased competition between workers, and, finally, increased prices for such activities.<sup>217</sup> Nevertheless, as was stated earlier in the report, the online sex industry is not widely regulated. The growth of indoor prostitution was also supported by the project findings of "Mapping

<sup>204</sup> 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>205</sup> Mujaj, E., & Netscher, A. (2015). *Prostitutionen i Sverige 2014: en omfattningskartläggning*. Länsstyrelsen Stockholm.

<sup>206</sup> Kuosmanen, Jari (2008). Tio år med lagen: Om förhållningssätt till och erfarenheter av prostitution i Sverige.

<sup>207</sup> Kuosmanen, Jari (2008). Tio år med lagen: Om förhållningssätt till och erfarenheter av prostitution i Sverige.

<sup>208</sup> Especially considering the finding of behavioral economists and criminologists, see

<sup>209</sup> Saunders, P. (2005). Traffic violations: determining the meaning of violence in sexual trafficking versus sex work. *Journal of Interpersonal Violence*, 20(3), 343-360.

<sup>210</sup> Scaramuzzino, G., & Scaramuzzino, R. (2014). Violence, Sex or Work? Claims-making against the Swedish ban on the purchase of sexual services on the Internet. *Social Work & Society*, 12(1).

<sup>211</sup> Dodillet, S., & Östergren, P. (2011, March). *The Swedish sex purchase act: Claimed success and documented effects*. In Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague.

<sup>212</sup> Levy (2011).

<sup>213</sup> Kjellgren, C. et al. (2012) Utvärdering av samtalsbehandling med säljare av sexuella tjänster [Evaluation of counselling with sellers' of sexual services], Delrapport 5 ur Prostitutionen i Sverige. Lunds och Linköpings universitet.

<sup>214</sup> Dahlborg, K. & Hulusjö, A. (2010) Uppsökande arbete av prostitutionsgruppen [Social outreach work by the Prostitution Unit], FoU-rapport, Göteborg: Göteborg stad, Väst/GR 2008-2009.

<sup>215</sup> Danna, D. (2012). Client-only criminalization in the city of Stockholm: A local research on the application of the "Swedish Model" of prostitution policy. *Sexuality Research and Social Policy*, 9(1), 80-93.

<sup>216</sup> Larsdotter, S., Jonsson, J., & Gäredal, M. (2011). Osynliga synliga aktörer. *HBT-personer med erfarenhet av att sälja och/eller köpa sexuella tjänster*.

<sup>217</sup> Levy, (2014), Östergren and Dodillet (2011), Sanders and Soothill (2011), Levy (2014) and Östergren (2004)

Prostitution in Sweden". Amanda Netscher (director of the project) reported that in 2006, 304 advertisements about sexual services were found online, while the latest survey from 2014 found 6,965 advertisement in ten weeks. Also, there are thousands of discussion threads on Flashback, where men mainly share experiences with sex purchases. Although the legislation is sometimes blamed for moving the sex industry underground, it is not always proved to be accurate. More precisely, the digitization of society is described as having affected the decline of street prostitution, while the police's efforts to call for sexual services in public places have contributed to this decrease.

There is also critique of the Governmental report (2010) by some scholars. For example, Dodillet and Östergren (2011) argued that the Governmental report was filled with inconsistencies, contradictions, and poor factual data.<sup>218</sup> The recent study of Zeegers and Althoff also critiqued the report on its focus on street sex work only, they argued that the report is lacking the overall picture of the sex industry.<sup>219</sup>

We cannot state at the moment what exactly is the impact of the legislation but we definitely see that the support for a criminalization of purchase sexual services by the general public has increased. Some activists and researchers argue that criminalisation of buyers added to the stigmatization of sex workers, yet the extent to which experiences of discrimination and stigma can be interpreted as a direct expression of unintended consequences of the prohibition of sex purchases is still difficult to determine. 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.

## 7. Conclusions

We have learned in this report that the four research countries all have different approaches to sex work and the sex industry but not so much towards human trafficking. It seems that the internationally adopted definition on human trafficking in the Palermo Protocol, copied and slightly amended in European legal instruments have had a harmonising effect. Focussing on the legislation on sex work and the sex industry we see a criminalisation of (parts of) the sector in Croatia, Poland and Sweden and a regularisation of voluntary adult sex work in the Netherlands. Logically in the former three countries provisions are to be found in criminal law whereas in the Netherlands the regulation has taken place in administrative law and other regulations.

What follows from the discourse analysis is that none of the research countries is 'human trafficking-free' and that in literature there are pro's and con's for each of the approaches. Rather than taking an either/or approach, meaning choosing for one of the approaches towards sexwork, we prefer to see what options there are in each system to strengthen the position of sex workers which might ultimately have a preventive effect on human trafficking. However, in relation to Croatia the criminalisation of providing sexual services by children under the age of 18 seems to be particularly problematic also given the international definition of human trafficking. Furthermore, a thorough understanding of the Polish system is hard to achieve and maybe it can best be labeled as a policy of tolerance although we do not know whether it is regulated or unregulated tolerance.

Interestingly, and given the aim of exploitation as the ultimate outcome of human trafficking, Croatia, Poland and Sweden have separate provisions criminalising sexual exploitation. In the Netherlands this would qualify under certain conditions under human trafficking. However, distinguishing between the process of forced recruitment aiming at the exploitation and the exploitation in and of itself, creates opportunities to criminalise and prosecute sexual exploitation regardless of a recruitment process.

Then the ultimate question remains; what is the impact of these policies on the occurrence and prevention of human trafficking. Interestingly there are similar trends in all countries e.g. from outside prostitution to indoor prostitution, from visible to less visible forms of prostitution, increased use of the

<sup>218</sup> Dodillet, S., & Östergren, P. (2011, March). *The Swedish sex purchase act: Claimed success and documented effects*. In Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague.

<sup>219</sup> Zeegers, N., & Althoff, M. (2015). Regulating Human Trafficking by Prostitution Policy? An Assessment of the Dutch and Swedish Prostitution Legislation and its Effects on Women's Self-determination. *European Journal of Comparative Law and Governance*, (2), 351-378.

Internet. Since these trends occur in all countries we can conclude that policy approaches have had no impact on these trends. However, based on this report we cannot draw far-reaching conclusions. It is true that in the Netherlands there is a broad range of instruments outside the criminal law that can be 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 instrumentarium cases of human trafficking occurred in the sex industry. Similar, we can say that with the criminalisation of clients a mind change as taken place in Sweden among the general public but here there are still reports of abuses, violence and human trafficking within the sex industry as well. Regarding the Croatian system the criminalisation of sex workers is problematic because it places a burden on sex workers in case they become subjected to criminal acts such as violence, abuse and human trafficking. The non-punishment principle, if applied at all, only protects the victims of human trafficking and not sex workers who become victimised.

Within the DESIRE project, further research is needed, including the field work to answer the question if we are able to draw firmer conclusions on a possible relationship between approaches to sex work and occurrence of human trafficking and to see the impact on the position of sex workers of the different approaches to the sex work. However, we have to keep in mind that those who are affected by criminal laws try to evade the laws. So no matter what laws are implemented it will always create a movement evading the laws.

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