

STUDY

Requested by the FEMM committee



The differing EU Member States' regulations on prostitution and their cross-border implications on women's rights



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Abstract

This Study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the FEMM Committee – after assessing the state-of-the-art of prostitution regulations in EU MSs and the current situation of sex trafficking and related data in the EU – identifies and evaluates cross-border problems/risks related to differing national EU MSs' regulations and suggests future EU legislation to reduce them, thus preventing women from being trafficked while also protecting fundamental rights and gender equality.

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

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LIST OF ABBREVIATIONS

EP	European Parliament
EU	European Union
HR	Human Rights
MS/MSs	Member State/Member States
TFEU	Treaty on the Functioning of the European Union
THB	Trafficking in Human Beings
TOC	Trasnational Organised Crime

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EXECUTIVE SUMMARY

Background

Prostitution policies can bring about a variety of costs. Among these costs are those related to criminal activities carried out by (transnational) organised crime groups dealing with trafficking in human beings (THB), often women and girls, for sexual exploitation. These costs include violations of human rights (HR) of victims and EU citizens, that are exposed to the threats by transnational organised crime (TOC), and can depend on legislative asymmetries in a common market like that of the EU.

Aim

The objectives of this Study are to: 1) assess the state-of-the-art of prostitution regulations in EU MSs; 2) assess the current situation of sex trafficking and the related existing data in the EU (also by providing actual estimates); 3) identify/evaluate cross-border problems/risks related to the differing national regulations of the EU MSs, with special attention to the trafficking of women/girls and to cross-border organised crime rings; 4) suggest how the EU should legislate in the area – protecting its fundamental rights and gender equality – in order to prevent women/girls from being trafficked for prostitution. The methodology includes desk research, meta-analysis of existing research and additional quantitative research by the author.

Results: national regulations on prostitution in the EU

Regulations in the EU can be clustered in two macrogroups, that can be further divided in sub-groups: **Model 1. Legalisation** (21 MSs = 77,8% of EU-27): **Model 1a. Regulated:** prostitution is legal and regulated (Austria, Germany, Greece, Hungary, Latvia, Netherlands; 22,2% of EU-27); **Model 1b. Unregulated:** prostitution is legal but unregulated (or only partially regulated, e.g. prohibiting explicitly brothels) (Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Italy, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain; 55,6% of EU-27); **Model 2. Prohibition** (6 MSs = 22,2% of EU-27): **Model 2a. Punishing the prostitute** (Croatia, Romania; 7,4% of EU-27); **Model 2b. Punishing the client** (France, Ireland, Sweden; 11,1% of EU-27); **Model 3b. Punishing both the prostitute and the client** (Lithuania; 3,7% of EU-27).

Results: THB and related data in the EU

THB for sexual exploitation in the EU is a TOC activity, vastly carried out by criminal rings. As far as **traffickers** are concerned: offenders are predominantly male; many criminal groups of sex traffickers originate from EU countries; the most active non-EU crime groups are Chinese and Nigerian; crime groups are characterised by mobility and the ability to move from one MS to another according to opportunities; sex trafficking groups in the EU are often poly-criminal; they extensively use ICT to facilitate their activities. As far as **victims** are concerned: THB for sexual exploitation in the EU is a gender-specific phenomenon (the very great majority of victims are women; the majority of sex trafficking flows involve EU citizens, with girls mainly coming from Eastern EU MSs; Nigeria, Albania and China are the three main non-EU sending countries; more and more victims act under supposedly voluntary business agreements. As far as **clients** are concerned: clients are “normal” people; clients who often buy sexual services from foreign prostitutes (they are the great majority) very likely buy them from trafficked victims; some factors clearly drive the demand for foreign (and often trafficked) women; clients have an (at least partial) awareness of exploitation. As far as **data on THB** are concerned, the mechanism by the European Commission for the collection of data from the MSs is now in its third round. It has very useful indicators; it is improving with each round; there are still data gaps and data are not always provided disaggregated; there is a certain inhomogeneity regarding the subjects who collect the data and their roles/activities in different MSs; a key problem is still the very high hidden figure of THB. It would therefore be necessary, alongside these official data sources, to also provide

estimates based on alternative/non-official and advanced cross-country data-gathering methodologies.

Backing on EU official data on reported victims, this Study estimates (with an ad hoc methodology) the **2018 EU flow of sex trafficking victims** in a range **from 45.000 to 90.000**; the **2018 EU presence of trafficking victims exploited in prostitution** in a range **from 90.000 to 180.000**; and the **2018 EU turnover from trafficked prostitution** in a range **from Euro 5.387.580.000 to Euro 10.775.160.000**.

Results: cross-border problems/risks of different national regulations on prostitution

With reference to THB for sexual exploitation and TOC activities, the Study identifies the main risks/problems related to different national regulations on prostitution. The greater the asymmetry between national prostitution regulations within the EU (with countries where prostitution is legal and countries where is illegal and where the demand for prostitution is criminalised): 1) the more victims of THB for sexual exploitation (especially women) in some MS and in the EU are there, and, as a consequence, more human rights' (HR) violations (**more victims of THB and more HR' violations**); 2) the more and/or stronger are the TOC groups in sex trafficking in those MSs which attract more sex flows and in the EU (**more/stronger TOC groups in THB, with greater mobility**); 3) the wider the presence of TOC rings in sex trafficking in the EU, and the more likely other serious organised crime activities (such as drug trafficking) and this, in turn, equates to more TOC threats and more violations of EU citizens' HR (**more TOC activities, TOC groups' escalation and HR' violations**); 4) the more widespread sex tourism in EU MSs is (**more sex tourism: displacement of the sex demand**); 5) the greater the differences in the size of prostitution markets in the EU countries and in opportunities to work in a given national sex market. This, coupled with differentials in national levels of poverty, unemployment and welfare means internal EU flows of women for prostitution purposes (**more internal movements of women: displacement of the sex offer**).

Suggestions for future EU legislation

First suggestion: to amend the 2011 Directive on Human Trafficking by adding specific offences criminalising buyers of prostitution and envisaging a two-option prostitution model regime: a) criminalisation of clients of prostitution who buy unregulated prostitution services, for MSs that opt for a regulation model (with capillary control of the legal market so as to prevent victims of trafficking from entering the legal market); b) criminalisation of clients of prostitution *tout court* for MSs that opt for a prohibition model punishing the client. The Directive could also request EU MSs to introduce a specific offence of "conscious" buying sexual services from victims of sex trafficking. **Second suggestion:** if one recognises that prostitution is a form of violence, a violation of human dignity and a form of exploitation of gender inequalities, **to enact a new Directive asking MSs to adopt a prohibitionist model of prostitution criminalising the purchase of sexual services tout court.** Such an approach (alternative to suggestion 1) like suggestion 1 would reduce market asymmetries, sex trafficking flows and the connected TOC activities, but would also safeguard the HR of the victims within the EU, at the same time promoting gender equality. **Third suggestion: to address the root causes (social, economic, cultural) of prostitution by supporting Member States in the fight against female poverty, social exclusion and discrimination.** A possible intervention could include: a special Fund for European Aid for Deprived Women; forms of social support, including increased social security benefits and minimum wage for poor women in the MSs. Interventions could also take the form of orienting and strengthening existing instruments, such as the European Social Fund. **Fourth suggestion: to conduct, at MS level national, a periodic standardised self-report survey on prostitution clients.** The European Commission could consider the idea of commissioning a periodic special Eurobarometer survey on prostitution clients and attitude towards prostitution of EU citizens.

1. INTRODUCTION AND AIM OF THIS STUDY

The management of prostitution is a very relevant and sensitive issue in the Member States of the European Union as elsewhere. Deciding which model of prostitution to adopt, amongst the possible ones (i.e. whether to legalise and regulate, criminalise or leave the market legal but unregulated) is a political decision that brings with it consequences and is based on a variety of perspectives and choices (ethical, moral and religious).

At the EU Member State level, at one extreme, prostitution is considered a profession (sex-work) and is therefore legal and regulated, while, at the other extreme, it is criminalised.

The European Parliament in its *Resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality* considers prostitution and forced prostitution as “forms of slavery incompatible with human dignity and fundamental human rights” and a “both a cause and a consequence of gender inequality”. The EP, therefore, chose to define prostitution as a human rights’ violation and a gender inequality issue *tout court*, without distinguishing between prostitution and forced prostitution/ trafficking in human beings for sexual exploitation. Prostitution is always seen as “a violation of women’s rights – a form of sexual slavery –, which results in and maintains gender inequality for women”. As a consequence, the Resolution advocated the “Nordic Model”, i.e. a prostitution policy which criminalises the clients, the demand. The Resolution did not pass with unanimity but with simple majority. The perspective it endorsed was not agreed upon by a relevant minority of the EU Parliament which considered the regulation of prostitution a way to protect the rights of those who work in the sex market and saw prostitution itself a way to foster, as explained in the EU Parliament Resolution, “gender equality by promoting a woman’s right to control what she wants to do with her body”.

So, if there is a strong consensus within the EU on how to treat forced prostitution and human trafficking for sexual exploitation, the same does not happen with prostitution as such.

The assertion that prostitution as such is a violation of human rights and an issue of gender inequality is not within the realm of science, but rather of politics. What scientific research can do, in its constant attempt to be objective and non-judgmental, is to collect and analyse existing qualitative and quantitative information on the phenomenon (in order to understand the market of prostitution, its actors and its internal dynamics) and to help evaluate the effects and impact of different prostitution policies in terms of benefits and costs, so as to support and orient decision-making towards prostitution model/s that maximise the former while minimising the latter.

Among the costs of prostitution policies are those related to criminal activities, very often transnational in nature, carried out by organised crime groups dealing with the trafficking in persons (especially women and children) for the purpose of sexual exploitation. These costs include very serious violations of human rights both of the persons who are victims of this trade and of EU citizens in general, that are exposed to the severe threats posed by transnational organised crimes. These costs, as we are going to argue in this Study, can also depend on legislative asymmetries in a common market like that of the European Union.

Starting from this perspective, the objectives of this Study are to:

- assess the state-of-the-art of prostitution regulations in EU Member States, and the impact of the 2014 EU Parliament Resolution on them (chapter 3);

- assess the current situation of sex trafficking and the existing data on this phenomenon in the EU, also by providing actual estimates of victims and of turnover from their exploited prostitution activities (chapter 4);
- identify and evaluate cross-border problems and risks related to the differing national legislation of the EU Member States, with special attention to the trafficking of women and girls and to related cross-border organised crime rings (chapter 5);
- suggest how the EU, in the name of its fundamental rights and shared values defined in Article 2 of the TFEU, should legislate in the area – protecting its fundamental rights in general and gender equality in particular – in order to protect women and girls from being trafficked for purposes of prostitution and define the legal framework applicable on the EU level which could serve as the basis for legislating in the area of prostitution (chapter 6).

The methodology employed includes desk research, meta-analysis of existing research and additional quantitative research by the author.

2. POLICIES ON PROSTITUTION IN THE EU AGENDA

Since 2014, the EU has started looking at prostitution through the lens of gender equality and human rights. The 2014 EP resolution linked both prostitution and forced prostitution to gender inequality, since they both have an impact on the status of women and men in society, their mutual relations and sexuality. Both prostitution and forced prostitution are regarded as “forms of slavery incompatible with human dignity and fundamental human rights”.

Given this background, the legal framework applicable on the EU level which could serve as the basis for legislating in the area of prostitution is that related to gender equality. This framework was significantly impacted, back in 2007, by the Lisbon Treaty, that amongst other things enhanced the social dimension of the European Union and added principle of non-discrimination and equality between women and men as a key value of the European Union.

Article 2 of the Treaty on the European Union in fact does now mention, amongst the key founding values of the European Union, equality between women and men. The article reads as follows: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.

The topic is taken up again by article 3 of the Treaty on the European Union, where it is stated the EU “shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child”.

Gender equality is therefore acknowledged as a fundamental right by the EU; since fundamental rights are a subcategory of the area of freedom, security and justice, the topic falls within shared competence between the EU and its Member States, as defined in art. 4 of the Treaty on the Functioning of the European Union. Both the Union and the Member States have the capacity to legislate on the topic and adopt legally binding acts, with the Member States exercising their competence for as long as the EU has not exercised its own.

Article 8 of the Treaty on the Functioning of the European Union makes clear that the European Union, “in all its activities”, shall aim not only to eliminate inequalities between men and women, but also to promote equality between them. As noted, this provides “the legal basis for the strategy of ‘gender mainstreaming’ in which gender equality is to be mainstreamed into all areas of EU activities, including policy formation and implementation” (European Commission, 2016: 16).

3. NATIONAL REGULATIONS ON PROSTITUTION IN THE EU

This chapter summarises the state-of-the-art of prostitution regulations in the EU Member States in 2021, and the impact of the 2014 EP Resolution on them.

3.1. National laws and policies

3.1.1. Austria

Prostitution is legal and regulated (since 1947). Specific regulations on the peculiar circumstances under which prostitution can be practised are under the competence of the Landers: hence, the regulatory landscape in Austria varies according to the specific Region. In more detail (van Rhaden, 2020):

- in each Lander there are licensed brothels (labelled with different names, such as walk-in-brothels, sauna clubs, bars, studios, massage brothels, clubs, aroma temple) where sex workers can offer their services;
- in some Landers, prostitutes are allowed to offer sexual services at their clients' home (the so-called 'home visits'). At the same time, in Austria it is forbidden to provide sexual services at the sex worker's private venue;
- street prostitution (soliciting in the street) is permitted only in Vienna, even though with some limitations concerning the time of the day and the specific urban areas (e.g. soliciting of sexual services in residential areas is forbidden). The updated regulation is available on the official web page of the municipality of Vienna;¹
- in compliance with the requirements set by the law, the services offered by 'escort agencies' (i.e. agencies that arrange contacts with customers) are considered legal. However, the final decision to take a customer is always up to the sex worker.

Federal laws include provisions regarding mandatory insurance, health tests and tax treatments: for instance, sex workers are required to have regular tests for sexually transmitted diseases (*Kontrolluntersuchung*), at least once every six weeks.

The Supreme Court of Austria (*Oberster Gerichtshof*) in 1989 (OGH 28 June 1989, 3 Ob 516/89) ruled that 'prostitution' shall be regarded as an 'unconscionable contract': this implied that sex workers had no legal remedies against consumers refusing to pay. This position was revised in 2012 (OGH 18 April 2012, 3 Ob 45/12g) and today contracts for sexual services are generally permissible. However, the Court stressed that this does not impose on the sex worker any obligation to provide for the sexual service.

Crimes linked to prostitution are listed in the Criminal Code (Part 10: Offences against sexual integrity and self-determination, Articles 201-220b). Among the various activities related to prostitution that are prohibited by the Code: making use of sexual services provided by underage workers (Art. 207b), recruiting (Art. 213), inducing (Art. 215), aiding and abetting (Art. 216).

3.1.2. Belgium

Both prostituting and buying sex are legal (but unregulated). Until 1948, Belgian municipalities were the only competent regulatory authorities in the area of prostitution; since then, the regulation of this

¹ Stadt Wien, 'Prostitution in Wien', available at: <https://www.wien.gv.at/verwaltung/prostitution> (last accessed: 01/07/2021).

activity has been at the federal level. However, municipalities are still permitted to regulate prostitution in their respective areas where public order issues arise (Reinschmidt, 2016a: 1).

Brothels and third party activities (such as procuring, soliciting, pimping, advertising for the purpose of prostitution) are prohibited under Article 380 of the Criminal Code, which is in Chapter VI (titled '*Corruption of Young People and Prostitution*'). It must be noted that after a 1995 law reform, third party gains from prostitution are partially tolerated. Indeed, living together with a sex worker is no longer considered an offence, and premises can be left for the purposes of prostitution if this situation does not generate abnormally high gains (Reinschmidt, 2016a: 2).

As said, Belgian municipalities may also introduce further regulations. This is not only to provide further restrictions. Indeed, many municipalities tolerate brothels, red-light districts and other forms of organised prostitution. Local authorities, especially in the last two decades, regulated prostitution in very different ways: thus, today the Belgian regulatory landscape is very puzzled, and has been defined as a '*system of unregulated tolerance*' (Loopmans and Van Den Broek, 2014).

For instance, prohibitions have been introduced by the municipalities of Liège (windows prostitution), Ghent (prostitution in the city centre), Antwerp and Charleroi (street prostitution). At the same time, Antwerp restructured its red-light district (*'t schipperskwartier*), creating a tolerance zone in which prostitution can take place under strict regulation. In Brussel, windows prostitution exists (and it is tolerated by institutions and LEAs, even if not regulated) near the Brussels-North Railway station and around Rue d'Aerschot (Reinschmidt, 2016a: 3-7).

Finally, it must be noted that prostitution is considered an 'immoral' activity in Belgium: this implies that linked contracts (both of sale of sexual services and employment contract for prostitution) are not valid, even if sex workers are considered self-employed for taxation purposes.

3.1.3. Bulgaria

Prostitution is not specifically addressed by the law, thus legal even if unregulated (till 1990 was explicitly illegal).

Organised forms (enticing, procuring, persuading, systematically making premises available for prostitution in return for payment, etc.) are illegal under Article 155 c.c. The Criminal Code foresees other specific criminal offences related to underage prostitution (Articles 149, 150, 151, 154a, 155a, 157, and 188) and to rapes committed in view of forceful involvement in further acts of debauchery or prostitution (Article 152).

Furthermore, soliciting to sell sex in public places is usually punished by using vagrancy and public order laws.²

3.1.4. Croatia

Engaging in prostitution (literally 'falling into prostitution') is a criminal offence according to Article 12 of the Act on '*Misdemeanours against Public Peace and Order*'. The punishment for sex workers is a fine from 25 to 100 EUR or imprisonment up to 30 days: in addition, it is possible to issue a protection order of compulsory treatments of sexually transmissible diseases (Art. 34), or an expulsion order from the area in which the offence took place for a period from 30 days to 6 months (Art. 36).

² Sexuality, Poverty and Law Programme, 'Bulgaria', available at: <http://spl.ids.ac.uk/sexworklaw/countries> (last accessed: 02/07/2021).

Article 7 of the same Act also criminalises allowing for the use of one's premises for prostitution or enabling or helping a person engage in prostitution. Some other activities connected to prostitution are punished under the provisions of the Criminal Code: Article 157 punishes the enticement, soliciting, incitement, inducement, advertisement and recruitment.

At the same time, the law does not address clients (thus, buying sex is a legal activity). The Ministry of Interior proposed criminalising clients in 2012 and 2016, unsuccessfully (PILAR Institute of Social Sciences, 2020). However, Article 106 (3) of the Criminal Code criminalises clients of trafficked victims (if they knew or should have known it) with the same punishment envisaged for traffickers.

3.1.5. Cyprus

Voluntary prostitution is not addressed by the law and is thus considered legal (but unregulated). The law of Cyprus prohibits forced prostitution and organised forms, such as pandering (Article 157 c.c.) or owning or leasing a brothel (Article 156 c.c.).

3.1.6. Czech Republic

Since 1990, prostitution in the Czech Republic is legal (no longer banned) but unregulated. Article 189 c.c. criminalises inducing, hiring or enticing a person into sex work, and profiting from others sex work. The criminal code includes also a specific offence punishing sex workers, i.e. cases of soliciting and practising prostitution near schools or other locations meant for children (Article 190 c.c.).

Municipalities may regulate prostitution under the area of "municipal matter of public order", e.g. by setting up restricted zones, or by banning completely street prostitution in their territory: sex workers violating such rules are punishable with a fine (Reinschmidt, 2016b: 3).

It must be noted that the application of existing law is often lax and also organised forms of prostitution are quite common.³ For instance, according to the Ministry of Interior, there are over 860 brothels in the country (200 just in Prague) (Kenety, 2012).

Prostitution is not included in the Czech commercial law (because immoral): for this reason, sex workers achieve legal employment status (thus the possibility to pay taxes and access social insurance) by declaring another work (e.g. waitress) (Reinschmidt, 2016b: 2).

3.1.7. Denmark

Prostitution has been partially decriminalised in Denmark in 1999: today, the Criminal Code addresses and punishes only organised forms and third party activities (Articles 288, 229, and 233 of the Criminal Code).

Sex workers are obliged to pay taxes: at the same time, they cannot assert labour rights and have limited access to benefits (Bernardi, 2018: 7).

In 2009 the Ministry of Justice solicited the Criminal Code Council (*Straffelovrådet*) to review existing provisions of the criminal code, assessing the possibility to criminalise clients (*købesex*). On the basis of the recommendations provided by the Council, the Ministry decided not to introduce such a ban since it *'is not likely to lead to a decrease in prostitution or the exploitation of prostitutes, but rather is likely to*

³ Sexuality, Poverty and Law Programme, 'Czech Republic', available at: <http://spl.ids.ac.uk/sexworklaw/countries> (last accessed: 22/06/2021).

have negative consequences for the prostitutes'⁴ (Justis Ministeriet, 2012).

3.1.8. Estonia

Prostitution is legal but unregulated. Organised forms and activities of third parties are punished by the Criminal Code: i.e. organising meetings between a prostitute and client, owning or managing a brothel, aiding, renting premises used for prostitution, inducing (Article 133-2 c.c., titled 'Pimping'), and aiding prostitution (Article 133-3 c.c.).

Furthermore, since 2017 and under Article 133-1 c.c. the 'buying of sex' from trafficked victims is punished by up to 5 years of imprisonment.

3.1.9. Finland

Prostitution is legal and unregulated. Organised forms and third party activities are criminalised under Chapter 20 c.c., Articles 9 (Pandering) and 9a (Aggravated Pandering). Moreover, according to Article 7 of the Public Order Act 61/2003, it is illegal to buy or sell sexual services in public places, such as streets and pubs.

Specific provisions focus on sexual services provided by underage people, i.e. Article 8 a (Purchase of sexual services from a young person) and Article 8b (Solicitation of a child for sexual purposes).

In Finland, a public debate on criminalising the purchase of sex was fuelled shortly after the introduction of such a provision by Sweden in 1999 (for further information, see below). In 2005, the Government submitted to the Parliament a proposal aimed at fighting human trafficking (HE 221/2005), which included the criminalisation of all sex purchases (as done in Sweden). However, very different views emerged during the parliamentary discussion of the bill. The Legal Affairs Committee settled on a compromise based on the minority opinion of the working group drafting the legislation (OM 2003:5) to limit the sex purchase ban to the purchasing of sex from victims of human trafficking and procuring (Niemi and Aaltonen, 2013). Accordingly, in 2006 the Parliament added to the Criminal Code an offence (Article 8, Abuse of a victim of sexual trade, further emended in 2015) punishing clients for the purchase of sexual services from trafficking victims (to a fine or imprisonment up to 6 months).

Finally, Section 148 of the Finnish Aliens Act reports that an alien may be refused entry into the country/deported if there are reasonable grounds to suspect that he or she may sell sexual services (thus partially criminalising migrant sex work).

3.1.10. France

Legislation in France has been recently amended. Until 2016 both prostitution and the purchase of sexual services were considered legal, and the criminal code criminalised only organised forms or the involvement of third parties. However, some limitations existed. For instance, in the attempt of limiting street prostitution, Law n. 2003-239 (the so-called Law Sarkozy II) introduced a ban for 'passive solicitation' (*racolage passif*). The provision introduced in the criminal code (i.e. Article 225-10-1 c.c.) punished (with two months of imprisonment and a fine of 3.750 EUR) 'the fact, by any means, including

⁴ Original statement (in Danish): 'Regeringen har desuden besluttet at følge Straffelovrådets anbefaling om ikke at indføre et forbud mod købesex. Straffelovrådets undersøgelse viser, at et forbud mod købesex ikke kan forventes at føre til at fald i prostitutionen eller i udnyttelsen af prostituerede, men tværtimod må forventes at have negative konsekvenser for de prostituerede'.

even a passive attitude, of publicly soliciting others with a view to inciting them to sexual relations in exchange for remuneration or a promise of remuneration'.⁵

The French approach completely changed in 2016, switching the target in the fight against prostitution from the sex workers to the clients. Indeed, in April 2016 the Parliament adopted Law n. 2016-444 aimed 'to strengthen the fight against the prostitution system and to support prostituted persons'. This law repealed the 'passive solicitation' offence, and introduced in the Criminal Code a new Article punishing the 'use of prostitution' (Article 611-1 c.c.). According to this provision *'the act of soliciting, accepting or obtaining sexual relations from a person who practices prostitution, even on an occasional basis, for remuneration, a promise of remuneration, a performance in kind or a promise of such an advantage is punished'*⁶ with a fine of 1.500 EUR (that is up to 3.750 in case of recidivism). The fine is 75.000 EUR if the sex worker is a minor or vulnerable (e.g. illness, infirmity, disability or pregnancy).

Furthermore, the French Criminal code still criminalises pimping/procuring (Article 225-5) and operating a brothel (225-10).

3.1.11. Germany

Today, prostitution in Germany is legal and regulated. Till 20 years ago, sex work in Germany was legal but the Civil Code defined it as contrary to public decency and morality (Art. 138-1): as a consequence, contracts on sexual services were void from a juridical viewpoint and prostitution was legal but unregulated.

However, German courts started to challenge this principle and a 2001 court case ruled that prostitution was not to be considered an 'immoral' activity anymore (Weitzer, 2017: 377). At the same time, as pointed out by the Federal Ministry for 'Family Affairs, Senior Citizens, Women and Youth' (BMFSFJ, 2007: 9), the legal disadvantages of considering prostitution immoral (and then an invalid legal transaction) had a negative impact on the sex workers. Hence, the need to introduce a new legal framework arose.

This was done in 2002 with the promulgation by the *Bundestag* of the federal Prostitution Act (*Prostitutionsgesetz - ProstG*). From that moment on, prostitution has been regulated and sex workers are allowed to provide their services in approved businesses or on a freelance basis. The Act allowed providers of sexual services to get regular work contracts, and gave prostitution a legal status by establishing that agreements between adult sex workers, employers and clients are subject to civil law: this means that sex workers can enforce their contracts.⁷

Germany is a federal state in which each Lander can interpret, enact and enforce national legislation in its own way: specific regulations (e.g. conditions under which prostitution may take place, tax laws, compulsory health insurance, labour regulation, etc.) differ Lander by Lander. Furthermore, municipalities have the right to define areas in which sex work is not allowed (*Sperrbezirk*) and/or limitations concerning the time of the day.

⁵ Original text (in French) : *'Le fait, par tout moyen, y compris par une attitude même passive, de procéder publiquement au racolage d'autrui en vue de l'inciter à des relations sexuelles en échange d'une rémunération ou d'une promesse de rémunération [...]'*

⁶ Original text (in French) : *'Le fait de solliciter, d'accepter ou d'obtenir des relations de nature sexuelle d'une personne qui se livre à la prostitution, y compris de façon occasionnelle, en échange d'une rémunération, d'une promesse de rémunération, de la fourniture d'un avantage en nature ou de la promesse d'un tel avantage est puni [...]'*.

⁷ Sexuality, Poverty and Law Programme, 'Germany', available at: <http://spl.ids.ac.uk/sexworklaw/countries> (last accessed: 05/07/2021).

In 2016, two important legislative amendments took place. First of all, a new offence was introduced in the Criminal Code punishing clients of trafficked and coerced sex workers (Article 232a c.c.).

Second, the Prostitutes Protection Act (*Prostituiertenschutzgesetz*) was approved (and entered into force in July 2017) with the aim of helping sex workers and fighting criminal exploitation. Among other provisions, this new Act establishes obligations and restrictions for sex workers and people involved in prostitution (e.g. the need for a registration to the competent authority and to attend compulsory counselling), makes condom use mandatory and introduces some restrictions in the advertisements of sexual services.

3.1.12. Greece

Prostitution is legal and regulated since 1834, when a first legal framework on prostitution was adopted to mitigate the effect of a syphilis outbreak in the country (NSWP, 2019: 3). At the same time, Article 349(3) of the Criminal Code punishes 'pandering', defined as the promotion of professional prostitution or of sexual services for profits.

According to Law 2734/1999, today sexual services are allowed only in state-licensed brothels. Local authorities have the competence to define the number of licenses per municipality as well as possible geographical restrictions: for instance, in Athens a brothel must be over 200 meters away from churches, libraries, schools, hospitals, kindergartens, nursing homes, and other public buildings.⁸ There cannot be more than one brothel in a single building. Furthermore, an apartment can be used as a brothel only under the consent of the owner and of all the other people living in the building.

Very strict requirements are set by law concerning sex workers (NSWP, 2019: 3):

- they must be single, divorced or widowed (i.e. they need to be unmarried);
- they need to obtain a personal licence that lasts for 3 years. Several documents are required to obtain the license, e.g. ID card/passport, residence permits (if foreigner), criminal record, HIV test certificate, chest X-ray;
- during the validity of the licence, they are required to have regular testing for sexually transmissible diseases (every 15 days), for syphilis (every month) and for HIV (every 3 months).

Specific requirements and licenses are also envisaged for brothels owners and for all the staff: for instance, maids must be over 50 years, possess valid residency documentation, and undergo the same medical examinations as the sex workers.

However, it must be noted that only a few licensed brothels are active in Greece, and they cover only a small percentage of the actual sex industry in the country (NSWP, 2019: 3). For instance, although prostitution is formally illegal, it is not really prosecuted (Bernardi, 2018: 8).

3.1.13. Hungary

Prostitution is legal and regulated. On the one hand the Hungarian Criminal Code envisages specific offences punishing prostitution, i.e. pandering/soliciting (Article 200), procuring for prostitution or sexual acts/maintain or operate a brothel (Article 201 c.c.), and living on earnings of prostitution (Article 202 c.c.). On the other hand, Article 8 of the Law 75/1999 on Organised Crime (*Törvény a szervezett bűnözés, valamint az azzal összefüggő egyes jelenségek elleni fellépés szabályairól és az ehhez kapcsolódó*

⁸ Global Network of Sex Work Projects, 'Greece Case Study', available at: https://www.nswp.org/sites/nswp.org/files/greece_legal_case_study.pdf (last accessed: 05/07/2021).

törvénymódosításokról, 1999, LXXV) entitles local municipalities to designate specific locations in which prostitution is allowed (the so-called 'tolerance zones').

Municipalities with over 50.000 inhabitants need to identify such areas, while smaller ones can decide whether to proceed or not. However, it must be noted that some local authorities have so far refused to designate any tolerance zone.⁹

Section 9 of the same law states that sex workers must be at least 18 years old, possess a permit and a health certificate (to be renewed every 3 months) and pay taxes.

3.1.14. Ireland

Till recently, sex work was not criminalised in Ireland. At the same time, the 'Criminal Law (Sexual Offences) Act, 1993' punishes a series of related behaviours such as soliciting or importuning for purposes of prostitution (Article 7), loitering for purposes of prostitution (Article 8), organisation of prostitution (Article 9), living on earnings of prostitution (Article 10), keeping brothels (Article 11) and advertising brothels and prostitution. Furthermore, Article 23 of the 'Criminal Justice (Public Order) Act, 1994' prohibits the advertising of brothels and prostitution.

The Irish legal approach to prostitution sharply changed with the 'Criminal Law (Sexual Offence) Act, 2017', which introduced the criminalisation of the purchase of sexual services by clients. In more detail, this new legislation amended the 1993 Act introducing Article 7A, a new offence that punishes '*a person who pays, gives, offers or promises to pay or give a person (including a prostitute) money or any other form of remuneration or consideration for the purpose of engaging in sexual activity with a prostitute*'. The penalty is a fine of up to 500 EUR for a first offence, and a fine of up to 1,000 EUR for each subsequent offence.

3.1.15. Italy

In 1958, Article 3 of the Law n.75 (the so-called 'Merlin Law') repealed all previous provisions on prostitution within the Criminal Code and introduced the following offences:

- being the owner, manager, administrator or director of a brothel (*casa chiusa*, literally 'closed house');
- renting venues for prostitution;
- tolerating the habitual use of a venue for the exercise of prostitution (e.g. owners of bars, hotels, clubs, dance halls, etc. tolerating the presence of sex workers);
- recruiting someone to prostitute;
- inducing someone to prostitute;
- exercising any activity as part of an organisation or association that exploit prostitution;
- exploiting or facilitating prostitution.

Hence, street prostitution and independent prostitution in private homes are today legal but unregulated. However, the Supreme Court of Cassation clarified that sexual services must be taxed (Sentences n. 20528/2010 and 10578/2011), and that clients refusing to pay a sex worker may be liable for rape (Sentence 8286/2010).

⁹ Sexuality, Poverty and Law Programme, 'Hungary', available at: <http://spl.ids.ac.uk/sexworklaw/countries> (last accessed: 05/07/2021).

The Constitutional Court has been asked on several occasions to assess the potential incompatibility of the Merlin Law with the Italian Constitution (e.g. because in contrast with the fundamental right to dispose of one's body, or with the freedom of economic initiative), always ruling for its legitimacy.

In 2008, the Italian Government proposed a new bill (S. 1079, the so-called 'Carfagna Law') criminalising street prostitution, namely both sex workers and clients. However, the bill was dismissed after some debates and several criticisms raised by civil society.

Finally, it must be noted that Italian municipalities are empowered (on the basis of Law 125/2008) to adopt local regulations punishing (with administrative fines) both clients and sex workers. However, in 2011 the Italian Constitutional Court (Sentence n. 115/2011) declared that local provisions against prostitution can be adopted by mayors only in case of emergency and for a limited period of time.

3.1.16. Latvia

Prostitution is legal and regulated by the Cabinet Regulation No. 32 Regarding Restriction of Prostitution 2008 (*Ministru kabineta noteikumi Nr.32 Prostitūcijas ierobežošanas noteikumi, 2008*).

Sex workers are required to obtain a 'health card' which is issued to individuals on the basis of a monthly sexually transmitted diseases testing. The police is authorised to arrest sex workers without a valid health card.

Prostitution can only take place in premises rented or owned by the sex worker (and only if neighbours do not object). The property must not be located less than 100 meters away from an educational institution or church, and no minor may be present. Furthermore, local governments have the power to set zones where sex work can and cannot take place. Sex workers cannot gather in groups to offer services.

The Criminal Code punishes the establishment, maintenance, management and financing of brothels (Article 163-1), involvement of a person in prostitution and use of prostitution of a minor (Article 164), and living on the avails of prostitution (Article 165).

3.1.17. Lithuania

The activities of both sex workers and clients are punished under Article 182-1 of the Lithuanian Code of Administrative Offences. Such a responsibility is excluded for the sex worker who has been involved in prostitution being dependent or under physical or psychological violence or deception, or by any means being a minor or/and a victim of human trafficking when the status is recognised in the criminal proceedings.¹⁰

Furthermore, the Criminal Code provides offences for 'gaining profit from another person's prostitution' (Article 307), and 'involvement in prostitution', i.e. induction (Article 308).

3.1.18. Luxembourg

Prostitution is legal and unregulated. Organised forms or the involvement of third-party is prohibited under Article 379bis c.c.

¹⁰ European Commission, 'Lithuania - 2. Institutional and Legal Framework', available at: https://ec.europa.eu/anti-trafficking/member-states/lithuania-2-institutional-and-legal-framework_en (last accessed: 05/07/2021).

Furthermore, Law 28th February 2018 introduced in the Criminal Code new offences (Articles 382-6, 382-7 and 382-8) criminalising clients of sex workers who are minors, vulnerable (e.g. suffering from mental illness or without documents) or victims of human trafficking.

3.1.19. Malta

Prostitution is legal but unregulated.¹¹ However, it is illegal to solicit in public: at the same time organised forms and third party activities are illegal (e.g. living off the earnings of the prostitution of any other person, public loitering or soliciting for the purposes of prostitution, keeping or managing a brothel, letting of house or premises for the purposes of prostitution).

3.1.20. Netherlands

Prostitution is legal and regulated since 2000. Before that year, the Dutch legislation provided for a general ban on brothels and pimping. Despite this, sex work was tolerated throughout the country and became more visible year by year, especially from the 1970s. For these reasons, local authorities tried to control this sector and to limit the expansion of windows prostitutions by developing policies to concentrate brothels in specific areas or streets of the cities (Post et al., 2019: 107-108). Thus, sex work was *de facto* allowed in the Netherlands even during the XX century, despite the provisions of the Criminal Code; a new piece of legislation was clearly needed.

This happened with the reform entered into force in October 2000 (Stb. 464/1999), which lifted the ban on brothels. A clear distinction was made between forced and voluntary prostitution. The former is today punished by Article 273f of the Criminal Code. The latter has been regulated and both brothel owners/managers and sex workers have been considered legitimate entrepreneurs.

The regulation of the sex market follows a decentralised scheme. Local authorities have been empowered to adopted by-laws establishing the rules governing prostitution in their municipalities (Articles 149 and 151a of the Local Government Act of the Netherlands), for instance: number and location of brothels, requiring criminal background checks on brothels owners/managers, health and safety requirements, etc. (Barnett and Casavant, 2014: 10). The Dutch Association of Municipalities produced a model General Local Act for the regulation of prostitution, that has been followed (at least partially) by several local authorities: as a result, there is considerable overlap in the existing municipal by-laws (Jans et al., 2017).

In general, brothels need to be licensed and to comply with existing regulations about safety, sanitation, fiscal accountability and health. Outdoor prostitution is permitted only in specific locations identified by local authorities (*tippelzonen*).

In the last 20 years, several bill reforms have been discussed, especially trying to address weakness which emerged from the practical application of the 2000 reform (for instance, an evaluation of the law carried out in 2007 by the Centre for Scientific Research and Documentation of the Ministry of Justice highlighted that abuses, such as involuntary prostitution and sexual exploitation, still existed) (Post et al., 2019: 110).

¹¹ It must be noted that some authors and analysts categorise Malta within the 'prohibitionist' approach, i.e. considering prostitution as illegal in the country (see for instance: Sexuality, Poverty and Law Programme, 'Malta', available at: <http://spl.ids.ac.uk/sexworklaw/countries>, last accessed: 07/07/2021). This is based on the consideration that although there is not any regulation specifically addressing prostitution, there are provisions prohibiting it in an indirect way (e.g. Article 215AA of the Criminal Code punishing loitering in a private or public space) (GhSL, 2015: 8). However, since the legislation specifically covers some acts related to prostitution (e.g. Articles 197, 204, 204a, 204b, 205, and 248b of the Criminal Code), while not addressing voluntary prostitution, it is possible to conclude that the latter shall be not considered an illegal activity.

The Bill Regulation of Sex Work (*Wet regulering sekswerk*, first drafted in 2009 and amended in 2014) envisages (among other minor issues) the centralisation of the licensing system, and the need for sex workers to be at least 21 years old (criminalising clients buying services from persons they know are under that age). However, the bill is still under discussion. Furthermore, in January 2021 the Dutch Council of State expressed a negative recommendation on the bill, stating that the foreseen licensing requirement will create a barrier to legally practising prostitution (thus increasing the risks of abuses), and criticising the proposed criminalization of facilitating illegal prostitution and of the client (Raad van State, 2021).

3.1.21. Poland

Prostitution is legal but unregulated. However, forced prostitution, organised forms or the involvement of third parties are criminalised, i.e. forcing a person to sell sex (Article 203 c.c.), inducing a person to sell sex and profiting from the prostitution of another person (Art. 204 c.c.).

It must be noted that prostitution, even if considered legal, is not recognised as legitimate work: as a consequence, sex workers are not subject to taxation and are not allowed to claim social benefits.¹²

3.1.22. Portugal

In 1982, the Law Decree 400/82 decriminalised sex working: today prostitution in Portugal is legal but unregulated. The Criminal Code punishes pandering (Article 169 c.c.), i.e. to profit, promote, encourage or facilitate the prostitution of another person. Penalties are increased when the offence is aggravated by violence, serious threat, deception, fraud or abuse of authority.

Offences are very wide and criminalises also the renting of an apartment to a sex worker; it is also illegal for sex workers to work together in indoor cooperatives.¹³

3.1.23. Romania

Until recently, prostitution was a criminal offence. However, the new Criminal Code (entered into force in 2014) no longer contains any ban on prostitution. Today, sex workers can be charged with an administrative offence and subjected to a fine. Thus, prostitution is still an illegal activity, even if decriminalised. If the fine is not paid, the person concerned must fulfil community service or an alternative term of imprisonment (Reinschmidt, 2016b: 1).

Furthermore, Article 216 c.c. criminalises clients of sex workers who are victims of human trafficking, while Article 213 c.c. punishes pimping.

3.1.24. Slovakia

Prostitution is legal but unregulated. Organised forms or the involvement of third parties are illegal (Article 367 of the Criminal Code). However, it must be noted that public order offences are often used against prostitutes outdoor and to confine them to specific areas;¹⁴ furthermore, some municipalities

¹² Sexuality, Poverty and Law Programme, 'Poland', available at: <http://spl.ids.ac.uk/sexworklaw/countries> (last accessed: 06/07/2021).

¹³ Global Network of Sex Work Projects, 'Portugal', available at: <https://www.nswp.org/country/portugal> (last accessed: 06/07/2021).

¹⁴ Sexuality, Poverty and Law Programme, 'Slovakia', available at: <http://spl.ids.ac.uk/sexworklaw/countries> (last accessed: 06/07/2021).

have adopted local ordinances that make it illegal to offer or provide sexual services in public places (SWAN, 2019: 15).

3.1.25. Slovenia

As Croatia, Slovenia incorporated in their legal system the Yugoslavian Act on Misdemeanours against Public Peace and Order; however, in 2003 engaging in prostitution (literally 'falling into prostitution') was decriminalised. Thus, today prostitution is legal but unregulated.

In 2006 the Government added a provision in the Protection of Public Order Act (titled 'indecent behaviour') punishing the offer of sexual services in public spaces if carried out in an intrusive manner and if the act disturbs anybody, provokes disquiet or indignation in others (SWAN, 2019: 16).

Furthermore, procurement and organising prostitution remained punishable under the Criminal Code.

3.1.26. Spain

Prostitution in Spain has been decriminalised in 1995. The offences related to prostitution still into force are in Chapter V of the Criminal Code (*De los delitos relativos a la prostitución y a la explotación sexual y corrupción de menores*, Articles 187-190), i.e. forced/coerced prostitution, incitement and exploitation of the prostitution of another person when the victim is in a vulnerable position, child sex work, as well as the online promotion/incitement of all these situations.

Thus, the national law provides very few prohibitions concerning sex working; at the same time, it does not foresee any regulation of the market. At the regional level, local regulatory activity has been mostly limited to the definition of the conditions to be met by the premises in which prostitution is practised. In this framework, Spanish municipalities found themselves in need to implement measures to manage sex working in public spaces (Villacampana, 2017: 44-45).

The first by-law was introduced by the municipality of Barcelona in 2005 (*Ordenanza de Medidas para Fomentar y Garantizar la Convivencia Ciudadana*, amended with some modifications in 2012): it punishes the offering, negotiating or requesting of paid sexual services in public places. In the following years, local administrative bans on prostitution in public venues have been adopted by other cities across the country, such as Valencia, Santander, Seville, Granada, Bilbao, Palma de Mallorca and Malaga (Arce Becerra, 2018: 1205-1206; Villacampana, 2017: 46-48).

Furthermore, in 2015 the Law for the protection of cities' security (*Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana*) punished prostitution when exercised in areas of public transit, or close to places where minors are (schools, parks, etc.) or in areas where there is a risk for the road safety (Article 36).

In Spain, sex workers are not allowed to register with the national social security system: the only exception is the judgement of Social Court no. 10 of Barcelona in 2015, which has recognised the provision of sex services as an employment relationship (Villacampana, 2017: 43-44).

3.1.27. Sweden

Sweden has been the first country in the world to criminalise the purchase (i.e. clients) but not the offer (i.e. prostitutes) of sexual services (Jay Olsson, 2019: 16). This legislative model (often referred to as 'the Nordic Model') has been then adopted by other EU (France and Ireland) and extra-EU countries (Norway, Iceland, Northern Ireland and Canada).

More in detail, the ban on clients has been introduced in 1999 by the Lex Purchase Act (*Sexköpslagen*) and then (2005) moved into the Criminal Code, Chapter 6 (on sexual offences), Section 11. After the

latest amendment (2011, which increased the imprisonment terms from 6 months to 1 year), the current version of the provision states that *'a person who, otherwise than as previously provided in this chapter, obtains a casual sexual relation in return for payment, shall be sentenced for purchase of sexual service to a fine or imprisonment for a maximum period of one year. The provision of the first paragraph shall also apply if the payment was promised or given by another person'*.¹⁵

Furthermore, chapter 6 of the Criminal Code punishes also pimping, procuring, living off immoral earnings and brothel-keeping.

3.2. Typologies/models of national laws and policies

Existing regulations in the EU can be clustered in two macro groups, further divisible in sub-groups:

- **Model 1. Legalisation:**
 - Model 1a. Regulated (Austria, Germany, Greece, Hungary, Latvia, Netherlands);
 - Model 1b. Unregulated (Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Italy, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain);
- **Model 2. Prohibition:**
 - Model 2a. Punishing the sexworker (Croatia, Romania);
 - Model 2b. Punishing the client (the so-called 'Nordic Model') (France, Ireland, Sweden);
 - Model 3b. Punishing both the sexworker and the client (Lithuania).

Some considerations and clarification on these models are needed:

- *within each model/group, national legislation differ.* The models presented above represents the legal approaches to prostitution followed by Member States. However, each model does not comprehend perfectly homogenous national legislations. For instance, among states following model 1a (legalisation - regulated), regulations of prostitution may significantly vary (e.g. conditions to the exercise prostitution, venues in which prostitution is allowed, health and safety requirements, etc.);
- *some states criminalise clients of forced prostitution.* Some Member States in which prostitution is legal (either regulated or unregulated) recently introduced the criminalisation of the purchase of sexual services from trafficking victims. These are Estonia, Finland, Germany and Luxembourg. Furthermore, Romania decriminalised prostitution and prohibits sex working with an administrative offence: however, the Criminal Code envisages an offence punishing clients acquiring sexual services from trafficked people. The same prohibition has been introduced by Croatia. These provisions are in line with Article 18.4 of the EU anti-trafficking directive (2011/63/EU) which states that *'in order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation [...]'*;
- *two Member States adopted Model 2b (the so-called 'Nordic Model') after the EP resolution of 26 February 2014.* France and Ireland changed their prostitution policies towards a prohibitionist model of 'punishing the client' respectively in 2016 and 2017, following the 2014 EP Resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality advocating the 'Nordic Model'. This means that also soft non-binding EU regulation can play a role, and change beliefs and attitudes;

¹⁵ Original text (in Swedish): *'Den som, i annat fall än som avses förut i detta kapitel, skaffar sig en tillfällig sexuell förbindelse mot ersättning, döms för köp av sexuell tjänst till böter eller fängelse i högst ett år. Vad som sägs i första stycket gäller även om ersättningen har utlovats eller getts av någon annan'*.

- *local provisions may create a non-homogenous regulatory framework within each country.* Regional or municipal ordinances and by-laws are quite common in model 1 states (legalisation). Just for example, in Austria and Germany, the concrete application of the national law is up to the Landers, while in the Netherland is (still) under the competence of the municipalities. At the same time, in some model 1b states measures have been adopted by local authorities to regulate the sex market (e.g. in Belgium) or to limit it by imposing administrative fines when practised in public spaces (e.g. in Spain). As a consequence, the actual regulation of prostitution is usually non-homogenous within each country;
- *model 1b states (legalisation - unregulated) criminalises third party activities and organised prostitution.* In Member States in which prostitution is neither prohibited nor regulated by the law, specific provisions are envisaged to criminalise (at a different extent) third party activities and organised prostitution (e.g. operating/managing a brothel, pimping, inciting, inducing, profiting from the prostitution of others, etc.). Thus, the sex market is not completely unregulated in these countries.

Table 1: Models of regulation on prostitution and EU Member States

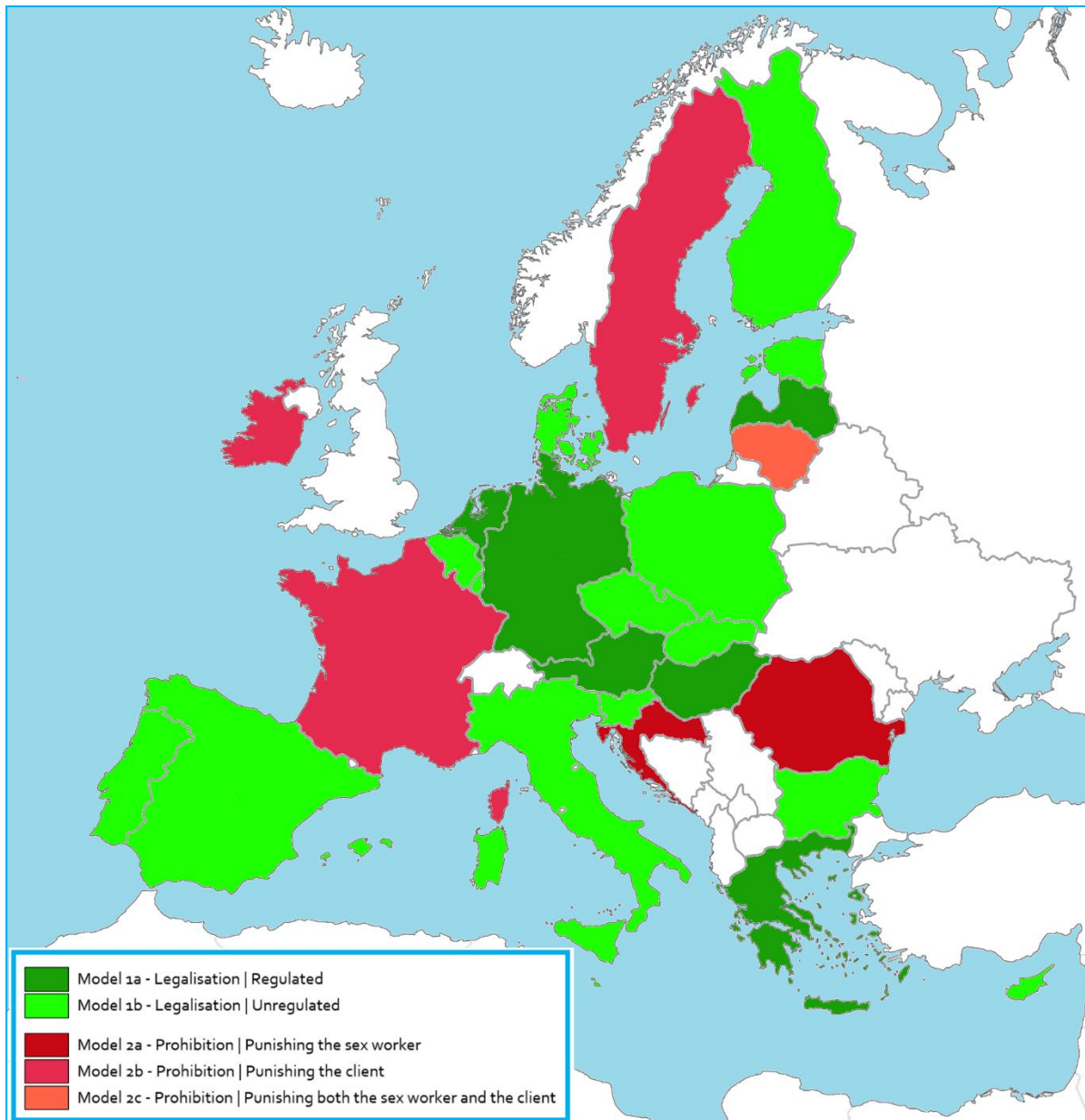
Model 1 - Legalisation		Model 2 - Prohibition		
Model 1a Regulated	Model 1b Unregulated	Model 2a Punishing the sex worker	Model 2b Punishing the client	Model 3b Punishing both the sex worker and the client.
Austria Germany* Greece Hungary Latvia Netherlands	Belgium Bulgaria Cyprus Czech Republic Denmark Estonia* Finland* Italy Luxembourg* Malta Poland Portugal Slovakia Slovenia Spain	Croatia * Romania ¹⁶ *	France Ireland Sweden	Lithuania
6 MSs = 22,2% of EU-27	15 MSs = 55,6% of EU-27	2 MSs = 7,4% of EU-27	3 MSs = 11,1% of EU-27	1 MS = 3,7% of EU-27
21 MSs = 77,8% of EU-27		6 MSs = 22,2% of EU-27		

* = Criminalising clients purchasing sexual services from trafficked victims.

Source: author's elaboration of national regulations in the EU Member States.

¹⁶ Even if prostitution has been decriminalised, sex workers can be charged with an administrative offence and subject to a fine.

Figure 1: Models of regulation on prostitution and EU Member States



Source: author's elaboration of national regulations in the EU Member States.

4. THB AND RELATED DATA IN THE EU

4.1. The phenomenon (within the EU and from outside the EU)

4.1.1. Sex trafficking

In the EU human trafficking is amongst the most serious transnational organised crime activities. It puts victims' lives at great risk and strongly undermines their fundamental rights and dignity. The most vulnerable people become commodities and are transported, exchanged, exploited by criminals for profit.

According to art. 2 of the EU Directive 2011/36/EU, trafficking in human beings consists in "the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. [...] Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs."

The most common and widespread form of human trafficking in the European Union is that for the purpose of sexual exploitation: 60% of victims of human trafficking in the European Union are trafficked for sexual exploitation (European Commission, 2020b: 3-4). Sex trafficking is extremely lucrative for organised crime groups. Looking at internal EU trafficking, simply crossing a few borders can mean intercepting greater and more lucrative markets, with not particularly high law enforcement risks.

Sex trafficking is firmly linked to the EU Member States' prostitution markets at destination. These markets are characterised by an increasing volume of "foreign prostitution" activities, and are therefore populated by a great number of non-national prostitutes. Traffickers abuse victims of sexual exploitation in different clandestine as well as legitimate settings, both indoor (hotels, bars, restaurants, sauna clubs, strip clubs, night clubs, massage parlours and prostitution windows) and outdoor. Indoor premises are usually owned by associates or facilitators of traffickers (Europol, 2021: 70). In the European Union sex trafficking and prostitution are strictly intertwined, from a theoretical and practical point of view.

4.1.2. Criminal rings

Trafficking in human beings for the purpose of sexual exploitation in the European Union is a transnational organised crime activity, vastly carried out by criminal rings. In this regard, some elements are worth being discussed for the purposes of this Study:

- *offenders are predominantly male.* In EU-28, in the years 2017-2018, 68% of suspects for trafficking for sexual exploitation were male and 29% female; 68% of the prosecuted individuals were male and 24% female; 67% of those convicted were male and 24% female (European Commission 2020a: 44);
- *many criminal groups of sex traffickers originate from EU countries and therefore, from the offending perspective, the phenomenon can be regarded as a strictly EU problem/issue.* Amongst the most threatening organised crime groups active in trafficking in women for sexual exploitation in Europe are Bulgarian, Czech, Hungarian, Romanian and Slovakian ones. They

can be described as loose, fluid criminal networks made up by members tied by kinship or ethnicity (Di Nicola, 2013: 150; Europol, 2016: 14, 17-18);

- *the non-EU crime groups most active in sex trafficking in the European Union are Chinese and Nigerian.* Amongst the non-EU criminal groups most involved in the trafficking of women for sexual exploitation in the European Union are Chinese and Nigerian ones (Europol, 2016: 13). Compared to EU crime groups, they have more members and are more structured and hierarchical. Also, they are capable to cover greater distances, since cells of the criminal group are present along the trafficking routes and in several destination countries (Europol, 2016: 17-18);
- *crime groups involved in sex trafficking in the European Union are characterised by mobility and the ability to move from one Member States to another according to the environmental opportunities.* Crime groups involved in sex trafficking in the European Union are professional, fast, flexible and adaptable; all these characteristics allow them to effectively respond to new opportunities and risks, to work in different countries and to move from one country to another if this equates to more profit and less risk. For instance, in the *Second report on the progress made in the fight against trafficking in human beings by the European Commission*, Romania stressed that criminal groups demonstrate flexibility and look for new destinations for sex markets with higher demand (European Commission, 2018b: 29);
- *sex trafficking groups in the European Union are often poly-criminal.* Sex trafficking rings are often involved in (or linked to) other serious organised crime activities, such as migrant smuggling, drug trafficking, smuggling of goods, extortion, money laundering, document fraud, payment card fraud and property crimes (e.g. theft) (European Commission, 2020b: 2; 46-49). Some of them are also active in online crimes. Some of these crime groups are investing the proceeds of sex trafficking into other organised crime activities (Antonopoulos et al., 2019: 40, 48);
- *crime groups involved in sex trafficking extensively use ICT to facilitate their activities.* ICT is massively used across all the phases of the human trafficking process (Antonopoulos et al., 2020), especially during and after the Covid-19 pandemic (European Commission, 2021). First, offenders exploit the Internet to lure potential victims, aided by the anonymity that these media can ensure: this is mainly done via deceptive online job advertisements and 'lover boy' techniques carried out in social media and dating websites/applications (Di Nicola et al, 2017: 96-97). Equally, virtual spaces provide traffickers with new innovative ways to display their human merchandise to potential clients, and capitalise not only on existing markets but also expand and consolidate markets at the margins of 'traditional' prostitution (Antonopoulos et al., 2020: 70). At the same time, new technologies play a pivotal role in real-monitoring the location of exploited victims (e.g. via location sharing apps) or in exerting control over victims without resorting to physical violence (e.g. by treating to share photos and videos of sex acts online, the so-called 'sextortion') (Europol, 2020: 2-3).

4.1.3. Victims

There are some specific features of sex trafficking victims in the EU that should be kept in mind for the purpose of this Study:

- *human trafficking for sexual exploitation in the EU is a gender-specific phenomenon: the very great majority of victims are women, both adult and underage.* In the EU-28 (including UK), over the period 2015-2016, 95% of registered victims of trafficking for sexual exploitation were female (European Commission, 2018a: 64-65). Over the period 2017-2018, the percentage of women

among the victims of trafficking was similar: 92% (European Commission, 2020: 22-23). Trafficking in persons for sexual exploitation is clearly a gender-specific phenomenon at the expenses of females;

- *the majority of sex trafficking flows involve EU citizens, and therefore are from a Member State to another, with girls mainly coming from Eastern EU Member States.* In the EU-28 (including UK), in 2017-2018, 53% of the victims of trafficking for sexual exploitation had EU citizenship (European Commission, 2020: 28). The 2018 top five EU countries of citizenship of registered victims of sex trafficking, in absolute values, were Hungary (645 registered victims), Romania (623), France (417), Bulgaria (140 victims) and the Netherlands (136) (European Commission, 2020: 163-164). This strong EU internal dimension of sex trafficking is often neglected, but is indeed very relevant;
- *Nigeria, Albania and China are the three main non-EU sending countries, with non-EU victims of sex trafficking being from these countries.* The 2018 five top non-EU countries of citizenship of registered victims of sex trafficking, in absolute values, were: Nigeria (1.026 registered victims), Albania (532), China (289) and, with much lower numbers, Vietnam (91) and Eritrea (40);
- *more and more victims act under supposedly voluntary business agreements.* One the most recent trend is that victims are less frequently recruited by abduction or deception by their traffickers (e.g. by using false promises of well-paid jobs abroad). Traffickers increasingly seek to exploit their victims in the context of supposedly voluntary business agreements. As Europol (2021: 71) states “[a]s part of these arrangements, the victims agree to engage in prostitution and hand over a share of their earnings in exchange for protection and support with administrative issues such as tax declarations, registration with chambers of commerce, or pension arrangements. This type of exploitation is particularly common in jurisdictions where sex work has been legalised.” The same applies to non-EU women: for instance, many Nigerian victims are aware that they will work in the sex industry in Europe and regard this as the only opportunity they and their families have to achieve social mobility (EASO, 2021: 19-21).

4.1.4. Clients

EU customers often go after foreign female prostitutes, which are widely present in the EU Member States' markets. The trafficking of women shapes the demand and the demand itself in turn impacts on sex trafficking, in terms of magnitude and characteristics of women. One of the still scarce comparative pieces of research on clients of foreign prostitution linked to trafficking for the purpose of exploitation in the EU (Di Nicola et al, 2009) reaches conclusions that may help understand the reason for the continuous trafficking of women for sexual exploitation in EU countries and that can be useful for the purpose of this Study, namely:

- *clients are “normal” people.* Clients of foreign prostitution are “normal” people, often married. Results from cross-country analysis show the relatively younger age (30–40 years old) and higher level of education (at least a secondary school diploma or a university degree) of the web surfers compared to the street buyers of prostitution (who are on average over 40 years old and less educated);
- *clients who often buy sexual services from foreign prostitutes (they are the great majority) very likely buy them from trafficked victims.* In a non-representative web survey conducted in Italy, Finland, the Netherlands and Romania, the large majority of respondent clients chose foreign prostitutes (63.7% of them met at least 3 foreign prostitutes out of 4), while only 10.6% did not. Findings also show that 73.6% of clients who used foreign prostitutes had a medium/high probability of having entered into contact with victims of sex trafficking;

- *some factors clearly drive the demand for foreign (and often trafficked) women.* Men often look for foreign prostitutes in EU Member States because they are prettier (especially those from the East), more capable of putting them at ease, cheaper; because they offer better performance and are more numerous, publicised and visible; because it is more transgressive;
- *clients have an (at least partial) awareness of exploitation.* What is more striking is that the shared search for a “beautiful girl at a reasonable price”, the need for dominance and/or affection, the preference for Eastern European women as driving forces are coupled by an (at least partial) awareness of exploitation by the clients. Very often clients perceive the scant knowledge of the local language by the foreign prostitute, the fact that she has been victim of abuses and has signs of mistreatment of her body; also, they are aware that the prices of foreign prostitution services are much cheaper than those by local prostitutes. Although conscious of the “single signs” of exploitation, they miss the “whole picture”; when they do not miss it, they often use “neutralization techniques”: they neutralize their sense of guiltiness in using foreign and likely trafficked prostitutes via some constructed arguments aimed at denying the existence of trafficking or its size so as to justify their behaviours.

4.2. Existing data

Robust and comparable national quantitative data on human trafficking are essential to evaluate policies and interventions across Member States of the European Union. This need has been stressed in several occasions in the past decades (Di Nicola et al, 2004: 6; Kangaspunta, 2007; Laczko, 2007; Stefanizzi, 2007). Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (Anti-trafficking Directive) answered to this need, since its Articles 19 and 20 specifically require EU Member States to gather and report on statistics on trafficking in human beings. As a consequence, in January 2012, the European Commission mandated the Member States to use a standardised data-collection methodology, with the goal of producing reliable country-by-country statistics.¹⁷ This mechanism for the collection of data on common indicators of human trafficking from the Member States is now in its third round and a series of comments can be made:

- the mechanism that has been built has very useful indicators, obviously it takes time for the States to get the system fully up and running;
- the European Union's data collection is improving with each round and certainly the level of qualitative information has progressed a lot;
- there are still many data gaps and data are not always provided disaggregated;
- one problem is that there is a certain inhomogeneity regarding the subjects who collect the data and their roles/activities in different Member States. Attention should be paid to ensure that the data collecting entities, the types of actions implemented with reference to the victims and the data collection methods are as much as possible similar across countries, in order to improve data comparability;
- a key problem is still there: trafficking in human beings is a phenomenon with a very high hidden figure (i.e. a huge gap between the population of victims that come to the attention of the national actors and the actual population of victims). In addition, this hidden figure could

¹⁷ Since then the European Commission, with the support of Eurostat, has been collecting and making available EU wide data on trafficking in human beings from the Member States, covering a period of 10 years, from 2008 to 2018. The latest refer to the period 2017-2018 (European Commission, 2020a).

vary from country to country also as a result of different levels of attention by NGOs or law enforcement agencies that could lead to the emersion of more or less victims;

- it would therefore be necessary, alongside these official data sources on sex trafficking and victims, to also provide estimates based on alternative/non-official and advanced cross-country data-gathering methodologies. The European Union could, for instance, conduct at MS level national standardised self-report surveys on prostitution clients. These surveys, using proxy variables, would make it possible to quantify and understand the characteristics and motivations of potential clients of trafficked prostitutes, thus also allowing to estimate and compare the number of victims across the EU Member States. A strength of this methodology is that it could help overcome the problem of the large hidden figure of victims, promoting at the same time cross-country comparability.

4.3. Proposed estimation model and related estimates

Table 2 presents 2018 data on reported victims of sex trafficking in the EU Member States coming from the EU Commission monitoring system (EU Commission, 2020) and, based on these data, estimates by the author of this Study of 1) yearly flow of victims of sex trafficking and 2) yearly presence of victims of sex trafficking in EU Member States.

The method these estimates are based on is a refinement of a logic method of estimation already used by the author (Di Nicola et al, 2005: 10-11). The starting point is official information on the number of (real or presumed) trafficking victims who entered into contact with NGOs or with the police/judicial authorities (victims in judicial proceedings) (the one reported to the Commission by Member States) as a source of reliable estimates of the stock of new victims that every year enter a country (*yearly estimated flow of victims*). If one tries to logically define the ratio between victims who contact the police/judicial authorities or NGOs and those who do not (i.e. the hidden number of victims) for a given year, reliable estimates can be calculated (*ibidem*). It was suggested that the ratio between the victims recorded and the real number of victims entering a given country could range between 1/10 and 1/20.¹⁸ It is then logical to assume that the yearly estimated presence of victims in a given country at a given time (*the stock of victims*) is around 2 times higher, assuming an average period of exploitation of 2 years (IOM, 2017: 3). According to this estimate in **2018 the yearly flow of sex trafficking victims in the EU should range from 45.000 to 90.000**, and the **yearly presence of trafficking victims exploited in prostitution in the EU from 90.000 to 180.000**.

From here it is now possible to calculate the **yearly turnover from trafficked prostitution in the EU** (see Table 3), by multiplying the yearly estimated presence of trafficking victims in the EU by the average price of outdoor and indoor foreign prostitution in EU Member States for every sexual

¹⁸ On the point, Di Nicola et al (2005: 10) state that “[t]his ratio could be defined using the results of victimisation surveys or with the help of the national experts on trafficking. A starting point for calculating the ratio between the number of victims recorded by this monitoring study on trafficking and the real number of its victims was a victimisation survey conducted on the victims of sexual offences in the UK. For this type of crime only two in every ten victims contact the authorities. The ratio between the number of victims reported in official statistics and those who go unreported is thus 1/5. Taking account of a) the lack of trust in the authorities shown by the victims of trafficking, b) their illegal status in the destination country and their isolation; c) their subjugation to the traffickers, d) the covert nature of the trafficking, it is possible to argue that this ratio is much lower. It accordingly seemed likely that the ratio between the victims recorded and the real number of victims could oscillate between 1/10 and 1/20”.

performance (36 euro¹⁹) by an average of 5 sexual performances sold every day, by 330 working days. This turnover ranges **from Euro 5.387.580.000 to Euro 10.775.160.000**.

A final remark can be useful to frame these estimates. They are to be considered extremely prudential, since a ratio between the recorded victims and the real number of victims entering a given country which goes between 1/10 and 1/20 is very cautious. From many sides, at an official level, it is emphasised that human trafficking remains a "significantly underreported" criminal activity (Europol, 2021: 70). The European Commission (2020b: 3), while quoting the official information on the number of (real or presumed) trafficking victims in the European Union, states that "[i]t is likely that the actual number of victims is significantly higher than reported data as many victims remain undetected". Also 5 clients a day for 330 days a year are likely to be lower numbers than the real one, given that often the reports also speak of up to 20/30 clients a day and continued prostitution activities, seven days a week.

Table 2: Reported sex trafficking victims, yearly estimated flow of sex trafficking victims, yearly estimated presence of sex trafficking victims and index of trafficked prostitution (reported victims per 1.000.000 inhabitants) in the EU Member States and in the EU. 2018

	Reported victims	Yearly estimated flow of victims		Yearly estimated presence of victims		Index of trafficked prostitution (reported victims per 1.000.000 inhabitants)
		Min	Max	Min	Max	
Belgium	33	330	660	660	1.320	2,9
Bulgaria*	309	3.090	6.180	6.180	12.360	43,8
Czechia*	12	120	240	240	480	1,1
Denmark	31	310	620	620	1.240	5,4
Germany	430	4.300	8.600	8.600	17.200	5,2
Estonia	12	120	240	240	480	9,1
Ireland	39	390	780	780	1.560	8,1
Greece	80	800	1.600	1.600	3.200	7,4
Spain	128	1.280	2.560	2.560	5.120	2,7
France	945	9.450	18.900	18.900	37.800	14,1
Croatia	9	90	180	180	360	2,2
Italy	572	5.720	11.440	11.440	22.880	9,5
Cyprus	19	190	380	380	760	22,0
Latvia	6	60	120	120	240	3,1

¹⁹ This is calculated as the average between the average price of street prostitution in EU Member States (27 euro) and the average price of prostitution in brothels in EU Member States (45 euro) (see Adair and Nezhyvenko, 2017: 119).

Lithuania	31	310	620	620	1.240	11,0
Luxembourg	5	50	100	100	200	8,3
Hungary	511	5.110	10.220	10.220	20.440	52,3
Malta	1	10	20	20	40	2,1
Netherlands	486	4.860	9.720	9.720	19.440	28,3
Austria	247	2.470	4.940	4.940	9.880	28,0
Poland	86	860	1.720	1.720	3.440	2,3
Portugal	13	130	260	260	520	1,3
Romania	335	3.350	6.700	6.700	13.400	17,2
Slovenia	67	670	1.340	1.340	2.680	32,4
Slovakia	18	180	360	360	720	3,3
Finland**	18	180	360	360	720	3,3
Sweden**	92	920	1.840	1.840	3.680	9,1
Total	4.181	45.350	90.700	90.700	181.400	9,4

** For this MSs the number of reported victims are not take from EU Commission (2020a) but from US Department of State (2019).

Source: author's elaboration of EU Commission (2020a) and Eurostat for population.

Table 3: Yearly turnover from trafficked prostitution in the EU in euros. 2018

Min	Max
5.387.580.000	10.775.160.000

Source: author's elaboration of European Commission (2020a).

5. CROSS-BORDER PROBLEMS/RISKS RELATED TO DIFFERENT NATIONAL REGULATIONS ON PROSTITUTION IN THE EU

Opportunities for (organised) criminal activities may be inadvertently generated by legislation²⁰. Certain types of regulation may facilitate criminal activities, by making a given (legal or illegal) market more vulnerable to organised crime. In this sense, legislation may involuntarily create crime waves. In a quite homogenous area like the European Union, organised criminals, who tend to act rationally weighing costs and benefits of their actions, can easily "shop" those national legislations that facilitate their criminal activities, by making them less difficult, less risky, more profitable/rewarding.

This can be certainly applied to prostitution which – as rightly pointed out by the 2014 EU Parliament Resolution – "functions as a business and creates a market, with different actors being interlinked and where pimps and procurers are calculating and acting to secure or increase their markets and maximising profits, and whereas the buyers of sex play a key role as they maintain the demand in this market". This market has a EU dimension, not only a national dimension. As a consequence, the flows of trafficking in persons for sexual exploitation to EU Member States and within EU Member States and the choices of traffickers and exploiters in the EU may also, among others factors, be driven by asymmetries in national legislation on prostitution amongst Member States.

With special reference to trafficking for sexual exploitation and organised criminal activities, what are the risks and problems related to different national legislation on prostitution in the EU? The following paragraphs will try to answer this key question.

5.1. More victims of THB and more HR' violations

The greater the asymmetry between national prostitution legislation within the EU (with countries where prostitution is legal and countries where is illegal and where the demand for prostitution is criminalised), the more victims of trafficking for sexual exploitation (especially women) in some Member States and, in general, in the European Union are there, and, as a consequence, more human rights' violations due to sex trafficking.

Different national laws on prostitution may fuel the trafficking of persons for sexual exploitation in some Member States because some models of policy on prostitution can unintentionally produce more victims of sex trafficking. That is to say that some countries of the European Union may "attract" more trafficking flows for the purpose of sexual exploitation. Considering that human trafficking for the purpose of exploitation is an organised crime activity which brings with it serious human rights' violations, the lack of a homogenous policy on prostitution within the European Union runs the risk of exacerbating exactly those violations that the European Union would like to counteract and eradicate.

This is due to the fact that some prostitution policies seem to be more effective at reducing sex trafficking, and at minimizing crime costs connected to prostitution, than others.

Although the results of the studies on the correlation between prostitution policies and human trafficking, especially in the beginning, were mixed and although there are not yet many empirical studies on the subject, in the last fifteen years the number and quality of these studies increased, also as a consequence of a slow but progressive improvement of quantitative information on trafficking in human beings in the EU.

²⁰ On this see the *European Journal on Criminal Policy and Research*, vol. 12, n. 3-4, 2006 ("Double Thematic Issue on: Proofing EU Legislation Against Crime").

The following is a summary of the results of those studies that seem to be most comprehensive and robust, take into consideration countries of the EU, and corroborate the above statements:

- the seminal work on the correlations between models of prostitution policy and the nature and extent of trafficking for sexual exploitation in the European Union was the 2005 Study on "National legislation on prostitution and the trafficking in women and children" (Di Nicola et al, 2005) conducted for the European Parliament's Committee on Women's Rights and Gender Equality. According to the findings of this research, notwithstanding several caveats, "the models that seem to "produce" more victims [...] are 'new abolitionism' and 'regulationism', whilst the model that seems to "produce" less victims is 'prohibitionism'". For this study a country falls under the model of regulationism if prostitution is regulated and legal if exercised according to the regulation. It falls under the models of abolitionism if state intervention on prostitution is abolished and prostitution is allowed or better tolerated, with no official regulation; while new abolitionism is a variant where the State steps in to explicitly prohibit brothels;
- in a work first published in 2010 and revised and republished in 2013, Jakobsson and Kotsadam (2010, 2013), relying on two different sources of European data – the Incidence of Reporting of Destination Countries by UNODC (UNODC, 2006) and a dataset with estimates of human trafficking built by Danailova-Trainor and Belser (2006) from ILO (International Labour Office) data – concluded that trafficking in persons for sexual exploitation is least present in European countries where prostitution is illegal, most present in European countries where prostitution is legal and in between in European countries where prostitution is legal but procuring illegal. This piece of research also used two case studies of European countries (Norway and Sweden) that criminalised buying sex and that also seem to support the possibility of a causal link between harsher prostitution laws and reduced sex trafficking;
- a 2011 empirical analysis by Hernandez and Rudolph (2011, 2015) found that prostitution laws have no positive or negative effect on sex trafficking inflows to European countries. This conclusion was drawn working on a limited sample of 13 European countries;
- a 2012 study published in *World Development* by Cho et al (2012) investigated the effect of legalised prostitution on human trafficking inflows in 150 countries. Legalised prostitution in this study included both policy models in which prostitution is legal and regulated, on the one side, and legal and unregulated (i.e. prostitution is tolerated, by leaving the market legal without any form of intervention by the State), on the other. This piece of research looks into possible contrasting effects of legalisation: the scale effect, i.e. an expansion of the market of prostitution which leads to an increase in human trafficking, and the substitution effect, i.e. the reduction of the demand for trafficked women, as legal sex workers are favoured over trafficked ones. It does so by measuring sex trafficking in a given country through the Incidence of Reporting of Destination Countries provided by UNODC (UNODC, 2006). This index has ordinal scores ranging from 0 to 5: 0 indicates no reported inflow of human trafficking and 5 implies very high reported inflows. The empirical analysis shows that countries with legalised prostitution are associated with higher reported human trafficking inflows than countries where prostitution is prohibited. The scale effect of legalising prostitution outweighs the substitution effect and this effect is even stronger in high-income countries than middle-income countries. Democracies have a higher probability - of 13,4% - of increased reported human-trafficking inflows than non-democratic countries. The authors at the end of their work point out that, however, in order to make a decision on prostitution policies, a "full evaluation of the costs and benefits" of the various options is necessary. For example, they say, the results

of their work may lead to overlook "potential benefits that the legalization of prostitution might have on those employed in the industry. Working conditions could be substantially improved for prostitutes - at least those legally employed - if prostitution is legalized";

- more recently Hedlin (2016) created the Prostitution Law Index (PLI), which - trying to better reflect the variation in national prostitution regulation - captures not only whether prostitution overall is legal or illegal, but whether buying sex is legal or illegal and whether selling sex is legal or illegal, by dividing prostitution regulations into four categories: 1) illegal to sell sex, but legal to buy sex (punishing sellers only); 2) legal to sell sex and to buy sex (punishing neither sellers nor buyers); 3) illegal to sell sex and to buy sex (punishing sellers and buyers); and 4) legal to sell sex, but illegal to buy sex (punishing buyers only). The PLI Index allows to rank prostitution regulations across countries on a four-point scale (from 1 to 4), based on their expected effectiveness (from least to most effective) in reducing sex trafficking. The PLI takes into account three possible effects of prostitution policies on the market: scale, substitution and replacement effects. Scale effects refers to "increases in the prevalence of trafficking that are caused by growth of the overall market for prostitution". Substitution effect refers to "decreases in trafficking caused by current consumers who purchase sex with trafficking victims and, based on the risk of criminal sanction, shift to instead purchasing sex with individuals who voluntarily sell sex, thereby crowding out trafficking victims". Replacement effects refers to "decreases in trafficking caused by new voluntary sellers of sex who, incentivized by changes in prostitution laws, enter the market and crowd out trafficking victims". The work focuses on EU MSs since, in order to measure sex and human trafficking, it uses the new EU dataset on trafficking in human beings, which covers the years 2008-2010, stressing the better quality of this data (Eurostat, 2013). The author refers to the mechanism set up by the European Commission to monitor and collect common indicators of human trafficking from Member States (see paragraph 4.1). The work finds out an inverse relationship between the PLI scores and the prevalence of sex trafficking and human trafficking, measured through this data: the more regulation on prostitution of EU Member States moves towards a model which punishes buyers only, the less sex trafficking and human trafficking towards the country. The article also uses a case-study, the Norway's 2009 prostitution law reform, and reaches the conclusion that the Norwegian reform, which made it legal to sell but illegal to buy sex, may potentially have helped reduce the prevalence of sex trafficking in the country;
- Lee and Person (2018), with an econometric model, conclude that: 1) criminalising johns (the "Swedish" model) has the potential to reduce/eliminate "sex trafficking, but only if it also eliminates voluntary supply. Thus, this asks of lawmakers to weigh the war on trafficking against the civil liberties of voluntary prostitutes"; 2) licensed prostitution (the "Dutch" model) is better to reduce/eliminate sex trafficking if compared with a model of decriminalisation (prostitution is legal but not regulated), "however, it does not have the potential of the Swedish model to eradicate trafficking, which will persist in an 'underground' market serving johns to whom it does not matter if their counterparty is unlicensed (so long as the price is 'right'). This is because the Dutch model imposes penalties on the 'wrong' side of the market - the supply side"; 3) to reach strong effect against sex trafficking without eliminating voluntary prostitution, an effective model (proposed by the authors) can be a hybrid of the Dutch and Swedish models: "licensing prostitutes and criminalizing sex purchases from unlicensed ones. Johns will discount unlicensed transactions, pricing in the risk of arrest".

It shall be finally here stressed that prohibitionist approaches could make prostitution less visible, pushing it more and more indoors and online, and therefore hinder the emergence of the

phenomenon, as well as of the victims, by making the “hidden number” of victims greater and the estimate of sex trafficking seem smaller than they are in reality. Other intervening variables could then be determining factors together with the prostitution policy. However, the cited studies use different methods to measure sex trafficking and consider different global contexts, and some of them also take into account the co-occurrence of other intervening variables (on this, see also, Adair and Nezhyvenko, 2017). Statistics on human trafficking for sex and labour exploitation are becoming more robust. So, today, we can conclude that there is more and more evidence about the inverse correlation between policies of criminalisation of prostitution and level of human trafficking for sexual exploitation.

These results should be read keeping in mind that any other possible costs and benefits of these as well as other models of regulations on prostitution are not accounted for by this analysis.

5.1.1. Models of regulation on prostitution and THB in the EU in 2018

In Table 4 the reader can find numbers that represents the average index of trafficked prostitution (number of identified victims of sex trafficking per 1 million inhabitants) of the Member States, by model of regulation of prostitution. The data used are those mentioned in paragraph 4.1, coming from the European Commission’s monitoring mechanism.

Even with all the limitations that this data can still have, on average the level of (identified) sex trafficking is much higher under a legalisation model than under a prohibition one.

Table 4: Models of regulation on prostitution in EU Member States and Average Index of Trafficked Prostitution (number of identified victims of sex trafficking on 1 million inhabitants). Year 2018

Model 1 - Legalisation		Model 2 - Prohibition		
Model 1a Regulated	Model 1b Unregulated	Model 2a Punishing the sex worker	Model 2b Punishing the client	Model 3b Punishing both the sex worker and the client.
21,8	20,7	9,7	10,4	11

Source: author’s elaboration on regulations on prostitution in EU Member States and EU Commission (2020a).

5.2. More/stronger TOC groups involved in THB, with greater mobility

The greater the asymmetry between national prostitution legislation within the EU (with countries where prostitution is legal and countries where is illegal and where the demand for prostitution is criminalised), the more and/or stronger are the transnational organised crime groups, connected to the sex trafficking business, in those Member States which attract more sex flows and, more in general, in the European Union along the trafficking routes towards the destination countries.

As we saw in chapter 3, the trafficking of people, especially women and children, for the purpose of sexual exploitation is firmly in the hands of transnational organised criminal groups, being them European (in particular: Bulgarian, Czech, Hungarian, Romanian, Slovakian criminal networks) or extra European (in particular: Nigerian and Chinese criminal networks) (Europol, 2016). The criminal groups that recruit victims, transport them to their destinations and exploit them in destination countries have strong ethnic components: victims and exploiters/traffickers “generally share nationality, ethnicities and sometimes kinship links” (Europol, 2016: 3). These criminal rings follow their victims in transnational movements and can settle down in transit and destination countries. More trafficking in

people for the purpose of sexual exploitation in a given EU country and in the EU can therefore, logically, mean a greater and/or stronger presence and mobility of these criminal groups in the countries of destination and throughout the European Union. The trafficking of people for exploitation can go hand in hand with the migration and entrenchment of these foreign criminal groups in countries of destination. Many of these criminal groups have human trafficking as one of their main criminal activities. To sum up: the greater the asymmetry between national prostitution legislation within the EU (with countries where prostitution is legal and countries where it is illegal and where the demand for prostitution is criminalised), the more and/or stronger are the transnational organised crime rings in the EU involved in human trafficking.

5.3. More TOC activities, TOC groups' escalation and HR' violations

The greater the asymmetry between national prostitution legislation within the EU (with countries where prostitution is legal and countries where it is illegal and where the demand for prostitution is criminalised), the wider the presence of transnational organised crime rings involved in sex trafficking in the EU, and the more likely other serious organised crime activities (such as drug trafficking and smuggling, fraud, extortion, counterfeiting, smuggling of other illegal products) in those countries and in the EU in general are. All this, in turn, equates to more organised crime threats and more violations of EU citizens' human rights.

The examples of Nigerian and Chinese organised crime groups in Italy can be used as very explicative case-studies (see Di Nicola and Musumeci, 2021). Italy, as seen, is a neo-abolitionist country of the European Union: prostitution is considered legal but not regulated, however it is not allowed to organise the prostitution of others, nor to open and manage brothels. The prostitution market in Italy is very large with a very high percentage of prostitutes who are foreign women. Among these, many Nigerian and many Chinese, as well as a great number of minors. As for the Nigerian criminal groups, they came into the country by trafficking, together, people and drug. They have acquired power and market shares and resources. They are now entering into stable relationships with traditional Italian organised crime groups, such as the Mafia and the Camorra. They are undergoing an evolution, as happens for all transnational mafias, and are becoming stronger and stronger. The same thing is happening to the Chinese criminal organisations active on the Italian territory: they started off with trafficking for the purpose of sexual and labour exploitation and smuggling of persons and after a while they diversified their portfolio, with robberies, extortion, usury, counterfeiting of trademarks and sale of counterfeit goods, gambling, and also drug trafficking (especially cannabis). They then started to invest their illegal money in the licit economy, with Italy being a bridgehead to other Member States of the European Union.

Trafficking people is one of the most flexible organised criminal activities. Through it, organised criminal groups have the opportunity to interface with other criminal activities, such as drugs. Prostitution is often followed by drug trafficking, because what is earned with prostitution is invested in drug trafficking. Prostitution as such can be regarded as the lowest step of a ladder, from which a criminal climb can start and from where criminal organisations can begin to grow, change, take roots and then turn into entrepreneurs, infiltrating the legitimate economy. These are the stages. This is the rise of criminal organisations, including foreign ones, even in the countries of the European Union.

And, in the end, the more transnational organised crime in the European Union, the more the basic human rights of EU citizens are at risk.

5.4. More sex tourism: displacement of the sex demand

The greater the asymmetry between national prostitution legislation within the EU (with countries where prostitution is legal and countries where is illegal and where the demand for prostitution is criminalised), the more widespread sex tourism within EU Member States is (*geographic displacement of the demand for prostitution*). Clients can choose to move from their countries, where buying prostitution is a crime, to countries where there is no risk in buying sexual services. There is evidence of this geographic displacement of clients. For instance, the criminalisation of the purchase of sexual services in Sweden has contributed to displacing the demand for sexual services to other nations with Swedish men who have travelled abroad, for example to Denmark, Finland and Latvia, to purchase sex (ICMPD, 2009: 107). "The traffickers have moved to other markets, such as those in Norway and Denmark. There is information from the victims of THB in Sweden that traffickers have had problems finding enough sex buyers in Sweden, the demand has been much lower than expected" (Di Nicola et al, 2005: 101).

Several studies tell us that, where prostitution is illegal, clients, like others of illicit services, are very sensitive to the levels of law enforcement (risks of getting caught), try to acquire knowledge about them, also resorting to the internet, and move accordingly to minimise the related risks (Holt et al, 2008; Kotsadam and Jakobsson, 2014).

5.5. More internal movements of women: displacement of the sex offer

The greater the asymmetry between national prostitution legislation within the EU (with countries where prostitution is legal and countries where is illegal and where the demand for prostitution is criminalised), the greater the differences in the size of prostitution markets in the EU countries and in opportunities to work in a given national sex market. This, coupled with differentials in national levels of poverty, unemployment and welfare in general means internal EU flows of women for prostitution purposes. These women can move from a country to another within the EU, resorting or not to the services of traffickers (*geographic displacement of the sex offer*).

The already quoted 2005 "Study on national legislation on prostitution and the trafficking in women and children", through the use of expert opinions', identified the most relevant factors that, beyond the legislation typologies/models on prostitution, may affect the nature and extent of trafficking in human beings at the EU level. The two most significant factors identified were: 1) the feminisation of poverty and rate of unemployment; 2) the differential in level of welfare between the country of origin and the country of destination (Di Nicola et al, 2005: 132-134). The effect of poverty, unemployment and blocked opportunities both on the choice of a person to prostitute and on the level of trafficking in persons are well known (see, for instance, European Commission, 2015; Chohaney, 2016).

As we saw in chapter 4, many women who end up being exploited in the richest countries of the EU and where the prostitution markets are more flourishing come from countries such as Hungary, Romania, Bulgaria, Slovakia.

Shortly after the introduction of the criminalisation of the purchase of sexual services in Sweden, the number of street prostitutes in Denmark and Norway tripled (Ekberg, 2013: 6). One may think that the new prostitutes coming from abroad and trafficking flows were attracted to Denmark and Norway.

6. SUGGESTIONS FOR FUTURE UE LEGISLATION

The chapter starts from the cross-border problems/risks related to different national legislation on prostitution in the EU identified in chapter 5 – asymmetries of prostitution regulation amongst EU Member States may create more sex trafficking, more transnational organised groups and organised criminal activities, more human rights' violations, more sex tourism, and more internal movements of "vulnerable" people, also due asymmetries in socio-economic conditions (displacement of sex offer in the EU) – and puts forward some suggestions on how the EU could legislate in order to reduce these risks/problems so as to prevent women and girls from being trafficked for purposes of prostitution while also protecting fundamental rights in general and gender equality in particular.

This chapter starts from the following assumptions, that stems from what previously discussed in the document:

- prostitution models that criminalise customers (thus creating criminal sanctions) seem to have the potential to reduce sex trafficking and the cross-border problems/risks related to different national legislation on prostitution in the EU identified in chapter 5; legislative harmonization towards these models could therefore reduce sex trafficking;
- the two prostitution models which, albeit in different ways and starting from different points of view, can reduce sex trafficking better and towards which the European Union could therefore converge are variants of the criminalisation of customers:
 - model A. Regulation of prostitution with criminalisation of clients who act against the rules. This "new" model regulates prostitution and asks for capillary control of the legal market (to avoid victims of trafficking enter the legal market) and criminalises clients of prostitution who buy unregulated prostitution services and, even more severely, "conscious" clients of victims of sex trafficking;
 - model B. Criminalisation of clients of prostitution *tout court* with a specific and more serious offence for "conscious" clients of victims of sex trafficking;
- model A reduces costs in terms of violations of human rights of trafficking victims, but is not capable of taking into consideration gender equality;
- model B reduces costs in terms of violations of human rights of trafficking victims, and is also capable of taking into consideration gender equality;
- policies which reduce female poverty and rate of female unemployment in EU Member States and differential in female poverty and rate of unemployment between Member States, especially those of origin and destination, are essential to address the root causes of the phenomenon and to reduce sex trafficking flows in the EU.

On the basis of these assumptions, the following boxes contain some possible suggestions.

Box 1: First suggestion: to amend the 2011 Directive on Human Trafficking by adding specific offences criminalising buyers of prostitution and envisaging a two-option prostitution model regime.

Rationale and content

In order to quickly act to reduce sex trafficking flows and safeguard the victims' human rights, especially women, a pragmatic approach having the chance to reach a fast consensus amongst the Member States is recommended.

This entails amending the 2011 Directive on human trafficking by introducing: a) new criminal offenses in the field of sex trafficking criminalising the customers of prostitution and b) the possibility to opt between two alternative models of prostitution, so as to reduce market asymmetries, sex trafficking flows and the connected organised criminal activities.

The Directive could be amended so as to request EU Member States to criminalise buyers of prostitution via one of the two following regimes:

- criminalisation of clients of prostitution who buy unregulated prostitution services, for Member States that opt for a regulation model (with capillary control of the legal market so as to prevent victims of trafficking from entering the legal market);
- criminalisation of clients of prostitution *tout court* for Member States that opt for a prohibition model punishing the client.

The Directive could be also amended so as to request EU Member States to introduce a specific offence of "conscious" buying sexual services from victims of sex trafficking.

Legal framework

Art. 83 Treaty on the Functioning of the European Union, to introduce new criminal offenses in the field of sex trafficking criminalising the customers of prostitution

Art. 114 Treaty on the Functioning of the European Union, to approximate prostitution regulations by suggesting two alternative models

Box 2: Second suggestion: to enact a new Directive on Prostitution to eliminate gender inequality

Rationale and content

If one recognises that prostitution is a form of violence, a violation of human dignity and a form of exploitation of gender inequalities, the European Union could consider the possibility to enact a new Directive asking Member States to adopt a prohibitionist model of prostitution criminalising the purchase of sexual services *tout court*. Such an approach – which is alternative to suggestion 1 - would reduce market asymmetries, sex trafficking flows and the connected organised criminal activities and safeguard the human rights of the victims within the European Union, at the same time promoting gender equality. Since the rationale behind this approach is currently not accepted by all Member States, and difficulties would thus likely arise in adopting such an instrument, the European Union should work to build a consensus on it.

Such a Directive could also address the root causes of prostitution and the factors (social, economic, cultural) negatively impacting on this form of gender equality, suggesting instruments to eradicate them in Member States (e.g. increase awareness, exit programs).

Legal framework

Art. 4 Treaty on the Functioning of the European Union

Art. 83 Treaty on the Functioning of the European Union, to introduce new criminal offenses in the field of prostitution

Other relevant articles of the Treaty on the Functioning of the European Union, depending on the specific content of the Directive

Box 3: Third suggestion: to address the root causes of prostitution and sex trafficking

Rationale and content

The European Union also has the possibility, which can complement the two previous ones, to address the root causes (social, economic, cultural) of prostitution by supporting Member States in the fight against female poverty, social exclusion and discrimination.

This would result in the strengthening of inclusiveness and cohesion within the EU and would allow people prone to slip into prostitution to have legal means and alternatives.

A possible intervention could include: a special Fund for European Aid for Deprived Women; forms of social support, including increased social security benefits and minimum wage for poor women in the MSs. Interventions could also take the form of orienting and strengthening existing instruments, such as the European Social Fund.

The Commission's mechanism for the collection of data on common indicators of human trafficking from the Member States should be further developed in order to inform/orient social interventions (who needs support/where (country/countries)/how could be better supported).

Legal framework

Articles 19, 145-150 and 151-161 Treaty on the Functioning of the European Union

Box 4: Forth suggestion: to conduct a EU periodic standardised self-report survey on clients of prostitutionRationale and content

Given the large hidden figures of victims of human trafficking and its impact on cross-comparability of official data on human trafficking, and having in mind that reliable information is essential to improve the quality of policy-making in the field, the European Union could consider to complement the existing official data sources on sex trafficking and victims with estimates based on alternative/non-official and advanced cross-country data-gathering methodologies. For example, the European Union could conduct, at MS level national, a periodic standardised self-report survey on prostitution clients. These survey, using proxy variables, would make it possible to quantify and understand the characteristics and motivations of potential clients of trafficked prostitutes, thus also allowing to estimate and compare the number of victims across the EU Member States. The European Commission could consider the idea of commissioning a periodic special Eurobarometer survey on prostitution clients and attitude towards prostitution of EU citizens.

Legal framework

The instrument could be implemented as a monitoring mechanism within the previously suggested Directives (First and Second Suggestions above) and would thus share with them the legal framework.

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This Study, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the FEMM Committee –after assessing the state-of-the-art of prostitution regulations in EU MSs and the current situation of sex trafficking and related data in the EU – identifies and evaluates cross-border problems/risks related to differing national EU MSs’ regulations and suggests future EU legislation to reduce them, thus preventing women from being trafficked while also protecting fundamental rights and gender equality.

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