

Comparative Report: Disrupt Demand

Executive Summary

Working for equality



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About the Author

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Project Partners

Immigrant Council of Ireland is the lead partner in the Disrupt Demand project and is a human rights organisation and law centre. It supports and advocates for the rights of immigrants and their families and acts as a catalyst for public debate, legal and policy change. The Immigrant Council of Ireland is also a leading anti-trafficking organisation with expertise in policy and legislative change in this area. It has considerable experience with leading EU projects in the area of human trafficking and has produced high quality research and submissions, including on the issue of demand reduction.

Mouvement du Nid is a grassroots organisation and a social movement in France that acts in support of prostituted persons and is in opposition to the prostitution system that exploits their precarious conditions and vulnerability. Mouvement du Nid concentrates on the causes and consequences of prostitution.

Institute for Feminism and Human Rights is an international not-for-profit policy and research institute based in Sweden with members in a number of countries in Europe and internationally. The Institute for Feminism and Human Rights works to prevent and eliminate the socio-economic, legal and political discrimination of women and girls through the use of feminist strategies and research methods, and the application of international, regional and national human rights instruments.

Klaipeda Social and Psychological Services Center is a Lithuanian based non-governmental and non-profit organisation. Its main goal is to provide psychosocial help for victims of violence (physical, psychological, sexual, economical and institutional), including trafficking in human beings and sexual exploitation for the purposes of prostitution.

Mediterranean Institute for Gender Studies is a Cyprus-based non-governmental organisation primarily focused on gender equality and women's rights. The Mediterranean Institute for Gender Studies works to eliminate all forms of discrimination against women through a combination of research, lobbying and advocacy, education and training, awareness-raising, as well as the provision of expertise and consultancy services. The organisation has been working on demand reduction and prevention strategies in Cyprus, ultimately aiming at substantive legal changes.

EXIT (Exit – pois prostituutiosta ry) is a Finnish non-governmental organisation working to diminish prostitution and sexual maltreatment by focusing on preventive and advocacy work and participating in public debate. Youth Exit (Nuorten Exit) works on the domain of primary and secondary prevention of sexual maltreatment and paid sex with a focus on adolescents and young adults. The Exit Prostitution Association also works with substance abusers aged 18 to 25 years, providing counselling regarding sexual violence, different forms of maltreatment and prostitution.

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1

Introduction

1.1 Disrupt Demand

The project is designed to support efforts to prevent human trafficking for sexual exploitation by reducing demand, through mapping and analysing successful strategies involving legal changes, and fostering co-operation among key stakeholders. For this purpose, existing laws and implementation strategies addressing demand and mechanisms for monitoring their effectiveness were analysed with a view to identifying and promoting good, transferable practice among Member States. The project is led by the Immigrant Council of Ireland (ICI), an organisation recognised as a leading anti-trafficking civil society organisation and licensed independent law centre in Ireland, with expertise in policy and legislative change in this area. The partners are Mouvement du Nid (MdN) which was instrumental in effecting comprehensive legislative change for demand reduction in France, enacted in early 2016. The Institute for Feminism and Human Rights (IFHR) brings valuable expertise and knowledge from Sweden, a country which has implemented legal change to effectively reduce demand and prevent human trafficking for over 20 years. Klaipeda Social and Psychological Services (KSPSC) in Lithuania is a lead non-governmental organisation (NGO) and service provider attempting to influence legislative change to tackle demand. Mediterranean Institute for Gender Studies (MIGS) has vast experience in research programmes and EU funded projects, and has been working on demand reduction and prevention strategies in Cyprus. Exit Prostitution Association is a

lead organisation in monitoring and evaluating legislative change and the implementation of demand-reduction measures in Finland.

The project is funded by the Internal Security Fund of the European Union (HOME/2015/ISFP/AG/THBX).

1.2 Methodology

A consultation process was conducted in Dublin in the initial phase of the project with the leading experts from the partner organisations represented: firstly, to ensure a shared understanding of the project aims and secondly, to facilitate discussion and build agreement on the purpose and content of the national and comparative reports. The researcher designed a draft template for the production of national reports which was sent to all partners prior to the consultation process.

The national reports contain a broad overview of trafficking and prostitution in the six Member States with a specific focus on demand for the purchase of sex from victims of trafficking. The reports are not exhaustive but seek to provide a comprehensive picture of the response to demand in their respective countries, drawing on data from research, government reports, police crime statistics and reports.

This report specifically focuses on measures to address demand for the purchase of sex from victims of human trafficking and from women

and girls exploited in prostitution. Section 2 contextualises the issue of demand for the purchase of sex from victims of trafficking within the wider context of the gendered nature of trafficking and the commercial sex trade, into which the majority of girls and women are trafficked. Section 3 is drawn from the six national reports providing an analysis of the response to demand in the six countries, including: the profile of women who are prostituted and trafficked; the profile of the buyers of sex; analysis of the current legal and policy frameworks; the enforcement and implementation of the laws addressing demand; the wider approach to the criminalisation of the organisers who facilitate and profit from supplying girls and women to meet demand; and public awareness campaigns addressing demand. The outcomes of this project and this report will contribute to our understanding of the effectiveness of measures to address demand in EU Member States.

1.3 Legislative Context

Directive 2011/36/EU (replacing Council Framework Decision 2002/629/JHA)¹ is the most recent indication of the commitment of the European Union to addressing the demand for human trafficking. Part 4 specifically addresses the use of the services of victims of trafficking.

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 as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.

This directive reflects and re-enforces international instruments and conventions which specifically address demand. In 1949, the UN adopted the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution*

of Others.² The Convention is one of the few international human rights instruments which sets forth the principle that prostitution and trafficking are 'incompatible with the dignity and worth of the human person'. Women in prostitution are not to be considered as criminals but as victims who the state has a responsibility to protect. The Convention advocates punishment for those 'who procure, entice or lead' others into prostitution. Article 6 of The United Nations *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) (1979) also stipulates:

States parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

In 2000, the UN Assembly adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*,³ which provided a definition and framework forming the basis of legislation at a global level. The Palermo Protocol (as it is known) specifically requires Member States to address demand. Article 9 urges states to:

Adopt or strengthen legislative or other measures, such as educational, social or cultural measures...to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

The Council of Europe *Convention on Action against Trafficking in Human Beings*⁴ also urges states to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of trafficking (Article 19).

1. Directive 2011/36/EU of the European Parliament and of the Council of the European Union on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 2011 O. J. L 101 of 15.4.2011. URL: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>
2. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Approved by General Assembly resolution 317 (IV), 1949. URL: <https://ec.europa.eu/>

anti-trafficking/legislation-and-case-law-international-legislation-
united-nations/convention-suppression-traffic_en
3. UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000. URL: <http://www.refworld.org/docid/4720706c0.html>
4. Convention on Action against Trafficking in Human Beings, 2005 O. J. L 197.

2

Background Context to Trafficking for Sexual Exploitation, Prostitution and Demand

2.1 Trafficking in Human Beings

Trafficking in human beings is a complex phenomenon, intersecting with poverty, war and conflict, migration, socio-economic and gender inequalities, and violence against women. Impoverished regions of the world face high levels of indebtedness, deepening economic crises, increased gender inequalities and lowered social protection for women (UNESCO, 2004).

Human trafficking is a highly gendered phenomenon. Data generated since 2005 by US State Department's *Trafficking in Persons Reports* (TIP) on transnational trafficking in persons estimates that between 600,000 to 800,000 men, women, and children are trafficked across international borders each year. A total of 80 per cent are women and girls, with up to 50 per cent under 18, the majority of whom are trafficked into commercial sexual exploitation. Data from the United Nations Office on Drugs and Crime (UNODC) indicates the vast majority, 96 per cent, of the identified victims of trafficking in human beings for sexual exploitation are female (UNODC, 2010). Trafficking into and within the European Union is highly gendered with three-quarters (75 per cent) of victims for all purposes being female. Data from Eurostat (2015) indicates a distinct gender split within the different types of exploitation, with trafficking for the purpose of sexual exploitation being the most prevalent form of trafficking in the EU (two-thirds or 67 per cent) and nearly all, 96 per cent, women.

2.2 Gender, Migration, Trafficking and Prostitution

Migrant women now make up between 80 per cent and 90 per cent of those in prostitution in Italy, Spain, Austria and Luxembourg, and between 60 per cent and 75 per cent in Finland, the Netherlands, Belgium, Germany, France, Greece, Denmark and Norway (Tampep, 2009), suggesting an average of 84 per cent which is the widest range of nationalities in any one region (UNODC, 2010). The routes of migrant women into prostitution and international trafficking reflect the same pattern from less developed and poorer regions to richer ones, leading from the global South to the North. However, in the European context, the majority of victims of trafficking for the purpose of sexual exploitation are now female EU nationals from the poorer regions in Central and Eastern European states to the wealthier Western European Member States (Europol, 2016).

The UNODC (2010) estimates that as many as one million women in Europe are involved in prostitution and one in seven of the women involved in this industry are trafficking victims, amounting to 140,000 women in total. It is estimated that in any national regime which regulates prostitution activities, between 10 per cent and 24 per cent of women will fit the international definition of being trafficked (Kutnik *et al.*, 2007; Seo-Young *et al.*, 2012) and that the profits alone from trafficked women in Europe

could be as high as €2.5 billion (UNODC, 2010). Significantly, research consistently indicates victims of trafficking are inserted into the prostitution market, in which the demand for adult women as well as underage girls is high, and are intended for the same kind of users who consider the women and girls to be 'interchangeable goods' (Monzini, 2005:3). Consequently, any measures seeking to address human trafficking for sexual exploitation must recognise victims 'can be hidden within mixed populations of independent, exploited and coerced prostitutes and in mixed migration flows' (Walby *et al.*, 2016).

2.3 Gender Equality and Violence Against Women

The Walby *et al.* (2016) study into the gender dimensions of trafficking recognises that while in legalised or regulated systems of prostitution, such as in Germany and the Netherlands, a certain level of exploitation is considered acceptable and legal when it is 'proportionate', in another sense:

the taking of profits from the selling of sex may be considered unreasonable exploitation per se, in the context of the pursuit of the goal of gender inequality whereby mutuality rather than commercial exchange in intimacy is regarded as an essential part of a system of gender equality (Walby et al., 2016:28).

The report also recognises the specific harm of sexual exploitation in that there are:

severe, brutal and long-term, gender-specific physical, gynaecological and mental health harms, risks to life and traumas from trafficking for purposes of sexual exploitation (Walby et al., 2016:8).

This reflects a substantial body of empirical evidence on the harm of sexual exploitation for trafficked and prostituted women. In a study of 207 girls and women who had been trafficked, almost all (95 per cent) had been subjected to severe and ongoing physical and sexual violence; over half (57 per cent) reported physical injuries; 89 per cent reported threats of violence to themselves and their families including threats to kill, and 70 per cent reported that they had no freedom of movement (Zimmerman *et al.*, 2006). Numerous studies indicate the consequences of being

exploited in prostitution for women's physical, sexual, reproductive and mental health are severe, and that the rates and frequency of extreme violence, including homicide, are exponentially higher for women in prostitution than the general population of women and girls (Coy, 2009; Farley *et al.*, 2003; O'Connor, 2017; Potterat *et al.*, 2004; Raphael and Shapiro, 2002; Raymond *et al.*, 2002).

2.4 Understanding Demand

Human traffickers operate within global supply and demand chains involving the targeting, recruitment and coercion of vulnerable people, those who transport and move people into destination countries' exploitative markets, those who profit from the exploitation of victims in those destination countries and the final link in the chain of exploitation, the buyer or consumer of labour or services from those victims (Monzini, 2005).

A recent report examining progress taken by the European Commission and any other relevant stakeholders under the EU Strategy towards the eradication of trafficking in human beings (2012–2016) states:

Trafficking in human beings is a crime driven by demand and profit. The profits, in both the legal and illegal economies, result in a complex interplay between supply and demand that must be addressed if the crime is to be eradicated.

In relation to trafficking for sexual exploitation, this 'complex interplay' involves traffickers and recruiters targeting and exploiting vulnerable girls and women in order to supply them to the commercial sex trade; local pimps and prostitution 'businesses' and organisers profiting from that exploitation; and the demand from buyers of sex for a fresh supply of women and girls to meet their sexual demands in the commercial prostitution trade. As Walby *et al.* (2016:23) state:

Demand reduction concerns changing the wider environment into which people may be trafficked so as to reduce incentives for trafficking. In the case of trafficking for purposes of sexual exploitation, this wider environment is critically shaped by the institution of prostitution.

3

Comparative Analysis of Demand in the Six Member States

3.1 Gender Equality and Violence against Women

The critical importance of locating the issues of human trafficking, prostitution and demand firmly within a gender equality and gender-based violence framework underpins the six national reports, written by country experts. There is a shared understanding of trafficking and prostitution as gender specific forms of exploitation, both rooted in and causing gender inequality:

Like other types of gender-based violence, such as domestic abuse and structural violence against women, trafficking for the purposes of sexual exploitation has wider causes of gender and social inequalities, and has wider social implications beyond the obvious and immediate damage to the victims of trafficking only. Cypriot report

Prostitution is understood by all the experts as a serious barrier to gender equality, which is not just harmful to the prostituted woman or child, but also to society at large. Trafficking and prostitution are regarded as incompatible with internationally accepted principles of human rights and the dignity and worth of the human person and the equal rights of men and women.

The Lithuanian report describes how the intersection of gender inequality and poverty

is a driving factor in making girls and women vulnerable. Furthermore it outlines how pimps and traffickers intentionally target girls and women who experience economic, racial and/or ethnic marginalisation and discrimination.

The harm to women's physical, sexual, reproductive and psychological health is highlighted by the experts, all of whom work directly with trafficked women and women in prostitution and/or work closely with specialist services.

While they acknowledge EU and Member State initiatives to address this phenomenon, there is consensus that without recognising the demand to have girls and women available for sale as the root cause of trafficking for sexual exploitation, measures to combat it will fail.

3.2 The Profile of Trafficked Women and Women in Prostitution

The six Member States are countries of destination and transit for victims of trafficking, with Lithuania also being an origin or source country. The profile of women and girls who are trafficked and recruited into the commercial prostitution trade of the six countries reflects the general European pattern that the majority are migrant girls and women from impoverished regions of the world and the European Union, although national citizens still constitute

a minority of women and girls who are trafficked and prostituted in each country. Third country nationals who are consistently identified across the six Member States include women from West Africa, particularly Nigeria, and Brazil, China, Ukraine and Russia. However, all six countries have seen a major increase in European citizens being identified as victims of trafficking, visible in indoor and street prostitution: in particular women from Lithuania, Estonia, Bulgaria, Latvia, Poland and Romania. Street prostitution remains visible in all countries but to a far lesser extent as the current commercial prostitution trade is primarily located in indoor venues such as nightclubs, strip clubs and massage parlours. It is increasingly found in private premises such as hotels and apartments, mainly organised through the internet, as well as in the homes of the prostitution users. The lack of available, reliable and consistent data in relation to the numbers of women in prostitution and those identified as victims, trafficked for sexual exploitation, was an issue of concern for most countries.

The six experts expressed increasing concern regarding the grooming, targeting and sexual exploitation of young girls who are vulnerable, marginalised or in institutional care in their own countries. The current migration crisis is also of grave concern in creating further high risk contexts for girls and women. These issues are critical to highlight as they demonstrate the need for special protection measures to be put in place by statutory and voluntary agencies in Member States and by international agencies working with displaced people and refugee populations.

3.3 Demand: The Buyers of Sex

A recent EU funded transnational study provides insight into the profile and behaviour of buyers within Member States. The average buyer of sex is male, well-educated, with middle to high income, and in a relationship at the time of the purchase of a sexual act. In the main, the male buyers viewed the females involved in the transactions as consenting adults and were unlikely to conceptualise the women from whom they purchased sex as potential victims of human trafficking. This despite the fact almost one third of male respondents who reported purchasing sex also reported encountering some form of exploitation, including sellers who were legally under the age of consensual sex. (Keegan and Yonkova, 2014).

Patterns of demand and the attitudes displayed by buyers in the six Member States reflect international research which consistently indicates a commodified and consumerist perspective, with buyers expressing a strong sense of entitlement as consumers to have one's sexual demands met once payment has been made (Coy, Horvath and Kelly, 2007; MacLeod, Farley, Anderson and Golding, 2008; O'Connell Davidson, 1998). The primary concern of buyers is to have their sexual needs met; they are unlikely to be discerning or concerned about the means through which women entered prostitution, the circumstances they are currently in or whether they are coerced or trafficked.

3.4 National Legislation Addressing Demand

All Member States have introduced legislation to address the demand for the purchase of sex from victims of trafficking. However, as this section will demonstrate, measures introduced reflect the different political perspectives on prostitution which pertain to each country.

3.4.1 Criminalising the Purchase of Sex from a Trafficked Person

In Finland, there is a partial sex-purchase ban prohibiting purchasing sex from victims of the sexual trade who have been subjected to pandering and human trafficking. In 2015, following a Supreme Court ruling which required intentionality on the part of the buyer, further changes to the law were made where the purchase of sex from victims of the sexual trade through negligence was criminalised making it a criminal offence to engage in sexual intercourse or comparable sexual act for payment when there is a reason to suspect the seller is a victim of pandering or human trafficking. This means the buyers of sex can no longer avoid legal responsibility by gaining as little information as possible from the person selling sex and the conditions surrounding them. The new provision is meant to be easier to apply (HE 229/2014).

In Cyprus, Article 17 of the Trafficking Law 60(I) 2014 'penalises persons who use services provided by victims of trafficking if they should reasonably have been able to assume that the service was provided by a victim of trafficking.'⁵ When a person is found

5. *Ibid.*

guilty the person is subject to imprisonment for up to three years or to a fine not exceeding €15,000 or both penalties. To date there have been no convictions under this provision.

In Lithuania, in 2012, the laws on human trafficking were amended to prosecute the users of forced labour and services taking into account Directive 2011/36/EU. The law is clear in that it is only applicable where the use of force can be demonstrated. No buyers of sex have been prosecuted under this law. The issue of the liability of a client for buying sexual services was further addressed in June 2005 in the Administrative Violations Code, which was one of the measures to reduce the demand for prostitution services in Lithuania. The offence covers both persons who earn from prostitution and persons who use paid prostitution services. It excludes persons who have been involved in prostitution who are dependent or under physical or psychological violence or deception, by any means, or being a minor and/ or a victim of human trafficking, when the status is recognised in the criminal proceedings. According to this article, a fine (from 300 to 1,000 LTL) may be imposed on the prostitute and the client. In reality, the Lithuanian expert asserts that the evidence consistently indicates that women in prostitution are primarily the focus of law enforcement. In relation to buyers, they are rarely prosecuted and as this is a minor administrative offence the only penalty is a minimal fine.

3.4.2 Criminalising the Purchase of Sex from any Person

On 1 January 1999, Sweden became the first country in the world to introduce a law prohibiting the purchase of sexual services. The legislation was later incorporated into the Penal Code as a criminal law offence, with the following wording:

A person who, in other cases than previously stated in this chapter, obtains a casual sexual relation in exchange for payment shall be sentenced for the purchase of a sexual service to a fine or imprisonment for at the most one year. Swedish Penal Code, Chapter 6: Sexual Crimes, Chapter 6)

There have been some amendments to the offence. The offence now also criminalises the purchase of a sexual service by a third person or group of persons purchasing a sexual service for someone else. This situation can occur when a sexual service is offered as a gift in the context of a stag party or, for example, when businesses offer it as a

business benefit or for male business associates. On 1 July 2011, amendments to the offence came into force, including an increase in the maximum sentence from six months to one year in prison.

Significantly, from the outset the Swedish law was not simply punitive; it was intended to be declarative and normative, sending a very clear message that it is unacceptable to buy a person for sexual gratification.

In April 2016, the French Government passed a comprehensive legislative framework aiming to strengthen the fight against the system of prostitution and trafficking for sexual exploitation. The legal provision states that:

The act of soliciting, accepting or obtaining relations of a sexual nature from a person engaging in prostitution, including on an occasional basis, in exchange for remuneration, a promise of remuneration, the provision of benefits in kind or the promise of such benefits is punishable by a €1,500 fine. (Law No 2016-444)

The Act also includes higher penalties for repeated offences punishable by a €3,750 fine and supplementary punishment in the form of awareness training where the buyer is obligated, where required, at his own expense, to complete an awareness course deterring the purchase of sex acts.

The Act modifies the provisions of nine legislative codes introducing severe penalties for the organisation of prostitution, pimping and procuring; extensive support measures and resources to support people in prostitution including exit routes and welfare support. It also contains specific measures and residency rights for migrant and trafficked persons. Temporary residence permits to a victim of procuring or trafficking is extended *‘for the entire duration of the process to exit prostitution and achieve social and professional integration, as long as the conditions foreseen for its issuance continue to be met.’*

In Ireland, The Criminal Law (Sexual Offences) Act 2017 was enacted with a provision criminalising the purchase of sex. Part 4 of the Act introduces an offence which criminalises any person who purchases or attempts to purchase sexual activity from another person:

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 shall be guilty of an offence and shall be liable on summary conviction— (a) in the case of a

first offence, to a class E fine, and (b) in the case of a second or subsequent offence, to a class D fine.

An amendment to older legislation pertaining to the selling of sex on the streets removes the offence for soliciting for the purpose of prostitution but, importantly, the offence of soliciting for the purpose of buying sex remains.

In Ireland, prior to 2017, the approach to addressing the demand for the purchase of sex was limited to the purchase of sex from a trafficked person. The Criminal Law (Human Trafficking) Act 2008 contains a provision making it illegal to *‘solicit or importune’* a trafficked person for the purpose of sex. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 12 months, or both. However, if the defendant can prove that he or she did not know and had no reasonable grounds for believing the person in respect of whom the offence was committed was a trafficked person, s/he could not be prosecuted. There have been no convictions to date. The 2017 Act amends the trafficking legislation by broadening the scope of the original offence from *‘soliciting or importuning’* a trafficked person and it is now an offence for a person to pay, give, offer or promise to pay or give a person (including the trafficked person) money or any other form of remuneration or consideration for the purposes of the prostitution of a trafficked person. The maximum penalty for this offence is five years. This offence remains in place alongside the recent introduction of the sex buyer offence which means the offence of buying a victim of trafficking is still considered a more serious offence than the buying of sex from any another person in Irish law.

3.4.3 Criminalising Prostitution

In line with international obligations, EU Member States have introduced numerous measures to address trafficking in human beings including dedicated legislation, government policy frameworks, national action plans, specialised police officers and units, and a range of provisions to deliver services and legal representation to those identified as victims across the six Member States. Trafficking laws contain severe penalties and police operations have resulted in many successful prosecutions and convictions of traffickers in the six Member States.⁶

6. The wider response to trafficking including the details of convictions are contained in the National Reports.

In contrast to the extensive laws, severe penalties and state infrastructure surrounding trafficking, besides Sweden, prostitution has been mainly dealt with as a public order offence within criminal and/ or administrative law as a misdemeanour, with harsher penalties for pimping, procuring and the organisation of prostitution. Until very recently in Ireland and France, and currently in Cyprus and Lithuania, the focus of law enforcement is on the maintenance of public order, in particular the buying and selling of sex in street locations, with occasional police operations targeting organised crime and brothel keeping. The experts in these Member States concur that where both the seller and the buyer are criminalised for minor public order offences such as soliciting and importuning, the burden of criminality traditionally fell on women on the streets, with occasional arrests of buyers for soliciting on the streets.

In Cyprus, even though the operation of a brothel, the promotion of women into prostitution, coercion in prostitution and pimping as well as soliciting are criminal offences under the Cypriot Criminal Code, these offences are considered to be misdemeanours and not felonies, which results in low sentences, leading the Cypriot expert to conclude, *‘[in the] most part indoor locations act with impunity’*. Prostitution as such is not a criminal offence so, as it stands, those criminalised under the penal code are the pimps and brothel owners as well as women in prostitution while sex buyers remain invisible. They are regarded as the ‘victims’ of being solicited to buy sex and consequently not criminalised. The Cypriot expert also highlights the differential treatment of migrant women in prostitution. In an article under aliens and immigration law, the penal code stipulates that migrant prostitutes and persons living from earnings made from prostitution are prohibited immigrants who are not allowed to enter Cyprus. Therefore, while a woman, irrespective of her ethnic origin, is not subjected to criminal prosecution under the Criminal Code, if a migrant woman is arrested for prostitution, she is deported and declared to be a forbidden immigrant under rapid administrative procedures.

In Finland, although the selling or buying of sex is as such not criminalised, purchasing or offering of ‘sexual services’ in a public place is prohibited under public order offences. There have been periods of enhanced surveillance of the streets, for example by the Helsinki police in 2011, but not in recent years. The enforcement of the legislation in question is not at all systematic, and according to police statistics street prostitution has not been targeted in recent years. The punishment for a public order offence is a fine of €100 but the offence will not lead to an

entry into the criminal record or a trial, since it is considered a minor offence. However, as in Cyprus, there is an additional consequence for non-citizens and those not holding residence permits as they may be refused entry to the country if there is reasonable cause to suspect she or he is selling sexual services. The Finnish expert cites extensive research which concludes, 'one can safely assume that the Public Order Act is targeting mainly women with foreign origin selling sex and only in some cases men buying sex' (Niemi and Aaltonen, 2014).

In Ireland, prior to 2017, a similar pattern pertained with the focus on public order offences on the streets, which resulted in mainly those selling sex being criminalised and occasional police operations on brothel keeping and organised crime. However, the Irish expert observed a dramatically low level of soliciting offences in 2015/6 which would suggest (although this cannot be verified) a number of factors related to the campaign may have had an impact upon police practice including:

the dialogue between the Turn Off the Red Light campaign with the Gardaí (police) in relation to the vulnerability of women in prostitution; the report and engagement with the Oireachtas (Parliament) committee and in particular the training and close co-operation with Ruhama⁷ in relation to diverting rather than arresting women on the street; and the awareness of the new law de-criminalising women in prostitution that was coming. Irish report

Prior to 2016 in France, as in the countries above, the focus of law enforcement was people on the streets, procuring and the organisation of prostitution. Every year more than 1,500 prostituted persons were arrested for crimes of solicitation; not a single prostituted person has been arrested on these grounds since April 2016; 937 clients have been arrested in the year following the introduction of the law. The recent French law has clearly had an immediate impact on policing in terms of the focus of law enforcement being on the buyer not the person selling sex on the streets. But the French expert highlights a number of challenges ahead, including: the inconsistency in the implementation of the criminalisation of buyers from region to region; the continued use of other public order offences against women in some areas; weak implementation of the law in relation to minors in prostitution, particularly in relation to the defence by buyers of not knowing her age; trafficked and procured women being regarded as undocumented migrants rather than victims of exploitation; delays

in the resourcing and establishment of exit route programmes, services and accommodation for women seeking to exit prostitution. It is also worth noting all the arrests of buyers have been on the streets and that a further challenge will be the policing and arrest of buyers in indoor locations.

For two decades, the Swedish Government has developed a comprehensive integrated strategy on prostitution and trafficking for sexual exploitation, which is embedded within the policies and structures of the state. While the majority of Member States have national action plans (NAPs) on trafficking, the Swedish national action plan integrates both prostitution and trafficking for sexual purposes and contains 36 separate measures, mainly directed at public agencies. It has five priority areas: protection and support for people at risk; prevention; higher standards and greater efficiency in the justice system; increased national and international co-operation; and higher level of knowledge and awareness. The enforcement of the laws on prostitution and trafficking continue to be prioritised, monitored and resourced within the National Police Authority, the Prosecution Authority, the Swedish National Courts Administration, the Migration Authority, the National Board of Health and Welfare (NBHW) and the Gender Equality Agency (2018).

Since the legislation came into force on 1 January 1999, 7,059 men have been apprehended for attempting to purchase or for having purchased a sexual service resulting in 3,006 convictions. In addition, 1,593 men have been arrested for the purchase of a sexual act from a child under 18 years of age resulting in 233 convictions. There have been 1,328 reported crimes for procuring and 481 for trafficking for sexual exploitation. Through the direct or indirect intervention by the police, many more have been dissuaded from purchasing someone for the purpose of exploitation in prostitution. Despite claims by critics of the Swedish approach that criminalising the purchase of sexual services and sexual acts increases the risk to women in prostitution, the Walby *et al.* (2016) research once again confirms there is no evidence to substantiate this claim.

7. NGO service for women in prostitution.



Prostitution is not perceived as a matter of violence against women and sexual exploitation or a violation of their right to physical integrity, life and freedom, but merely as a behaviour that violates social order and morality.
Cypriot report

4

Conclusions and Recommendations

4.1 Conclusions

In examining the approach of Member States to criminalising demand for the purchase of sex from victims of trafficking we can see that it is the conceptualisation of prostitution that underpins the legislative and policy framework adopted. If the state deems it is a legitimate demand to have people, primarily girls and women, made available to supply sexual acts for money, then as long as they are not identified as trafficked, procured, pimped or minors, this is regarded as acceptable and legal. Consequently, the only criminalisation of the buyer is where the person bought is proven to be a victim of trafficking or pimping, and where the buyer is aware of that fact. This is the position also taken by the EU Directive and the Council of Europe Convention, so these states can claim they are fulfilling their obligations under the Convention and the Directive. This is the approach that has been followed in Cyprus, Finland and Lithuania, and prior to 2016/17, in France and Ireland. The evidence from these countries suggests that criminalising the purchase of sex only where there is proof that the person is a victim of trafficking or procuring is inoperable from an enforcement point of view and ineffective in relation to the wider goal of acting as a deterrent in reducing demand. Furthermore, in the absence of a national co-ordinated and resourced strategy on prostitution, the wider environment in which demand for victims of sexual exploitation operates, the prosecution of pimps, procurers and brothel owners tends to be sporadic with occasional special police operations targeting individual establishments and organised crime.

In Sweden, and now in France and Ireland, the state has adopted the position that prostitution is a form of violence against women and therefore the demand to have any girls or women made available to supply sexual acts for money is not regarded as legitimate or acceptable and, therefore, the purchase of sex is a criminal offence. This approach, as described, is underpinned by principles of gender equality and leads to an integrated national strategy to address both prostitution and trafficking for sexual exploitation. This approach has also proven to be an effective anti-trafficking and demand reduction measure. The most recent figures in relation to Sweden compared to the Netherlands and Germany are telling. It is estimated that the Netherlands has a rate of nine times and Germany a rate of between 30 and 40 times that of prostitution in Sweden. This is critical evidence in relation to reducing trafficking for sexual exploitation as studies demonstrate a very clear correlation between the scale of prostitution and the level of trafficking in a destination country, with the number of victims of trafficking estimated to vary from 10 per cent to 24 per cent of the overall numbers in the sex trade per cent spelt out previously (Seo-Young et al., 2012; Daniailova-Trainor and Belser, 2006). In other words, regardless of the prostitution regime, simply allowing the sex industry to grow increases the flow of trafficked people to that jurisdiction; conversely, addressing demand and reducing the size of the commercial sex trade is an effective anti-trafficking measure.

However, as other countries follow the Swedish approach, it is critical they are fully cognisant of the wide range of institutional mechanisms and measures that were put in place by the Swedish Government to ensure the success of all the

objectives of the law. The positive outcomes for women in prostitution and for society have been possible not simply by enacting a law but by the continuing commitment of the Swedish state to providing resources for services and policing and ensuring that the wider intention of the law is embedded in domestic and foreign policy. The French law has also now provided an exemplar of a comprehensive law that not only criminalises the purchase of sex and de-criminalises those exploited in prostitution, but also provides a statutory basis for service provision and exit routes. It is important to note that all six experts emphasise

the importance of recognising the wider significance of sex purchase laws, not merely as anti-trafficking measures but, fundamentally, about addressing gender inequality and violence against women.

4.2 Recommendations

The following recommendations arise from the comparative report but are also informed by other relevant EU reports.

1

We welcome the efforts by EU Member States to develop a comprehensive legal and policy framework on trafficking in human beings for sexual purposes. However, Member States should recognise the current remit of the EU Directive 2011/36/EU, which criminalises the purchase of sexual services only where there is proof the person is a victim of human trafficking, is inoperable from an enforcement point of view and ineffective in relation to addressing the increasing numbers of victims of trafficking for sexual exploitation within and into the European Union.

2

Recognising the shortcomings in EU Directive 2011/36/EU approach and extensive evidence regarding the success of the Swedish approach, Member States should introduce a criminal offence for buying a person for sexual acts as the only effective means to reduce demand for victims of trafficking for sexual exploitation. Decriminalisation of people exploited in prostitution, including victims of trafficking, should be an integral part of any legislative framework.⁸

3

Member States should develop integrated and co-ordinated whole-of-government strategies to respond to the commercial sex trade and to address the demand for victims of trafficking for sexual exploitation. The introduction of laws relating to prostitution and human trafficking need to be accompanied by a comprehensive range of measures which include enforcement policies, protection and support for all victims of sexual exploitation, monitoring and evaluation, and preventative initiatives.

4

National action plans on prostitution and human trafficking should be developed, underpinned by the principles of gender equality and human rights and informed by the wider body of law and policy on gender equality and gender-based violence⁹. Detailed targets, benchmarks, indicators, timeframes and budget allocations should be integral to national action plans. Ministerial responsibility and oversight with a dedicated unit within government is required.

8. EC (2016:8), *The Gender Dimension of Trafficking in Human Beings*, prepared by Walby, S. et al., concludes that victims of trafficking for sexual exploitation 'can be hidden within mixed populations of independent, exploited and coerced prostitutes and in mixed migration flows'.

9. Yonkova, N., Gillan, S., Keegan, E., O'Connor, M., Charlton, D., and Zobnina, A. (2018) *An analysis of the Anti-trafficking Directive from the perspective of a victim of a gender-based violence*. Vilnius: European Institute for Gender Equality.

5 Member States should ensure that international instruments and EU Directives on human trafficking are fully transposed into national legislation. New and emerging forms of trafficking such as trafficking for exploitative sham marriage should be monitored and laws enacted to reflect these.¹⁰ Academic and community research should be funded and carried out to strengthen laws and policy measures for their prevention.

6 Laws relating to the procurement and organisation of prostitution need to be robust, reflecting the serious nature of these offences and the likely intersection with human trafficking crimes. Further research and action is needed to criminalise online advertising and the use of web-based and other forms of communications technology tools in the organisation of prostitution-related activities, and the targeting of girls and women for sexual exploitation¹¹

7 Specialist police and prosecutions units must be resourced to investigate and prosecute those responsible for prostitution-related activities and to carry out surveillance operations on indoor locations. Training for police should be carried out in co-operation with experienced women's victim-support services to ensure a sex-specific, victim-centred and human rights approach¹². Recognising signs of coercion and control alongside signs of trafficking should form a core part of the training to ensure the identification and referral of all women subjected to coercion and procuring. Police and technical experts should be resourced to investigate, track and prosecute the use of communications technology by organisers of prostitution-related activities. Sentencing patterns should be monitored closely to ensure consistency and that they are commensurate with the seriousness of the offence.

8 Decriminalisation is a core element of the Swedish/Nordic approach but the introduction of the laws prohibiting the purchase of sexual acts/services must also be accompanied by a wide range of measures to ensure there are no negative consequences for prostituted and trafficked women¹³. The right to protection, accommodation, early legal intervention, legal advocacy and support for victims of trafficking have been enshrined in legislation and/or statutory guidance in most Member States¹⁴. Recognising the coercive circumstances in which women enter the sex trade, these rights need to be extended to all women who are subjected to commercial sexual exploitation, when they are in prostitution and when they are seeking to exit.

10. Cosgrove, C., O'Connor, M. and Yonkova, N. (2016) *Exploitative Sham Marriages and Human Trafficking in Ireland*. Dublin: Immigrant Council of Ireland.

11. See e.g. project case study by the Institute for Feminism & Human Rights, and Ekberg, G.S. and Werkman, K. (2016) *A Snapshot Study on the Prevalence, Laws, Policies and Practices regarding Prostitution and Trafficking in Human Beings for the Purpose of Sexual Exploitation in Belgium: Final Report*, Brussels: Sorbus Research.

12. See Benson, S. (2018). Case study on NGO and police co-operation for the 'Disrupt Demand' project.

13. See e.g. Ekberg, G.S. (2018) *Swedish Laws, Policies and Interventions on Prostitution and Trafficking in Human Beings: A Comprehensive Overview*.

14. O'Connor, M. (2015). *Upholding legal rights: Early legal intervention for victims of trafficking*. Dublin: The Immigrant Council of Ireland, EU/ ISEC Programme.

9 Member States should be cognisant of the rights enshrined in the Anti-Trafficking Directive¹⁵ and the Victims' Rights Directive¹⁶ in delivering protection and gender-specific assistance to victims of sexual exploitation. Member States have a responsibility to respond to the long-term needs of women who have been sexually exploited in their jurisdiction regardless of their legal status as migrants, including access to welfare, education, training and employment.

10 Member States should ensure exit programmes are in place for women seeking to exit prostitution and adequate long-term funding for such support services is in place.

11 Public awareness and preventive strategies should be central to government strategies, recognising the wider declarative and normative intentions of the laws that ban the purchase of sexual acts are to prevent and reduce demand, and to increase public awareness of prostitution as an obstacle to gender equality. Attitudinal surveys to assess public support for the legal and policy approach to prostitution and data, including through public surveys on the number and percentage of the population of men who have purchased sex, should be conducted periodically.

12 Member States should commit adequate resources to research in order to ensure solid and reliable evidence in relation to the impacts of the law is publicly available. Areas should include: mapping of the scale and extent of prostitution-related activities and trafficking for sexual exploitation in all relevant localities, including indoor venues; investigation of the number of prostitution-related activities and number of individuals involved online; research on the harmful consequences of prostitution for the health and well-being of girls and women; and the ongoing needs and barriers for women in relation to exiting.

13 An Independent National Rapporteur on Trafficking in Human Beings should be appointed by each Member State. The Rapporteur should have the authority and resources to access and evaluate non-identifiable data from the statutory and non-governmental agencies.

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

16. European Union Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L315/57.

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