

General reaction:

The Netherlands and Belgium support the EU efforts to tackle the trafficking of human beings. We are fully committed to comply with the provisions in Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims. Furthermore, we welcome the Commission's initiative to further step-up efforts against this crime.

However, we would like to emphasize our position regarding recent developments within the EU policy field of the combatting of the trafficking in human beings and the prostitution¹ policy in this general statement. As recognised in the Parliament's resolution of 14 of September 2023 on the regulation of prostitution in the EU², ranging from a purely criminal law approach to creating a legal framework legalising all facets of prostitution.

Tolerating, legalizing or regulating sex work are sensitive political choices, closely interconnected with the fight against trafficking in human beings. Therefore, we are of the opinion that Member States should be allowed to choose their own, specific approach to sex work instead of introducing broad criminalisation in the Directive on trafficking of human beings.

Recital 9, article 18a:

We have understood that the reporters of the draft report amending Directive 2011/36/EU and a lot of other Members of Parliament are keen on removing the passage "with knowing use" in recital 9 and in article 18a. The Netherlands and Belgium are of the opinion that it is necessary in article 18a to foresee 2 requirements "with the knowledge that the person is a victim" and "intentionally using the service provided by a victim". Without these requirements, the scope of this crime is far too broad.

The Netherlands and Belgium believe that criminalizing individuals without an intent (or even guilt) requirement is at odds with the basic principles of (our) criminal law and would interfere with the space left to Member States to choose their own approaches to prostitution.

Criminalisation of clients of prostitution:

In the draft report 'amendments 29-294' amending Directive 2011/36/EU the following amendment is included:

Amendment 248, second attachment
*2a. in article 18a, the following paragraph is added after paragraph 2 (2a). Member States shall also consider **taking measures regarding those who solicit, accept or obtain a sexual act from a person in exchange for remuneration, the promise of remuneration, the provision of a benefit in kind or the promise of such a benefit.***

This amendment seems to be asking Member States to consider a criminalisation of (certain aspects of) prostitution. We believe that prostitution policy is a controversial topic with various viewpoints. While some Member States choose to criminalize (aspects of) prostitution, other countries legalize,

¹ In this non-paper, the term prostitution is used. However, many countries that legalize or regulate the prostitution industry in order to ensure visibility of sex workers and a safe and healthy working environment prefer the term 'sex work' since this is less stigmatized terminology.

² Texts adopted - Regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women's rights - Thursday, 14 September 2023 (europa.eu)

decriminalize or regulate prostitution. Member States often select a system of legalization, decriminalisation or regulation after careful research and consultation with health care providers and sex worker communities.

We believe that a legalized or regulated prostitution system ensures visibility, legal workplaces, better and safer working conditions (with specific protective rights), and social security for sex workers. We are of the opinion that prostitution will always take place. It is unlikely that criminalisation of either customers or sex workers will lead to a disappearance of prostitution. On the contrary, we believe that a system of criminalisation will potentially increase the illegal market, increase the risk of exploitation and violence and will result in more vulnerabilities for sex workers being forced to provide their services in the hidden.

Obviously, criminalization of clients in general, as proposed in the amendment, may have disastrous consequences for independent sex worker's rights. Although it may seem counter-intuitive, reality on the ground shows that free and autonomous choice in this field, which covers a large variety of situations, do exist.

Aside this aspect, criminalization of clients will also have downside effects on prevention and detection of sexual exploitation and trafficking in human beings.

Indeed, crimes are often detected on the basis of information provided by citizens to the police. This is particularly the case in the context of forced prostitution and labor exploitation. It is therefore crucial that the simple use of services that lacks the (1) *knowingly* and (2) *intentional element* to contribute to the exploitation of the victim is not criminalized, in view to ensure that clients feel free to report any suspicion of exploitation.

Punishing the user would thus have a deterrent effect, as clients may no longer be willing to contribute to identifying suspected human trafficking.

The Northern Ireland Department of Justice released a report in 2019 analyzing three years of the impact of laws criminalizing clients of sex workers in Northern Ireland. A trend analysis of 173,460 ads indicated that the legislation had little effect on the supply of or demand for sexual services. The analysis showed a 5% increase in the number of sex work advertisements since the law had been changed. Evidence obtained from the survey with people who purchase sexual services showed that the legislation had a limited deterrent effect on client behaviour. Furthermore, there was no clear evidence to suggest that the legislation had an impact on the levels of trafficking for sexual exploitation. The report showed that sex workers were exposed to higher rates of anti-social as well as nuisance behavior and reported higher levels of anxiety and unease as well as increased stigmatization.³

Moreover, research shows that sex workers in legalised and decriminalized countries demonstrated greater health outcomes, including awareness of health conditions and risk factors.⁴

In the perspective of the minimum harmonization in this directive, we value that Member States are given the necessary flexibility to adopt the most suitable approach according to their country's political and democratic choice. This flexibility is also in line with the Convention of Warsaw on trafficking in human beings.⁵

³ "Assessment of Review of Operation of Article 64A of the Sexual Offences Order (Northern Ireland) - Offence of Purchasing Sexual Services," Northern Ireland Department of Justice, September 17, 2019, <https://www.justice-ni.gov.uk/publications/assessment-impact-criminalisation-purchasing-sexual-services>

⁴ McCann, J.; Crawford, G.; Hallett, J. Sex Worker Health Outcomes in High-Income Countries of Varied Regulatory Environments: A Systemic Review. *Int. J. of Res. Public Health* **2021**, *18*, 3956. <https://doi.org/10.3390/ijerph18083956>

⁵ The explanatory memorandum (point 233) of the Convention of Warsaw on trafficking in human beings explains the limited scope of the criminal provision to situations of exploitation, as follows: "233. (...) Article 19 is intended not to prevent victims of trafficking from carrying on an occupation or hinder their social rehabilitation but to punish those, who by buying the services exploited, play a part in exploiting the victim. Similarly, the provision is not concerned with using the services of a prostitute as such. That comes under Article 19 only if the prostitute is exploited in connection with trafficking of human beings – that is, when the components of the Article 4 definition are present together. As explained above, the Convention is concerned with exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in human beings. It defines neither "exploitation of the prostitution of others" nor "other

A similar position is defended by various civil society organizations, such as the European Coalition on Sex Workers' Rights and Inclusion and the International Planned Parenthood Federation. La Strada International, European umbrella association of anti-trafficking organizations, explains this in the following terms: "La Strada International believes the revision of the EU Trafficking Directive should not lead to a binding provision criminalising the knowing use of services of trafficked persons, as this not only seems to have very limited impact on combatting human trafficking, but inevitably implies the conflation of human trafficking and prostitution, and is very likely to have severe harmful effects on victims and related vulnerable groups." To conclude with a final quote, the Global Network of Sex Work Projects (NSWP) summarize this paradox as follows: " 'End Demand' legislation and law criminalizing third parties are often framed as a strategy to promote gender equality and combat trafficking through eradicating sex work. The reality is that women are made more vulnerable to violence, discrimination and exploitation."

Concluding remarks:

- We therefore urge to reconsider the amendments that ask for removing the words "with knowing use" from recital 9 and article 18a of Directive 2011/36/EU and also the word "intentionally".
- We believe that Member States can invest and excel in combatting the Trafficking in Human Beings while also implementing legalized, decriminalized or regulated prostitution systems.
- Criminalizing prostitution will not lead to a complete disappearance of prostitution. We do believe that it will increase the risk of illegal prostitution markets and sex workers working in the hidden.
- Research shows that sex workers in legalised and decriminalized countries demonstrated greater health outcomes, including awareness of health conditions and risk factors.
- Concluding, we believe that Member States should be responsible for implementing their own, specific, carefully selected prostitution policy model, while combatting any form of exploitation.

forms of sexual exploitation". It therefore does not affect the way in which Parties deal with prostitution in their domestic law. ».