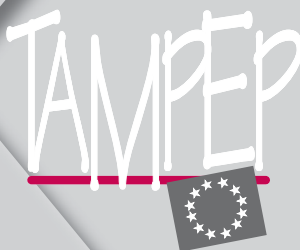


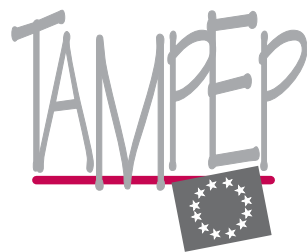
# SEX WORK MIGRATION HEALTH

A report on the intersections of  
legislations and policies regarding sex work,  
migration and health in Europe





# SEX WORK MIGRATION HEALTH



## SEX WORK | MIGRATION | HEALTH

A report on the intersections of legislations and policies regarding sex work, migration and health in Europe



### European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers

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This Report is based on contributions from all 26 member organisations of the TAMPEP network. It was compiled within the frame of the TAMPEP 8 programme (December 2007 – November 2009).

This Report is part of a series of resources produced by the TAMPEP 8 programme:

**Sex Work in Europe** | a mapping of the prostitution scene in 25 European countries

**Work Safe in Sex Work** | a European manual on good practices in work with and for sex workers

**www.services4sexworkers.eu** | an on-line directory of services for sex workers across Europe

All of the above resources are available from the members of the TAMPEP network and at [www.tampep.eu](http://www.tampep.eu).

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# INTRODUCTION

The report assesses legislation and policy developments on sex work, migration and health policies on a national and European level.

✦ **The aim** of this European report is to provide transparency about the legislation on sex work throughout Europe and its impact on the human rights of sex workers, including their access to public health services. The report assesses legislation and policy developments on sex work, migration and health policies on a national and European level and includes a critical evaluation of the various approaches relating to the interrelated issues of sex work, migration and health.<sup>1</sup>

The research covers 25 European countries in which the 26 partners of the pan-European TAMPEP network operate.<sup>2</sup> TAMPEP (European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers) is a network of community-based service providers and sex workers' organisations operating in 25 European countries. The main objective of TAMPEP is to reduce the HIV vulnerability of migrant and mobile sex workers through the development, exchange, promotion and implementation of appropriate policies and interventions across Europe, and specifically:

- to consolidate and further develop targeted HIV/STI prevention measures and health promotion interventions for migrant and mobile sex workers in Europe
- to examine and analyse the situation of sex work in Europe based on mappings of the

prostitution scene and legal framework on migration, sex work and HIV policies and the identification of risk factors and levels of vulnerability that determine the barriers to access prevention measures and care

- to facilitate the sharing of knowledge, experience and good practices among service providers and community-based organisations on a pan-European level
- to consolidate and enhance the network of 25 countries in Europe by strengthening their capacity for effective interventions within a sub-regional and cross border cooperation model
- to promote human rights and equality in public health policies and accessibility for migrant and mobile sex workers, by developing and promoting a holistic strategy underpinned by the principles of respect and inclusion of sex workers

This report and its recommendations for action are intended as a tool to promote the human rights of sex workers and to ensure sex workers' access to public health services. The report advocates for an integrative and inclusive treatment of sex workers within policies that affect their living and working conditions and for considering sex workers a pivotal part in such decisions. It is within this context that TAMPEP aims to contribute to ensuring the equality and equal treatment of sex workers.

## Methodological Approach

The analysis that is contained in this report is based on comprehensive national assessments that were carried out in 2008 by the respective national partner organisations of the TAMPEP network. The national assessment reports assess the legal and

political framing of sex work, migration and health in the 25 partner countries. The information contained in the national assessment reports was collected using a common methodological approach to ensure the comparability of the data. This included common guidelines for the research and a questionnaire that provided the structure for the assessment of the national legislation and of the policies relating to sex work, migration and health.

The national assessment reports were assembled, structured, evaluated and incorporated into the present European report. The European report provides an analysis of the various national approaches to sex work, migration and health in Europe and an overview of legislative changes and trends on national and European level, as well as specific recommendations for action in order to ensure the protection of the human rights of sex workers.

The report was compiled by TAMPEP within the frame of the TAMPEP 8 programme (December 2007 - November 2009), with the financial support of the European Commission DG SANCO under the programme Health and Consumer Protection (Directorate C – Public Health and Risk Assessment).

## Structure of the Report


This report provides a general introduction to the present phenomenon of transnationality of sex work and contextualises the intersecting issues of sex work, migration and health from a human rights perspective.

The analysis of the legal and political framing of sex work, migration and health legislation and policies in Europe is conducted with a focus on the assessment and evaluation of:

- general legislative approaches towards sex work,
- specific legislations and policies that affect migrant and mobile sex workers,
- the impact of public health policies on the human rights of sex workers.

The following section contains a summary of the main legislative and policy trends in Europe and an analysis of their impact on the working and living conditions of sex workers, including migrant and mobile sex workers.

The recommendations for action that follow are geared toward policy makers, the health care sector, private and public health, social and other service providers as well as actors within civil society.

The annex of this report contains summaries of the national assessment reports, illustrating the central elements and distinctive features of the models in the different countries. 

<sup>1</sup> Because legal and policy guidelines and practices are constantly changing, an assessment can only represent a certain moment within this process. When taking the information in this report into consideration, it is important to bear this in mind.

<sup>2</sup> The TAMPEP network consists of 26 partner organisations in 25 European countries: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France (two partners), Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxemburg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Switzerland, United Kingdom.





# SEX WORK MIGRATION HEALTH

An important change in the prostitution scene resulted from the migration flows from Central and Eastern Europe towards Western Europe.

✎ The transnational character of sex work is a global contemporary development. Regarding this internationalisation, Europe is no exception. From the end of the 1970s, migration within the sex industry in Europe implied mostly women from South Asian, Latin American and African countries. In the 1990s, an increased number of sex workers from Central and Eastern European countries migrated to EU-15<sup>3</sup> and other Western European countries. Since the enlargement of the European Union in 2004, a considerable part of these migratory movements takes place within the borders of the European Union. At the same time, migration from Eastern Europe and the Balkans as well as from non-European countries to EU-27<sup>4</sup> countries continues. An important change in the prostitution scene resulted from these migration flows from Central and Eastern Europe towards Western Europe and from internal migratory movements from Eastern Europe towards Central Europe. In this, Central European countries play an important role as they are at the same time countries of destination, transit and origin.

The TAMPEP network has registered that the number of new individuals working in the sex industry within the EU, Norway and Switzerland is constantly increasing, as well as the number of nationalities among sex workers. TAMPEP has observed a growing mobility among sex workers in Europe as well as a growing complexity regarding the patterns of mo-

bility (i.e. travel routes). The same applies to the spread of nationalities in Europe. During the first year of the TAMPEP project (1993-94), the network members (Austria, Germany, Italy, Netherlands) worked with sex workers from 10-12 different national backgrounds. In 2008, the TAMPEP partners contacted sex workers of 60 nationalities coming from the same geographical areas. This points to the growing diversity among sex workers – regarding the countries of origin and the nationalities of sex workers as well as their social and cultural backgrounds.<sup>5</sup>

Transnationality in the field of prostitution is a global reality, whether at an intercontinental, continental or regional level, which can be understood within the frame of the global economic restructuring that took place since the 1970s. Such an analysis takes into account the context of the current global economy and the structural inequality that this economy has consolidated. This global transformation had a particularly strong impact on the working and living conditions of women throughout the world. Although, in the beginning, mainly men had migrated from the peripheries to the (global) centres, women increasingly became the sole providers responsible for the household economy. But at the same time, they were unemployed or underemployed, forced to work under unacceptable working conditions and take on seasonal or temporary jobs.

Since the 1970s, there have been significant increases in the number of women who migrate alone in search of new prospects for their own survival and to sustain their families in their countries of origin. The world trend of the feminisation of poverty strongly affects the ‘feminisation of migration’.

The lack of social and economic opportunities in economically deprived countries has remained one important cause of migration. The internationalisation of sex work implies taking into consideration the migratory processes of women, men and transgender persons and the existing demand in European countries and other centres of the world economy for workers especially in the reproductive and care work sector. This implies a quantitative and qualitative change in the sphere of sex work.

Simultaneously, in the mid 1970s, the sex industry emerges and quickly develops: sex-shops, massage parlours, telephone sex agencies, escort services, sex tours, strip and dance clubs. This is one of the most flourishing and profitable industries of the global economy. It involves real estate companies, hotels, newspapers, magazines, telephone companies, Internet providers, taxis, airlines and the erotic industry, among others.


Nevertheless, the growth and revenue of the sex industry has not implied an improvement of sex workers' human rights, their living and working conditions or their access to public health services. Sex workers are not considered in the development of policies or they are only considered marginalised and criminalised.

The transnational character of sex work is an unquestionable reality in everyday practice that is expressed through the mobility of individuals and of the market, through its extension to new countries, the migratory movements of sex workers, the permanent innovation of routes of access from one country to another, in the dynamic structuring and restructuring of the sex industry, in trade agreements between transnational companies, in the new

types of establishments, in the growing demand and the supply that responds to those needs.

This creates a problematic dichotomy. The sex industry – consisting of national and international enterprises – constitutes a flourishing sector of the economy. But those who work within the industry – female, male and transgender sex workers – are discriminated against and criminalised.

Migrant sex workers are not only discriminated against as sex workers and subjected to criminal or prostitution laws but they are also constantly threatened by repressive migratory regulations in countries of the global West. This further excludes migrant sex workers from accessing legal, social and health support services. This exclusion of sex workers socially establishes a brazen hypocrisy and is evidence of a flagrant violation of human rights.

A policy of inclusion that considers sex workers as social subjects and not as objects of exclusion is a necessary condition to overcome marginalisation and discrimination. This demands a will and a politics of co-operation between sex workers' organisations, NGOs and official bodies on all levels of planning, decision-making and implementing such measures. At the same time, it is urgent to find not only national solutions but transnational perspectives to establish co-ordinated measures of effective interventions and to ensure the full protection of sex workers' human rights. 

<sup>3</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom

<sup>4</sup> EU-15 and Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia

<sup>5</sup> Cf. LEFÖ 2001, TAMPEP 2009



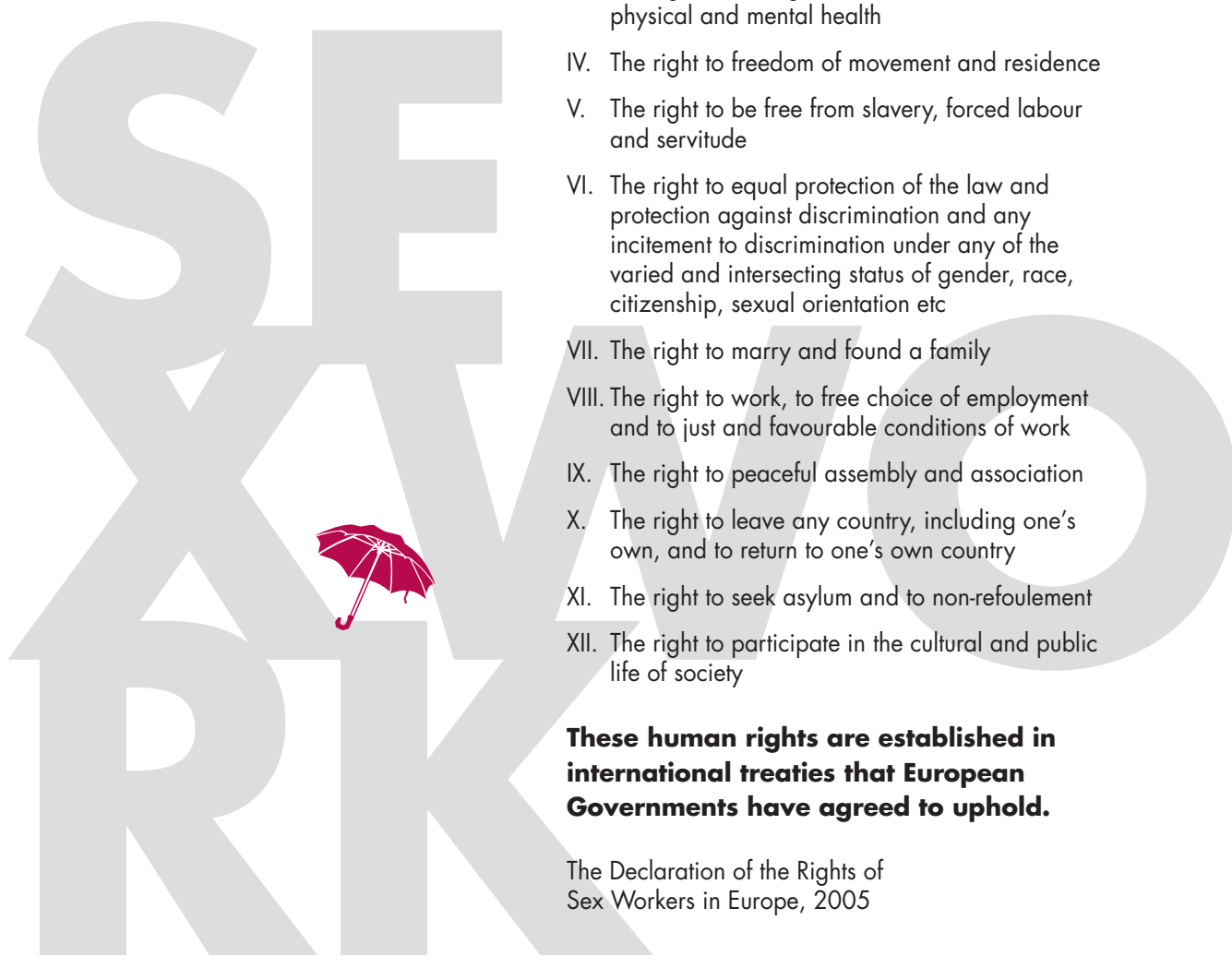
## LEGAL APPROACHES TO SEX WORK

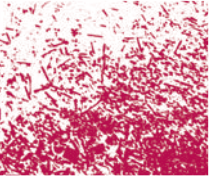
**All individuals within Europe, including sex workers, are entitled to the following rights under international human rights law. All European Governments are obliged to respect, protect and fulfil:**

- I. The right to life, liberty and security of person
- II. The right to be free from arbitrary interference with one's private and family life, home or correspondence and from attacks on honour and reputation
- III. The right to the highest attainable standard of physical and mental health
- IV. The right to freedom of movement and residence
- V. The right to be free from slavery, forced labour and servitude
- VI. The right to equal protection of the law and protection against discrimination and any incitement to discrimination under any of the varied and intersecting status of gender, race, citizenship, sexual orientation etc
- VII. The right to marry and found a family
- VIII. The right to work, to free choice of employment and to just and favourable conditions of work
- IX. The right to peaceful assembly and association
- X. The right to leave any country, including one's own, and to return to one's own country
- XI. The right to seek asylum and to non-refoulement
- XII. The right to participate in the cultural and public life of society

**These human rights are established in international treaties that European Governments have agreed to uphold.**

The Declaration of the Rights of  
Sex Workers in Europe, 2005





# SEX WORK

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✦ The legal approaches to sex work throughout Europe are ambiguous and generally do not focus on the protection of the human rights of sex workers. In addition, a main characteristic of the legal approaches to sex work is their implementation, which takes place on two often contradictory levels:

■ The theoretical implementation governs prostitution through creating national legislation measures that are most often established in the penal code rather than in distinct prostitution laws.

■ The practical implementation governs prostitution through implementing special (local-level) policies and regulations that highlight the actual state approach to sex work.

In order to analyse state approaches to governing sex work, both these levels and thus the sets of laws and practices governing prostitution must be evaluated. Inconsistencies in the legal regulations and in the areas that are not regulated, on the one hand, and the actual, concrete practices, on the other hand, make it nearly impossible to devise and apply viable categories for analysis within this context. In addition, the various realities in the different countries are not reflected in the 'classical' categories, which are most often utilised to describe the state models for governing sex work.

The dominant modes of categorisation emphasise one generalised aspect of the state approaches. For instance, the United Nations' 'Report of the Special Rapporteur on violence against Women, its causes and consequences' (1997) uses four legal paradigms to assess the ways in which sex work is dealt with on a national level: prohibitionism, abolitionism, regulationism and the decriminalisation paradigm, which are defined as follows:

■ **'Prohibition paradigm:** Prohibitionism seeks to punish any acts or persons involved in prostitution, including the woman herself. Although everyone involved in prostitution, including the women, clients and third parties, are subject to legal penalties, it is rarely the case that States enforce the laws against traffickers and/or clients.

■ **Abolishing paradigm:** Abolitionism calls for the elimination of laws on prostitution and rather than criminalising the transaction between the prostitute and the client, the abolitionist strategy targets third parties such as pimps, brothel-keepers, traffickers and the Government. The long term goal of abolitionism is the complete abolition of prostitution.

■ **Regulation paradigm:** Regulationism is characterized by official State tolerance of what is often understood to be a 'necessary evil', by attempting to control prostitution through government regulatory schemes. Such schemes are either classically regulated by government authorities primarily through legally permitted brothels or by means of a neo-regulatory system whereby indirect



mechanisms, such as taxes or mandatory health examinations, regulate prostitution.

**Decriminalisation paradigm:** The decriminalisation paradigm views prostitution as work and seeks to decriminalise prostitution and the exploitation of prostitution by third parties. Decriminalisation is focused on the coercion and violence rather than on prostitution itself and seeks to utilize labour laws to address working conditions and the rights of prostitutes.’

*(UN Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, 1997)*

In a similar manner the ‘Study on National Legislation on Prostitution and the Trafficking in Women and Children’ conducted for the European Parliament in 2005 distinguishes between systems of abolitionism, new abolitionism, prohibitionism and regulationism:

■ **‘Abolitionism:** A country falls under this model if outdoor and indoor prostitution are not prohibited. The State decides to tolerate prostitution and not to intervene on it. Prostitution by adults is not subject to punishment, but profiting from another person’s prostitution is, however, criminalised.

**New Abolitionism:** This model is a development on the ‘abolitionism’ model. A country falls under this model if outdoor and indoor prostitution are not prohibited, but with reference to the latter the State intervenes to explicitly prohibit the existence of brothels.

**Prohibitionism:** A country falls under this model if outdoor and indoor prostitution are prohibited. Parties involved in prostitution can be liable to penalties, including, in some cases, the clients.

**Regulationism:** A country falls under this model if outdoor and indoor prostitution are regulated by the State and therefore not prohibited when exercised according to this regulation. Prostitutes are often registered by local authorities and are in some cases obliged to undergo medical controls.’

*(IPOL/C/FEMM/ST/2004-05, 2005)*

Both these models represent the most prominent approaches in research on sex work. Their use of terms such as ‘tolerance’ or concepts such as ‘legislation’ or ‘abolitionism’ are characteristic of the definitions that emerge from such approaches. For example, these models for governing sex work use the term ‘tolerance’ to designate a passive form of tolerance, thereby producing a negative conception of sex work and excluding any notion of acceptance. The resulting exclusionary stance does not include recognition in the way that ‘active tolerance’ would. By the same token, the term ‘legalisation’ is used too generally, as it could be understood as referring to a lift on the ban on prostitution or to the legalisation of prostitution as a form of gainful employment, i.e. recognition within the context of labour rights and legislation. Although ‘abolitionism’ also refers to an approach that aims at banning prostitution without punishing the sex workers, in these state models the term refers to an approach in which state interventions and regulations on prostitution are formally nonexistent.

Aside from the inaccurate use of terms, these categorisations pose a number of other problems, as they

- largely refer to the existing (or lack of) legislation on sex work rather than to the legislative measures that actually affect sex workers;
- create stable categories that are incapable of considering the constant dynamics and fluctuations of state approaches to governing sex work;
- place an emphasis on one generalising aspect of the states' formal approaches, thereby ignoring the dynamics and interaction between the real political affects of the legislative measures;
- focus on national regulations of sex work and disregard local measures and practices;
- negate the overlaps i.e. transitions between the state models;
- make it difficult to analyse national and European policy-making trends in a differentiated manner, which are visible in the actual practices and treatment of sex workers (e.g. 'regulationism' does not describe the characteristics or the extent of the regulations).

Focusing on the impact of the various legal systems on the human rights of sex workers, we suggest a different assessment of the specific national contexts to highlight the complexity and intersectionality of the approaches.<sup>6</sup> For this purpose, we differentiate between the following interrelating frames that were derived from the assessments of the national legislations and policies governing prostitution:

- ▶ The frame of sex work as a threat to morality
- ▶ The frame of sex work as a threat to public order
- ▶ The frame of sex work as a threat to public security
- ▶ The frame of sex work as a threat to public health
- ▶ The frame of sex work as a violation against human dignity
- ▶ The frame of sex work as a threat to gender equality
- ▶ The frame of sex work as violence and force
- ▶ The frame of sex work as criminality/organised crime
- ▶ The frame of sex work as trafficking
- ▶ The frame of sex work as a threat of increased migration
- ▶ The frame of sex work as a source for state income through taxing
- ▶ The frame of sex work as an occupational activity

Sex work in Europe is predominantly discussed within the contexts of morality, violence, criminality and trafficking but seldom within the frame of human rights, autonomy or self-regulation. The different legal systems bear common elements that have similar consequences on sex workers' human rights and on their access to public health and social care services. In this report, the national legislations were assessed by focusing on the following dimensions:

- How is sex work perceived within the national context?
- Who is targeted by the legislative measures?





- What actions are regulated and in what way?
- How are the measures implemented and what are the consequences?

These assessments form the basis of the analysis of the national approaches to sex work.

## National legislations and policies

### AUSTRIA

#### Dominant elements

Sex work is considered 'indecent'. Sex work is neither recognised as a trade or a profession nor as a gainful occupation and there is currently no possibility to legalise employment relationships based on sex work. At the same time, it is compulsory for sex workers to be registered with the local authorities (municipal office and in some provinces the police department). Sex workers must undergo regular mandatory health checks and are taxed as self-employed workers. Work in prostitution is regulated in part by a brothel system and in part by a zoning system that determines where (and when) sex work is permitted. Sex workers who are national or EU citizens may officially register as sex workers. Since 2003, asylum seekers are also able to engage in sex work within the legal framework of the 'new self-employed' regulation. Until 2006, non-EU citizens could work in the sex industry with a so-called 'prostitution visa', i.e. its equivalent for dancers, which actually was a short-term residence permit for self-employed individuals to work in prostitution. Due to restrictive immigration legislation, this permit no longer exists. It has been 'substituted' by a standard visa (visa type

D+C), a new short-term (3-6 months) legal permit which, in practice, is not being issued. Sex workers who had previously been working and living legally in Austria for years on the basis of the former residence permit have effectively become illegalised.

#### Dominant frames

Sex work as a threat to morality, to public health, to public order, of increased migration, sex work as trafficking, as a source for state income through taxing.

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### BELGIUM

#### Dominant elements

Sex work per se is not a criminal offense but companion activities are. Any conduct that causes an offense to public order is punishable. This can include sex work. Kerb-crawling and soliciting are considered criminal offenses. Advertising services of a sexual nature is considered a criminal offense. Due to anti-trafficking legislation, there are restrictions on establishments that generate income from sex work. This may result in the closing of such establishments. There is a zoning policy that regulates where prostitution is permitted.

#### Dominant frames

Sex work as a threat to morality, to public order, sex work as criminality/organised crime, as trafficking.

### BULGARIA

#### Dominant elements

The legal framework does not directly address sex work but companion activities are criminalised. Organising and offering venues for prostitution is

punishable. Sex workers are fined or punished for not engaging in a 'socially beneficial' form of labour. This is applied in particular against street sex workers. Sex workers are often charged for violating public order, for not carrying or not holding ID cards and other similar offenses. Because sex work is not clearly regulated, sex workers experience a great amount of arbitrary treatment from the police and the authorities. Massage and escort services are legal and liable to taxation.

#### **Dominant frames**

Sex work as a threat to public order, to public security, sex work as criminality/organised crime.

### **CZECH REPUBLIC**

#### **Dominant elements**

Prostitution can be considered a public offense if it causes public annoyance. Engaging in prostitution at a public venue may also be punished under the offense of 'rioting' as the offender is committing a 'rude indecency' in a place open to public. Municipalities have the right to designate areas for sex work or to ban sex work altogether. This has pushed sex workers from working on the streets into working in private apartments, clubs and windows. Sex workers must stay outside the borders of the municipality, working along highways and roads.

#### **Dominant frames**

Sex work as a threat to public order, to public security

### **DENMARK**

#### **Dominant elements**

Prostitution is not per se prohibited as long as it is not one's sole source of income. Brothel keeping is criminalised. Outdoor prostitution is regulated. The police may prohibit anyone to stop on a certain spot or walk up and down shorter distances if any of these activities result in inconvenience for the persons living around or people passing by. Prostitution is considered a 'social problem'. There are two on-going discussions related to the regulation of sex work:

- the debate on how to combat trafficking and the implementation of the National Action Plan (2007–2010);
- the debate on the criminalisation of clients which is considered as a tool to combat trafficking.

#### **Dominant frames**

Sex work as a threat to public order, sex work as criminality/organised crime, as violence and force, as trafficking, as a threat to gender equality.

### **ESTONIA**

#### **Dominant elements**

The legal framework does not directly address sex work. Brothel ownership is prohibited. Public discussions centre around the rapid growth of the national sex industry, the debate on the criminalisation of clients and the prevention of trafficking.

#### **Dominant frames**

Sex work as criminality/organised crime, as violence and force, as trafficking, as a source for state income through taxing.





## FINLAND

### Dominant elements

Prostitution is considered a 'social problem'. Restrictive (legal) measures are implemented to support the objective of abolishing prostitution. Combating trafficking is highly prioritized and is a main element in the debates around sex work. Restrictive measures to combat trafficking are used as a justification to implement restrictive prostitution policies. The main focus is on curbing the demand side. Since 2006, buying sexual services from procured prostitutes and victims of trafficking is prohibited. According to the law concerning public order, it is prohibited to sell and buy sexual services in public places. Advertising for sexual services and brothel ownership are prohibited. According to the Aliens Act, third-country citizens may be refused entry if there are reasonable grounds to suspect that they may sell sexual services (a person has to be under suspicion, entry cannot be refused by the appearance). According to the tax law, all income is taxable. There is only a small and narrow prostitution scene which is not criminalised or restricted by some other regulations. Some forms of sex work can be carried out legally but the social stigma is heavy in every forms of sex work.

### Dominant frames

Sex work as a violation against human dignity, sex work as a threat to public morality, to gender equality, to public order, sex work as criminality/ organised crime, as a threat of increased migration, as trafficking.

## FRANCE

### Dominant elements

The legal framework does not directly address sex work. The 2003 Law on Domestic Security reclassified 'soliciting' as a serious offence and reintroduced 'passive soliciting' which criminalises soliciting by any means – including a posture, even passive. Passive soliciting concerns any person who has the intention to offer sexual service for money. In practice, the law against passive soliciting is wide enough to also punish clients under this offence. Soliciting is forbidden in any public place such as streets, bars, public gardens, roads, park places, woods etc. The legislation is national but its application is regional. In 2007, several strengthening municipal decrees were approved in some cities. Municipal decrees have been used against sex workers to prohibit them from working at their habitual place of work and police controls have increased as well. In 2007, several clients of sex workers were arrested on charges of passive or active solicitation. In some cities, clients undergo pressure and psychological harassment from the police forces in order to incriminate sex workers but are not fined. Migrants who are accused of soliciting can be deported. Concerning indoor sex work, there are no regulations but in practice whoever lets an apartment, house or building for prostitution, or tolerates the presence of sex workers in bars, clubs, dance halls, or other public facilities, can be punished (under the crime of procuring). As procuring is a wide notion, partners of sex workers can also be charged with pimping. Public debates are dominated by abolitionist framings of prostitution and by the construction of prostitution as a security and immigration problem.

### Dominant frames

Sex work as a threat to public security, to public order, sex work as criminality/organised crime, as violence and force, sex work as a threat to gender equality, of increased migration, sex work as trafficking.

## GERMANY

### Dominant elements

Sex work is not recognized as a trade or a profession but it is recognized as an activity. The Prostitution Act of 2002 (Act Regulating the Legal Situation for Prostitutes) is a national law addressing civil, labour and social aspects of the relationships between sex workers and their clients and/or employers. It had the following effects:

- It abolished the ‘immorality’ aspect of sex work by permitting self-employment as well as employment contracts in prostitution. It gave sex workers access to the social security systems such as unemployment, pension and health insurance.

- It declared the exchange of sexual activities for payment legally valid. It made the (verbal) agreement between sex worker and client regarding the service and price a legally binding contract. Sex workers can enter into an employment contract with a brothel owner and have a legally enforceable right to wages. Brothel owners, who, as employers, close a work contract with a sex worker, can only prescribe the place of work and the working hours. Otherwise they can be accused of pimping. It is forbidden for the employer to prescribe sexual practices and the price of the sexual service.

- The Prostitution Act also decriminalised the promotion of sex work, thus making the promotion of appropriate working conditions no longer punishable.

There are no uniform guidelines or standards as to how the Prostitution Act is to be implemented: it is interpreted and applied differently in each of the federal states. It only considers documented migrant sex workers. Improvements in the conditions for migrant sex workers depend upon their residential status. It is not possible to obtain an entry visa for the purpose of working as a sex worker. Self-employed sex workers have to register at the finance office as ‘sex worker’, ‘model’, ‘hostess’, or ‘escort’ in order to get a tax number. The income of a self-employed sex worker is classified as the income of a business enterprise and an annual income tax declaration is to be submitted. Dependently employed sex workers must, on principle, provide their employer with an income tax card. The income tax is retained in this way. Obligations prescribed by the Social Security Code, such as payment of health and pension insurance contributions, are taken into account. Brothels are only permitted in commercial and industrial areas. Self-employed sex workers may also work in residential areas.

### Dominant frames

Sex work as an occupational activity, as a source for state income through taxing.

## GREECE

### Dominant elements

Sex workers must register with the health department of the regional authorities and with the municipal authorities. They are required to undergo



regular mandatory health checks. Only unmarried women can register as sex workers. Outdoor prostitution is prohibited. Premises for indoor prostitution must not be located in buildings near schools, churches, preschools, nursery schools, sport centres, libraries or similar places. Self-employed sex workers have to pay taxes as self-employed persons.

#### **Dominant frames**

Sex work as a threat to public health, sex work as trafficking, as criminality/organised crime.

## **HUNGARY**

#### **Dominant elements**

Prostitution is considered a legal enterprise but is regulated by repressive measures. Sex workers should register as self-employed, pay taxes as well as social security and health care fees. The Hungarian Tax Authority requires sex workers to have a tax number and be registered with the local social and health insurance agencies. Sex workers can offer sexual services only if they possess the prescribed medical certificate, which is valid together with the identity card. In order to obtain a license to provide sexual services, sex workers must prove they have no criminal record, a flat lease, registration with the local government, a school report and a birth certificate. There is a strong zoning policy that refers to indoor and outdoor areas and largely prohibits prostitution. In practice, there are hardly any actual 'zones of tolerance' where sexual services may be offered. There are no maps that clearly mark the boundaries of the 'protected' zones. There is no communication about who is in charge of designating such zones or how they come to be defined as such.

#### **Dominant frames**

Sex work as criminality/organised crime, sex work as a threat to public security, to public order, to public health, sex work as a source for state income through taxing.

## **ITALY**

#### **Dominant elements**

Indoor sex work is prohibited though in practice, private apartments with only one sex worker are 'tolerated'. The state seeks to prohibit or drastically reduce street prostitution. Soliciting is subject to a fine and is defined by law as 'unabashedly inviting clients on the street'. It does not, however, prohibit loitering whilst awaiting clients on the street. The Domestic Security package of June 2008 invests mayors with the judicial power to declare anything that might endanger the security and decorum of the cities an emergency. For this reason, sex workers and their clients have been subject to special ordinances that allow municipal police to administer fines. In addition, the Public Security Law enables the local chief constable to impose and enforce a mandatory expulsion of persons from a city in which they do not officially reside. Currently, EU citizens who violate this ordinance are fined, while non-EU citizens, especially from African countries, are put in temporary detention/identification centres and, in accordance with the laws on immigration, are subsequently deported.

#### **Dominant frames**

Sex work as violence and force, as criminality/organised crime, sex work as a threat to public security, to public order, of increased migration, sex work as trafficking.

## LATVIA

### Dominant elements

Prostitution is controlled by the Regulations on the Restriction of Prostitution, which requires sex workers to work in places determined by local authorities. Sex workers must undergo regular mandatory health checks and carry a medical card, which is to be issued by a certified venereal doctor. Those who do not carry a health card or who work in the wrong area may be fined. Sexual services can be provided at premises that are owned or rented by sex workers themselves. The rules outlaw services of third parties, as well as by sex workers working in groups. Prostitution is prohibited in areas next to cultural, educational, religious, entertainment, health care and sport institutions and buildings where state and municipal authorities are located. Because the creation of brothels is not allowed, hotel rooms cannot be offered for prostitution, and administrative punishment for hotel owners who ignore this rule has been introduced.

### Dominant frames

Sex work as a threat to public health, sex work as violence and force, as criminality/organised crime, sex work as a threat to public security, to public order, sex work as trafficking.

## LITHUANIA

### Dominant elements

Sex work is prohibited. However, prostitution is not a criminal but an administrative offence and as such subject to a fine. Legislation is exclusively strict, punishing both sex service providers and clients. A person who was engaged in prostitution shall not be prosecuted to administrative liability if the involve-

ment resulted from economic or other dependence, was brought about by force, coercion or deceit, or if someone was engaged into prostitution in whatever way whilst being underage or a victim of trafficking who is recognized as a victim in the legal proceedings. Current discussions about legal changes centre on regulations that would allow more state control of the sex industry, the implementation of health control measures for sex workers and would generate state income through taxation.

### Dominant frames

Sex work as criminality/organised crime, as violence and force, as trafficking.

## LUXEMBOURG

### Dominant elements

Sex work in Luxembourg is regulated and includes street prostitution and prostitution in flats. Street prostitution is regulated through zoning policies. Sex workers may work between 8pm and 3am in the streets foreseen by the regulation. The local authorities regulate the areas for street prostitution. Current proposals for legal changes aim at banning the purchase of sexual services. The authors of the proposed law argue for the substitution of conventional sentences (fine and deprivation of liberty). This means that they want to focus on awareness raising activities for clients. They intend to modify the present law in the following meaning: A person who purchased or attempted to buy sexual services will be punished by works of general interest respectively mandatory participation in interactive seminars on prostitution. The debates around possible legal changes have resulted in confusion and insecurity among sex workers and clients.



### Dominant frames

Sex work as a threat to public order, sex work as violence and force, sex work as a threat of increased migration, sex work as trafficking.

## NETHERLANDS

### Dominant elements

Sex work is considered a legitimate occupation and sex workers have the same rights and obligations as other professionals. In 2000, the ban on brothels was lifted, making it legal to employ sex workers. The majority of sex workers work in sex clubs or red light windows; others find clients in hotels or bars or through escort services. Window soliciting occurs in most large towns and cities. In practice, street prostitution is almost impossible due to strict regulations. The legalization of brothels enables the government to exercise more control over the sex industry. The local authorities formulate and implement policies, lay down the rules for brothels operating within their jurisdiction and issue licences for brothels. This enables local authorities to exert influence on the locations of sex work – including outdoor prostitution – which must conform, among others, to zoning and urban renewal plans. They prohibit the employment of people without a valid residence permit. The police conduct frequent controls of brothels. Nationals of countries outside the European Union and the European Economic Area who do not have a valid residence permit are not allowed to work in the Netherlands and thus are not allowed to work in the sex industry. A new law proposal is being discussed that aims to bind every form of sex work to a licence and to homogenise the implementation of licensing regulations throughout the country. All forms of sex work would have to operate

within a licensing system, i.e. all sex businesses must have a license and self-employed sex workers must register. Sexual services that are provided outside of the licensing system would be considered ‘illegal’. The proposed law then foresees the criminalisation of the purchase of sexual services from the ‘illegal sector’. This includes sanctions against clients who use the services of non-registered sex workers and who visit non-licensed sex businesses. Moreover, this also concerns the use of sexual services provided by victims of trafficking and of sex workers without a residence permit.

### Dominant frames

Sex work as a threat to public order, to public security, sex work as criminality/organised crime, as an occupational activity, as a source for state income through taxing, sex work as a threat of increased migration, sex work as trafficking.

## NORWAY

### Dominant elements

Sex work is regarded as an undesirable social problem and is not considered a form of labour. The buying of sexual services is regarded as violence against women. Since 2009, section 202a of the General Penal Code is in force that criminalises the purchase of sexual services. It is applicable also to acts committed abroad by any Norwegian national or any person domiciled in Norway. Setting up a business, renting and advertising for sex work are also prohibited. The police frequently enforce the regulations on renting out premises. This usually results in the sex workers losing their workspace (hotels, private flats, massage parlours). Income from prostitution is theoretically subject to taxing but this is rarely enforced.

A Supreme Court decision from 1999 ruled that prostitution is not work. Migrants cannot apply for a work permit for sex work and thus cannot be charged for unlicensed labour as sex workers. In practice, the police rigidly enforce immigration legislation regarding migrant sex workers. Regular checks often result in deportation if migrants cannot provide valid identification papers, a residence permit or that they have enough money to support themselves.

#### **Dominant frames**

Sex work as a violation against human dignity, sex work as a threat to gender equality, sex work as violence and force, sex work as trafficking.

## **POLAND**

#### **Dominant elements**

Sex work per se is not punishable. Taking profits from sex work by third parties is punishable. This includes keeping a brothel. Sex workers' income is not liable to taxation. The sex industry is organised in outdoor areas (streets, train stations) as well as in hotels and through sex clubs that are officially registered as (escort) agencies. The agencies may not officially act as intermediaries for offering sexual services and thus are registered as organisations that are renting premises to private individuals. This makes sex workers solely responsible for all consequences. Internet soliciting is an important part of the market. Police registration of sex workers is prohibited but in practice the approach is ambiguous. Sex work is not recognized as an occupational activity and thus there are no health and social insurance regulations. Restrictive measures usually focus on closing down agencies and penalizing advertising for sex work. Liberal positions in current public debates

consider legal changes that would recognize sex work as an occupational activity and thus protect sex workers from exploitation. A main factor in these debates is the generation of state income through prostitution.

#### **Dominant frames**

Sex work as a threat to public morality, to public order, to public security, sex work as criminality/organised crime.

## **PORTUGAL**

#### **Dominant elements**

Sex work per se is not prohibited but organised forms of sex work are. Sex work is not recognized as an occupational activity and there is no legal framework to protect the rights of sex workers. It is not possible to receive a work contract for working as a sex worker. There are no specific provisions for migrants regarding sex work. For non-EU citizens, getting a residence permit depends on the existence of a work contract. As sex work is not recognised as work, it is very difficult for migrant sex workers to obtain a work contract. Sex workers can be charged because of offences against public morality but this is rarely enforced.

#### **Dominant frames**

Sex work as a threat to public morality, to public order, sex work as criminality/organised crime.

## **ROMANIA**

#### **Dominant elements**

Sex work is criminalised, nothing concerning sex work is legal. The Penal Code refers to sex work in the following manner: 'the behaviour of a person who





makes a living by engaging in sexual intercourse with different persons can be punished by a prison sentence of three months to three years'. Therefore, there are currently rarely any forms of prostitution that are not bound to some level of procuring, which puts sex workers in an extremely vulnerable situation. In the past, prostitution was more visible, as most of the sex workers worked on the streets. Since the EU accession in 2007, more aggressive and frequent police controls have led sex workers to become less visible and now more work in clubs, bars and apartments. The police fine sex workers daily, resulting in expensive fees that are impossible for sex workers to pay. Another reason for the lack of visibility is that many sex workers have left the country to work in other EU countries.

#### **Dominant frames**

Sex work as a violation against human dignity, sex work as a threat to public morality, sex work as criminality/organised crime, sex work as a threat to public order, to public security.

## **SLOVAKIA**

#### **Dominant elements**

The legal framework does not explicitly address sex work. Although not a crime under the current penal code, prostitution cannot officially be carried out as a profession, because any commercial activity must comply with accepted standards of morality and sex work is considered immoral. Employees working as dancers, in strip clubs, bars or massage parlours belong to an illegalised sector of the labour market. Sex workers working in clubs are usually hired as dancers. Generally, the provision of sexual services is not part of their official contract, if they have a con-

tract. Part of the employee's pay goes to club owner or to the owner of private flats. Although prostitution is not forbidden by law, municipalities are free to widen the scope of what is sanctioned as a misdemeanour on their territory. Some have adapted ordinances that make it illegal to offer or provide sexual services in public places.

#### **Dominant frames**

Sex work as a threat to public morality, to public order, to public security, sex work as criminality/organised crime.

## **SLOVENIA**

#### **Dominant elements**

Until 2003, prostitution was prohibited under the 'Act on Criminal Offences against Public Order and Peace'. With amendments to this act, prostitution is no longer considered a criminal offence. However, this act still contains a provision that imposes a prison sentence to anyone who cooperates in, facilitates, or supports prostitution. Public debates and, consequently, media reports on prostitution, when it was decriminalised in 2003, approached the topic of prostitution in a bipolar manner: on the one hand, sex work was discussed as an economic activity and on the other hand, it was framed as a threat to 'public morality'. Sex workers were consequently presented either as professionals, or, usually referring to migrant sex workers, as victims.

#### **Dominant frames**

Sex work as a threat to public order, to public security, sex work as trafficking, sex work as a threat to public morality.

## SPAIN

### Dominant elements

Sex work is not prohibited but not considered an occupational activity. Making profit of someone's work in prostitution is – under certain conditions – prohibited. On a national level, sex work is not regulated. Each council that intends to regulate sex work can pass by-laws or design specific programmes relating to prostitution. In certain cities, outdoor prostitution is prohibited under council rules regarding uses of public spaces. Laws against the use of public space and special programmes relating to sex work usually aim at prohibiting street prostitution and eradicating sex work. Measures include fining and harassing sex workers and their clients, the closing to traffic of a certain area where sex workers would work, advertising campaigns that frame sex work as sexual exploitation. There is a tendency to prohibitionist policies especially in the most important councils of the country, and a tendency to abolitionist policies on a national level. A national congress on prostitution defined sex work according to the abolitionist UN convention from 1949 and urged to work against the idea of prostitution as work.

### Dominant frames

Sex work as a violation against human dignity, as violence and force, sex work as a threat to public order, to public security, sex work as trafficking, sex work as a threat of increased migration.

## SWITZERLAND

### Dominant elements

Based on the constitution, which guarantees the freedom of trade (commerce), self-employed sex work is a legal activity. This means that a resident (depending on resident status, only with long term resident permit) is protected by the constitution from government interventions regarding one's freedom of trade. Prostitution is only legal if practiced as an independent (freelance) and in areas where it is not prohibited. In some cantons employment contracts are allowed (or at least the possibility is discussed on a political level) and many sex business owners find ways to evade the rules. Legally a sex worker should not be employed (based on civil law). As independent workers, sex workers have to pay taxes and have to follow the same regulations as other independent professionals working in other fields. There are laws in different fields regulating prostitution, mostly in civic and penal law. The cantons are given the right to regulate (in a law or regulation) prostitution in order to avoid public disturbance. They can decide about areas, hours etc. to allow or prohibit sex work. The towns can also regulate on this matter. Some cities have officially prohibited prostitution in the traditional red light district, but the sex business continues as before, with more police interventions fining sex workers heavily. Some local laws or regulations require sex workers to register with the police or a commercial department. Non-EU migrants can work as cabaret dancers with a special short time permit. Several cantons have stopped or are considering a halt on issuing permits to dancers from outside of the European Union. This is linked the argument that the situation of sex workers with a permit is more vulnerable and that busi-





ness owners are more likely to take advantage of people working with such a visa or force them to work in the sex industry. This means that migrants from outside the EU now work without a permit and therefore lack any form of protection, which makes them more vulnerable.

### **Dominant frames**

Sex work as an occupational activity, sex work as a threat to public order, sex work as a source for state income through taxing, sex work as trafficking.


## **UNITED KINGDOM**

### **Dominant elements**

Selling sex and working alone as a sex worker are not prohibited but companion activities are. Loitering, kerb crawling and soliciting for the purpose of prostitution in a public place are prohibited, thereby criminalising street-based sex workers. Brothel keeping (a brothel is defined as two or more sex workers working together in premises) is prohibited. The criminalisation of the sex industry has made it impossible for sex workers to work collectively for their safety, while the criminalisation of clients has driven street prostitution into more isolated and dangerous settings. The sex industry is legislated primarily through criminal and public nuisance legislation. The earnings of sex workers are considered taxable but there is no special part of legislation that refers to taxing sex workers, nor is there a special coding for sex workers who register to pay income tax. A number of recent court cases (appeals that have been lost by sex workers and sex businesses) have resulted in the authorities looking to proactively enforce tax laws and collect taxes within the sex industry. There is no immigration law that refers

explicitly to sex workers. Visas are granted and extended on the basis of 'good character', which may be interpreted as reason to deny migrant sex workers permission to enter or remain within the country. There has been on-going pressure to define prostitution as 'violence against women' and to focus government and charitable resources on 'rescuing' women / sex workers and 'punishing' men / clients. Trafficking for the purpose of prostitution has become a government priority, with high profile media attention. Further repressive legislation to control the sex industry is being considered. Proposals have been put forward to criminalise clients of sex workers who are controlled for gain, restrict lap dancing clubs through greater regulation; and to enable police and local authorities to close brothels. There is also discussion about criminalising the purchase of sex.

### **Dominant frames**

Sex work as a violation against human dignity, sex work as a threat to public morality, sex work as criminality/organised crime, sex work as a threat to public order, to public security, sex work as violence and force, sex work as a threat to gender equality, the frame of sex work as trafficking. 



## SUMMARY

### Criminalisation through legislations and policies

The dominant frames that represent state approaches towards sex work result in a set of laws that centre around the exclusion of sex workers and often make legal prostitution virtually impossible. This includes:

- legal frames that consider pimping, pandering and procuring as crimes and thus often also criminalise sex workers' families, partners, co-workers and managers
- laws that aim to prevent the organisation of prostitution into a business or criminal enterprise thus also criminalising sex workers, groups of sex workers that work as collectives and business managers
- laws that target the promoters of prostitution and also criminalise business managers who provide safe and fair working conditions
- laws that aim to eliminate the 'public nuisance' aspects of prostitution by prohibiting its visible components such as (active and passive) soliciting, negotiating, advertising, kerb-crawling and loitering and criminalise sex workers and their clients

- laws that prescribe registrations and mandatory health checks for sex workers and thus promote a public health policy that excludes and stigmatises sex workers

These regulations that focus on 'prohibition', 'prevention' (of disease, organised crime, abuse, public nuisance) and 'protection' (of the public, the family, of morals and of minors) do not consider the prevention of human rights violations against sex workers and the protection of sex workers. These regulations have a seriously harmful impact on sex workers, their working and living conditions as well as their health and well-being. Sex industry laws and regulations, however, should ensure the full protection of sex workers' human rights, including migrant and mobile sex workers, and assist sex workers to exercise greater control over their work environment.

The following overview analyses the types of laws that may apply in the various state jurisdictions and the implications for sex workers who must work within these legal frameworks.<sup>7</sup>

### Law

### Implications

#### Criminalising living off the earnings of prostitution

- ▶ Restricts how sex workers can spend their money. A sex worker cannot choose to support their partner, adult children or any other adult without exposing that person to criminal prosecution.

#### Criminalising procuring (includes recruiting people to work in the industry under threat, coercion or with drugs)

- ▶ Stereotypes the sex industry as requiring specific legislation to prevent procurement.
- ▶ Criminal laws exist in every jurisdiction to deal with procurement in all industries.

#### Criminalising soliciting

- ▶ Assumes that soliciting is always overt and offensive, when many clients like being approached for sex and sex workers know how and who to approach. The same is generally true for clients.
- ▶ Specific laws directed at the sex industry are not necessary and merely reinforce stereotypes about sex workers, primarily street workers.
- ▶ Public nuisance laws exist in every jurisdiction to deal with offensive public behaviour.



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<b>Compulsory testing of sex workers for sexually transmitted infections</b>	<ul style="list-style-type: none"><li>▶ Stigmatises sex workers as diseased and irresponsible.</li><li>▶ Targets sex workers, rather than clients or the general community, as responsible for STI transmission.</li><li>▶ STI tests do not provide proof of sexual health due to window periods for various infections. Further, tests are not always 100% accurate.</li><li>▶ Encourages clients to request services without prophylactics as they assume sex workers are 'clean'.</li></ul>
<b>Restricting brothels and private workers to industrial and peripheral areas</b>	<ul style="list-style-type: none"><li>▶ Industrial and peripheral areas are inappropriate for night time activity as they are badly lit, isolated and present security risks for sex workers.</li><li>▶ Restriction to industrial and peripheral areas is not economically viable for private sex workers.</li><li>▶ By definition private work takes place in residential areas and is discrete and devoid of nuisance problems such as noise and parking.</li><li>▶ Sex work is not an industrial activity but is a commercial services industry.</li></ul>
<b>Registration of individual sex workers</b>	<ul style="list-style-type: none"><li>▶ Registration stigmatises sex workers.</li><li>▶ It is unnecessary to register sex workers.</li><li>▶ Privacy concerns arise for sex workers such as who has access to information, how is it protected and maintained, what types of information are required and for how long is it kept.</li></ul>
<b>Licensing and probity checks</b>	<ul style="list-style-type: none"><li>▶ Excludes many sex workers from ownership of sex industry businesses as they may be excluded from applying for licenses due to past sex industry related charges.</li><li>▶ The expense of applying for licenses for sex industry businesses is usually prohibitive and individuals and small operations are unable to afford application/licensing fees.</li></ul>
<b>Regulations: planning permits, licensing, permits, land use approval, landlord approval etc.</b>	<ul style="list-style-type: none"><li>▶ The administrative and legislative requirements to comply with a myriad of regulations are complex and costly.</li><li>▶ Regulatory mechanisms may apply to small operators or private sex workers who are unable to comply with detailed approval processes.</li><li>▶ Strict regulatory requirements encourage the creation of a legal and illegal industry operating alongside each other.</li></ul>
<b>Local council jurisdiction on the locations of sex businesses</b>	<ul style="list-style-type: none"><li>▶ Planning locations may be highly restrictive and selectively directed at sex workers and sex industry businesses. For example, private single workers may be forced to comply with land use provisions.</li><li>▶ Many councils use local powers to deny sex workers and businesses location permits arbitrarily.</li><li>▶ Sex workers and businesses must undertake expensive legal action to overturn unlawful council decision to refuse to grant a licence.</li><li>▶ Local councils may use powers as a revenue raising measure.</li><li>▶ Many businesses refuse to comply with complex and expensive processes and continue to operate illegally.</li></ul>
<b>Bans on brothel keeping, bans on premises to be used for the purposes of prostitution</b>	<ul style="list-style-type: none"><li>▶ Denies sex workers the relative economic and physical security of legal brothel work.</li><li>▶ Prevents sex workers from forming collectives to pool their resources to meet costs of premises, reception staff, security, etc.</li></ul>

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The evaluation of the national legislations and policies throughout Europe regarding sex work reveals the alarming extent of criminalisation and exclusion of sex workers. The 'sex work frame', an approach that recognizes sex work as an occupational activity and ensures that it is also endowed with labour and social rights, is only rarely visible and – where implemented – only takes EU citizens into consideration. Migrant sex workers are forced into the dominant discourse on trafficking that spans all of Europe and uses the rhetoric of alleged victim protection to implement restrictive regulations on migration and prostitution. Within this context, migrant sex workers are not perceived as having any agency and their rights as migrants and as workers are constantly being violated by the restrictive policies and practices. This includes the widespread measures that in effect prohibit street prostitution, collective forms of work and support client criminalisation. Separating the discourse around trafficking from the discourse on sex work is a necessary step in order to create an approach centred on the protection of sex workers' rights. This approach must recognise the current transnational reality of sex work and must include sex workers as experts with equal rights in conceptualising and implementing legislation and policies.



<sup>6</sup>The following frames for the most part originate from a comparative study of prostitution politics in Austria and Slovenia (Sauer 2006). For an in-depth application of frame analysis to the assessment of sex work policies cf. Sauer 2006.

<sup>7</sup>Cf. Scarlet Alliance and the Australian Federation of AIDS Organisations, 2000

## **SEX WORK IN THE CONTEXT OF MIGRATION**

**'Everyone has the right  
to freedom of movement  
and residence within  
the borders of each State.**

**Everyone has the right  
to leave any country,  
including his/her own,  
and to return  
to his/her country.'**

(Universal Declaration  
of Human Rights,  
1948, Article 13)



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# MIGRATION

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✦ Migrant sex workers represent a significant and growing number of sex workers in Europe. Research conducted by the TAMPEP network shows that, in 2008, there was an average of 65% of migrant sex workers within the EU-15 countries, Norway and Switzerland.<sup>8</sup> In contrast, migrant sex workers still only make up a small percentage – on average 10% – of those working in sex work in the ten Central and South/Eastern European and Baltic countries that joined the EU in 2004 and 2007.<sup>9</sup> These figures further substantiate the trend of migration to EU-15 countries that – as countries of the West – generate a promise of better working and living conditions.

The majority of migrant sex workers (64%) in the EU-15 countries, Switzerland and Norway are third-country nationals, that is non-EU citizens, primarily from Eastern European, Central Asian, African, Latin American and Asian countries. The remaining percentage of migrant sex workers is mainly composed of EU citizens from the Central and South/Eastern European and Baltic countries that joined the European Union in 2004 and 2007 (EU-8 countries, Romania and Bulgaria). In the comprehensive TAMPEP study of 2009, a total of 60 different nationalities among migrant sex workers were recorded.<sup>10</sup>

In the countries of destination, the possibilities for migrants to find work and residence opportunities depend upon their legal status. From this, different conditions and circumstances arise that determine a person's access to residence and work, but also to public health and social care systems. Although categorisations are instable constructions because conditions are so varied and continuously changing, in order to analyse the impact of policies on migrant sex workers, this study has laid out the following basic categories:<sup>11</sup>

## ■ Those with the same rights as national citizens

... are persons with a legalised status who have been living in an EU country for several years, hold a permanent residence permit or have the right to permanent residence, are considered equal on the basis of marriage to an EU citizen or are themselves a national of one of the EU-15 countries. On these grounds, they are considered equal to national citizens in terms of their right to residence and work and free access to the labour market.

## ■ EU citizens

... are nationals from the EU-15 countries and have the same rights as national citizens and free access to the labour market.

... are citizens from the countries that joined the European Union in 2004 and 2007 (with the exception of Cyprus and Malta<sup>12</sup>) and, although they have the same right to the freedom of movement and residence, there are restrictions on their right to reside for the purpose of working as an employee. During the transition phase, a period of up to seven years after the accessions in 2004 and respectively in 2007, restrictions may be imposed on the freedom of



movement for the purpose of work for persons from, going to and between the new member states. The restrictions vary from country to country. In 2009, restrictions for citizens from EU-8 countries will continue to be imposed in Austria, Germany and the United Kingdom.<sup>13</sup> Since 1 May 2009, 15 of the EU-25 countries have fully opened their labour markets to Romanian and Bulgarian nationals.<sup>14</sup> Restrictions remain in place in the other ten countries. All EU citizens are permitted to work in freelance (i.e. self-employed) work. There are no specific restrictions regarding this type of labour for the transition period.

#### ■ As asylum-seekers

... persons receive the right to reside in a country until their asylum-seeking process has been completed. During this time, they must comply with the laws on asylum, which often impose exceptional restrictions on their mobility and access to the labour market. In addition, the duration of their stay relies on the duration of their application process. If a person's application for asylum is rejected after the final appeal, they must leave or – if they choose to remain in the country – live as undocumented migrants under precarious conditions. Persecution and discrimination as sex worker in one's country of origin is not recognised a grounds for asylum.

#### ■ As third-country citizens

... the possibility for a person to receive a long-term residence permit is closely linked to the possibilities for obtaining a work permit, which are currently only issued to 'key specialists'. The restrictive immigration laws in EU countries also make it nearly impossible or extremely difficult to migrate to an EU country on the grounds of family reunion. For a short-term stay, third-country citizens are required

to apply for a visa, such as a tourist visa or short-term employment permit for self-employed persons, which always requires the applicant to prove they have sufficient financial means and excludes the possibility of applying for permanent residence and receiving access to the formal labour market.

Residence and access to the labour market are important issues that must be factored in when analysing migration policies on sex work and regulations on sex work in the respective countries. This means that the legal framework for migrants in the sex industry is dependent upon:

- residency status
- access to the labour market
- legal regulations on sex work.

This generates an extremely restrictive legal framework that ignores the transnationality of sex work and produces and enforces the vulnerable status of migrant sex workers.

## Legislations and policies

In most of the countries in this study, sex work is not recognised as part of the formal labour market. Therefore, there is no legal framework that makes it possible for non-EU migrant sex workers to apply for residence or work permits. Migrant sex workers from EU countries are faced with the difficulty of not being able to provide proof of their income earned, which in many cases is required for obtaining a certificate of residence, health insurance, social assistance benefits and other support services.

## Legal frames

### Germany

Sex work is not recognized as a trade or a profession but it is recognized as an activity. Improvements in the conditions for migrant sex workers depend upon their residential status. Migrant sex workers from the EU-15 countries, Cyprus and Malta are permitted to enter into an employment relationship as an employee or as self-employed in sex work. For citizens of the EU-8 states, Romania and Bulgaria, work in the sex industry can only be done on a self-employment basis. Non-EU migrants have no possibility of obtaining an entry or work visa for the purpose of working as sex worker.

### Austria

Although sex work is not considered a form of gainful employment, it is however regulated as a form of self-employment. It is possible for all EU citizens to register as self-employed sex workers. Work in the sex industry, particularly by sex workers from the EU-8 states, Romania and Bulgaria, is often recorded during police checks as being performed within an employment relationship (as an employee), for which a work permit is required according to the Alien Employment Act. Non-EU migrant sex workers could theoretically apply for a visa type D+C (for three or six months) to work short-term on a self-employed basis as sex workers. However, the criteria for receiving such a visa are extremely restrictive and since it was introduced in 2006, they have rarely ever been issued. Asylum seekers who are still in the application process for receiving asylum and therefore hold a residence permit may also register as self-employed sex workers.

### Switzerland

Sex work is regulated on the basis of self-employment, although there is no consistency in the ways it is implemented. Migrants who are considered to have the same rights as nationals or those with a permit to work independently (i.e. EU citizens) can work as self-employed sex workers. Non-EU migrants may work as cabaret dancers with a special short-term work permit and even receive an employment contract, as this is not considered sex work. Such permits are extremely restrictive and only allow a person to stay from three to eight months per year; in addition, it is prohibited to change one's line of work. Asylum seekers are not permitted to work.

### Netherlands

Prostitution is a legal form of work but, at the same time, it is the only type of work for which work permits are not issued. Applying for a work permit should be possible; the law however explicitly specifies that activities bound to offering sexual services (including erotic shows) for and with third parties are not eligible for a work permit. Thus, only EU citizens are permitted to work in prostitution on a self-employed basis, for which they are not obliged to apply for a work permit. There is no uniform policy regarding citizens from the 2007 EU accession countries, i.e. Romanian and Bulgarian sex workers.





Working as a self-employed sex worker does not require a work permit. Self-employed non-EU migrant sex workers should be able to legally establish their business and receive a residence permit. The authorities, however, refuse to issue residence permits for self-employed persons for the purpose of working in prostitution on the grounds that

- they do not contribute to fulfilling national interests on the labour market,
- they are not actually independent workers and
- sex work is not an activity of economic importance.

### **Hungary**

Prostitution is considered a legal enterprise. Sex workers should register as a business (self-employed), pay taxes as well as social security and health care fees. In order to obtain a license to provide sexual services, sex workers must prove they have no criminal record, a flat lease, registration with the local government, a school report and a birth certificate. The legislation applies to both Hungarian and EU citizens. Theoretically it could be applied to other citizens as well, however nobody is known to request for this kind of permission.

### **Greece**

Sex work is not considered a profession but it is a legal 'activity'. The legislation on sex work is linked to employment conditions. Health screenings are mandatory in order to obtain a license to work as a sex worker. This legislation applies to any person who wants to work in the sex industry: nationals, EU citizens or non-EU migrants (with the exception of minors and married women). EU citizens, who wish to stay in the country for more than three months,

must have a health insurance in order to get the residence permit. Those without legal status are not permitted to work as a sex worker.

### **Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, United Kingdom**

Sex work is not considered a form of labour. There are no legal provisions for migrants regarding sex work. Non-EU migrants cannot obtain a residence or work permit for sex work. Undocumented migrant sex workers can be subject to deportation.


### **Lithuania, Romania**

Sex work is prohibited. Nothing that is related to sex work is considered legal. Undocumented migrants will be deported.

### **Specific regulations**

- If there are grounds to presume that a non-EU migrant will take up work in the sex industry i.e. sell sexual services, entry into the country may be refused. If entry has been previously refused on these grounds, a new visa will not be granted. There are no such regulations for EU citizens. (**Finland**)
- Migrant sex workers who pay third parties for certain managerial services or provide information and support for newcomers in the sex industry may be charged with procuring. This is considered a threat to public order and can result in the withdrawal of the right to residency or deportation. (**France**)

- The current legislation considers anything that could endanger the security and decency of a city to be an emergency. This includes sex workers and their clients who are both fined. Non-EU citizens charged with such an offense are put in temporary detention/identification centres and are subsequently deported. **(Italy)**
- Migrants who hold a regular work or residence permit may engage in sex work. However, it is not a rare occurrence that the police revoke residence permits and begin deportation procedures for persons working in sex work. **(Italy)**
- Special work permits can be issued to employees who work in lyrical shows, theatres, concerts or ballets and as dancers, artists or musicians employed in entertainment clubs. This type of residence permit allows a maximum stay of one year and does not allow a change of workplace. Although it is forbidden to perform sex work in clubs, nude dancing is tolerated. More often than not, clubs suspected of facilitating sexual encounters are closed down. **(Italy)**
- The police rigidly enforce immigration laws when it comes to migrant sex workers. Regular checks often result in deportation if migrants cannot provide valid identification papers, a residence permit or that they have enough money to support themselves. **(Norway)**
- Despite the lack of recognition of sex work as labour, there have been cases where migrant sex workers have been deported for working when they have legally been in the country but did not have the right to work. **(United Kingdom)**

- Visas are granted and extended on the basis of 'good character', which may be interpreted as a reason to deny migrant sex workers permission to enter or remain within the country. **(United Kingdom)** 

## SUMMARY

### Exclusion through legislations and policies

In most of the countries in this study, sex work is not legally recognised or regulated as a form of labour for nationals or migrant sex workers. Therefore, there are hardly any regulations that refer to migrant sex workers in any of the national legislations. At the same time, migrant sex workers are also affected by restrictive immigration legislations throughout EU countries. This lack of legal protection for sex workers and the explicit exclusion of migrants contribute to the vulnerability of migrant sex workers.

In countries with legal regulations on sex work, migrant sex workers from EU countries and those from non-EU countries are treated differently. Non-EU citizens are largely excluded from the possibilities for establishing residence and finding legal employment within the EU. The overall trend within Europe of increased restrictions on new migrants, on the issuing of residence permits and the possibility of family reunion, heavily affect migrant sex workers.

At the same time, migrant sex workers, including asylum seekers, who are charged with violating national laws on prostitution or local regulations on sex




work may face expulsion, deportation or their right to residence may be revoked. The predominant framing of sex work as a threat to public security also contributes to an increase in the extent of restrictive measures. Migrant sex workers who experience harassment, violence, discrimination or labour exploitation also remain unable to report their cases, because they risk police investigations into their own legal situation, expulsion or deportation.

The dominant framing of migrant sex workers as victims of trafficking and the frequent equation of migration for sex work and trafficking further increases the vulnerability of migrant sex workers:

- Measures that allegedly serve to combat trafficking are taken as a basis for restrictive prostitution policies.
- In particular, restrictions targeted at curbing the demand for trafficking have become a main priority in policy-making, which have brought forth various models for prosecuting clients of sex work.
- The only form of legal protection for migrant sex workers is provided within the laws to combat trafficking. Nonetheless, migrant sex workers who became victims of trafficking can only apply for a residence permit as victims of trafficking provided they stop working in the sex industry.

In addition to legal and social exclusion, migrant sex workers – regardless of their legal status – frequently experience criminalisation and often racist discrimination. Together, these factors create a specific type of vulnerability that endangers the life, health

and well-being of migrant sex workers. Within this context, the transnational reality of sex work demands an approach of recognition, de-criminalisation and unrestricted legal protection that ensures migrant sex workers' human rights. 



<sup>8</sup> The percentage refers to the situation in the EU-15 countries, except for Ireland and Sweden which are currently not members of the TAMPEP network, in Norway and Switzerland.

<sup>9</sup> The percentage refers to the situation in the Central and South/Eastern European countries that became members of the European Union in 2004 (the EU-8 states) and in 2007 (Rumania and Bulgaria) and does not include Cyprus and Malta.

<sup>10</sup> Cf. TAMPEP 2009

<sup>11</sup> The conditions relevant to this study are those prevalent in 25 European countries, which specifically include: 13 of the EU-15 countries, ten of the member states that joined the European Union in 2004 and 2007 (the EU-8 countries, Romania and Bulgaria), Norway and Switzerland.

<sup>12</sup> The treaty of accession for Cyprus to the EU does not entail any restrictions on the freedom of movement for the purpose of accessing the labour market. Regarding Malta, there is only a general safeguard clause.

<sup>13</sup> As of 2009, employees from the EU-8 countries have the same rights to freedom of movement and full access to the labour market within twelve of the EU-15 member states. The remaining three EU countries – Germany, Austria and the United Kingdom – will continue to implement restrictive measures that limit the access to their national labour markets. The national measures are permitted to remain in place until 30 April 2011, at the latest.

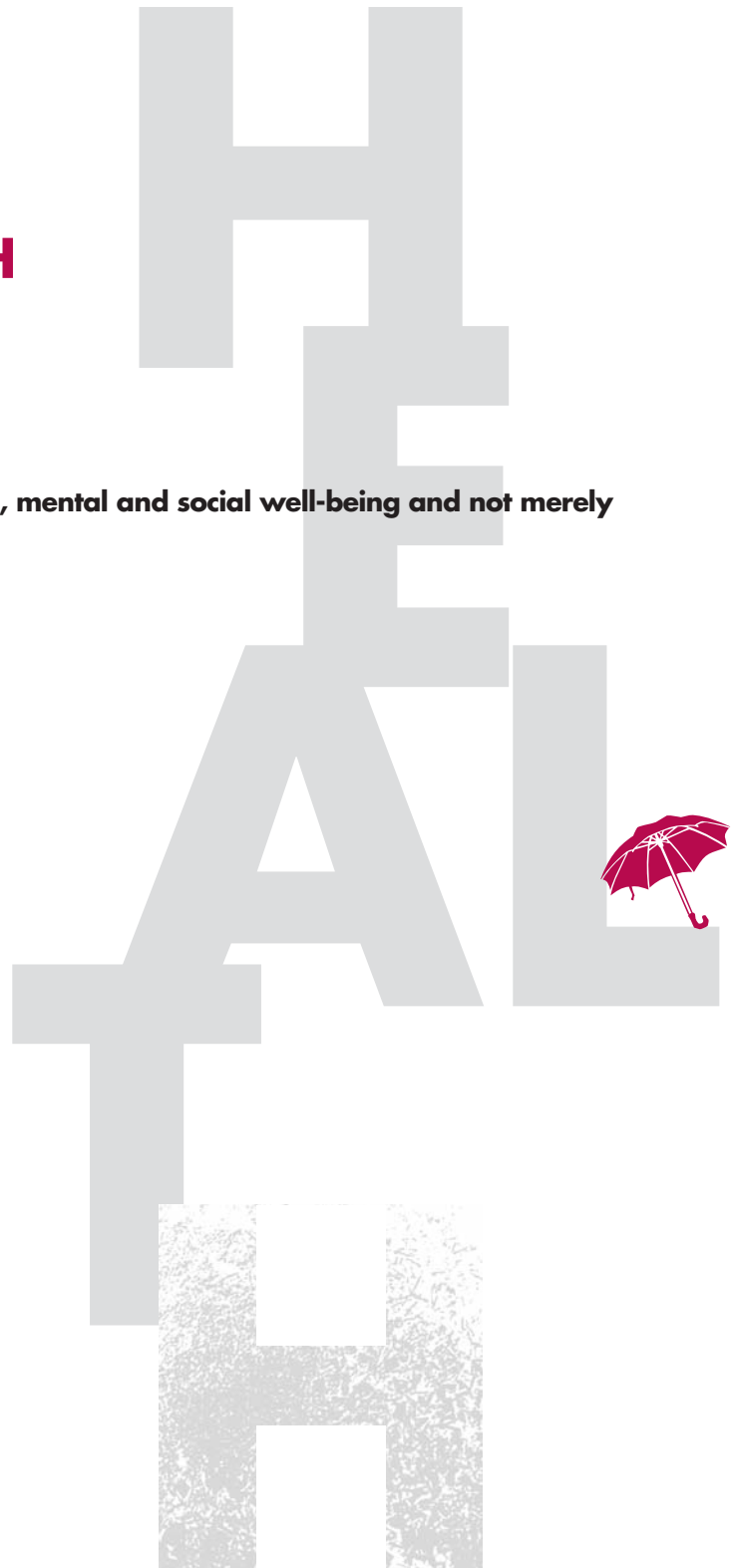
<sup>14</sup> Czech Republic, Cyprus, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden.

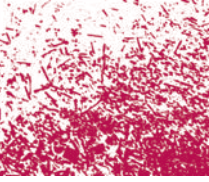


# HEALTH POLICIES AND ACCESS TO PUBLIC HEALTH SERVICES FOR SEX WORKERS

**Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.**

World Health Organisation,  
1946, Preamble to the Constitution





# HEALTH

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✦ The World Health Organisation defines health as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’,<sup>15</sup> which refers to a holistic understanding of health as a human right that everyone is entitled to.<sup>16</sup> According to the United Nations’ Committee on Economic, Social and Cultural Rights (UN-CESCR), the right to health in all its forms and at all levels contains the following interrelated and essential elements:

■ **(a) Availability.** Functioning public health and health care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. [...]

(b) **Accessibility.** Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party.

(c) **Acceptability.** All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

(d) **Quality.** As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. [...]

*(UN-CESCR, 2000, The right to the highest attainable standard of health, General Comment No. 14)*

The Human Right to health imposes – as do all Human Rights – three types of obligations on those countries who have signed the agreement: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil contains obligations to facilitate, provide and promote. In this sense, the member states who signed the agreement are obliged to ensure the availability, accessibility, acceptability and quality of health facilities and goods, and to guarantee that universal access to health prevention, treatment, care and support (PTCS) services is realized.

In order to ensure that public health services are indeed accessible for sex workers, including migrant and mobile sex workers, accessibility to health institutions must be based on the fundamental principles of inclusion and non-discrimination which, among other things, means:

- no discrimination based on a person’s present or former activity as a sex worker
- no discrimination based on a person’s legal status
- no discrimination based on a person’s insurance status
- no compulsory examinations, tests or treatments
- respecting the confidentiality of all personal data, including information about a person’s legal status and their involvement in the sex industry.

This also means complying with the UN-CESCR recommendations of:

■ **Non-discrimination:** health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

**Physical accessibility:** health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. [...] Accessibility further includes adequate access to buildings for persons with disabilities.

**Economic accessibility (affordability):** health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. [...]

**Information accessibility:** accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.'

*(UN-CESCR, 2000, The right to the highest attainable standard of health, General Comment No. 14)*

The prospects for putting these principles into practice largely depend on the discretion and interpretation of these recommendations by the authority responsible. According to this, there are different approaches that determine the actual accessibility of public health services and the implementation of universal access:

■ **The implicit or explicit exclusion approach**  
... adheres to the formal or informal barriers to accessing public health services, such as compulsory examinations, registration and sharing of personal data, as well as discriminatory treatment of persons from marginalized and vulnerable groups (including sex workers, migrants, transgender persons, men having sex with men, people living with HIV/AIDS etc.).

■ **The additive approach**  
... attempts to reduce the barriers and increase the accessibility of public health services for those from marginalised and vulnerable groups by, for example, working with cultural mediators, providing information materials in several languages and through tailored outreach work.

■ **The inclusive approach**  
... makes an asserted effort to include marginalised and vulnerable groups. This approach conceives persons from these groups as actors with equal rights and includes them in the planning, decision-making and implementation phases in all matters concerning health policy, programs and measures.

The possibilities for implementing good principles within the context of universal access, particularly regarding prostitution, depend on the legal framework that regulates the working and living conditions for female, male and transgender sex workers,

including for migrant and mobile sex workers. Prohibitive and criminalising measures exclude sex workers from making use of public health services that are there to ensure and protect their health and well-being as well as the health and well-being of their families. Public health policy must broaden its range of focus to meet the needs of marginalised and vulnerable groups and create ways of evaluating health care services in terms of their accessibility to these groups. In this process, health must be understood in a holistic and integrated manner that does not merely focus on HIV/AIDS and STIs or exclusively on providing treatment in case of a life-threatening emergency.

## The politics of mandatory health checks

Although the majority of the countries included in this study do not currently prescribe mandatory health checks for sex workers, compulsory health examinations for sex workers is an idea that has a long history within Europe and is an issue that continues to resurface in the current debates.<sup>17</sup> Mandatory health checks are a repressive form of exercising control that reinforce discrimination, stigmatisation and disenfranchisement of sex workers while also undermining the sense of self-responsibility and empowerment of sex workers.

Mandatory health checks contradict the fundamental principles of good health policies and are based on a false logic of a necessity for control.

The politics of mandatory provisions...

- stigmatise sex workers as carriers of STIs.
- do not conceive of sex workers as part of the general population (that must be protected), but instead put the blame on and make sex workers responsible for the fact that society (including sex workers) must contend with these circumstances.
- ignore the fact that the entire society is responsible for carrying and transmitting STIs (including the responsibility of husbands and boy-friends acting outside the sex industry).
- ignore the professional self-responsibility of sex workers.
- ignore the diversity of services offered by the sex industry and the different types of activities that sex workers perform.
- are not based on actual rates of infection through STIs, but instead they are based on preconceptions and a desire for control.
- link health policy issues with criminal policy issues in terms of discussions around identifying and supporting victims of human trafficking. This argument uses the issue of human trafficking as a way of limiting the rights of and criminalising sex workers.
- are humiliating and degrading practices. They cannot serve as a replacement for a holistic approach to health policy that ensures marginalised and vulnerable groups accessibility to health prevention, treatment, care and support services.





The countries in which mandatory health checks for sex workers are currently prescribed by law are **Austria, Greece, Hungary and Latvia**. Sometimes, sex workers themselves are required to pay for these regular checks. In some countries, although health checks are not required by law, they are asked for in certain cases. For example, sex workers working in certain brothels in Slovakia are required to regularly provide their employer with proof that they have been checked. For that purpose, some doctors agree – for a fee – to perform the examination and issue a statement. In this way, although they may not be legally prescribed, the concept of mandatory testing and asserting medical control over sex workers has not only created a financially rewarding field of work for medical personnel but also new dependencies for sex workers, and thus also further reinforce their social exclusion and stigmatisation.

The main reason that most countries do not officially require mandatory health checks for sex workers is that prostitution is either prohibited or not explicitly regulated.

The practice of mandatory health checks for sex workers is a severe barrier to establishing universal access to health prevention, treatment, care and support services and violates the human rights of sex workers.

■ Registration and mandatory testing of sex workers has no preventative value, particularly while there is no requirement for clients to be tested. Where mandatory testing still exists, one of the consequences is that clients assume sex workers are ‘healthy’ and resist the need to use condoms, as they do not see themselves as a threat to the sex worker.

Registration and mandatory sexual health and HIV testing are a violation of sex workers’ human rights and reinforce the stigmatisation of sex workers as a threat to public health and promote the stereotypical view that only they can transmit infections to clients.’

*(Sex Workers in Europe Manifesto, 2005)*

## Universal access

In the countries included in the study, the implementation of universal access to public prevention, treatment, care and support health services is dealt with in an extremely ambivalent manner. Access to national health care systems is largely linked to one’s residence and insurance status. This, however, goes against the recommendations of the UN-CESCR regarding accessibility to public health services and thereby also works against implementing efficient prevention measures.

The different national models are formulated in the following ways<sup>18</sup>:

### ■ The right to health as provision of emergency services

All persons on the national territory have the fundamental right to health. However, this right to health is most often interpreted in terms of emergency care for life-threatening medical conditions. In some countries, this is extended to include medical treatment in case of an accident or emergency as well as sexual health treatment; preventative health checks during and after pregnancy or abortion, in case of a long-term condition detrimental to one’s health and in case of contagious diseases such as HIV or tuberculosis; or healthcare for

minors. Emergency treatment can be preventative or curative, the actual way in which it is implemented is however always subject to interpretation, which undercuts the right to health and also leads to uncertainties of which services are free of charge and which require payment.

■ **Universal access within national public health care systems**

In this approach, free of charge public health care is provided to all residents.

■ **Universal access within public health care systems that are based on legal status and employment**

All national citizens and permanent residents are issued a health insurance card and have access to public health care. This model focuses on the residential status and only allows residents with valid documentation within the national territory access to the country's public health system. In some countries, coverage under the public health care system depends on one's employment status (e.g. being gainfully employed).

■ **Universal access within obligatory national (public/private) health care systems**

The entire population within a national territory, respectively all national citizens must have valid health insurance. In some cases, services are provided to undocumented migrants who lack financial resources through the intervention of social workers or a social welfare centre. Sometimes there are special medical coverage systems for documented residents (national or migrant) with low income that pay for a portion or the entire costs and specific systems for undocumented migrants and non-resident

EU-citizens. Although these models are supposed to ensure universal access to health care services, in practice the actual treatment depends on the institutions and on the medical staff who often deny treatment to persons or groups outside the formal medical coverage systems. In addition, the use of services is often dependent on showing a form of identification, which is not an option for undocumented persons. Accessing such services always entails a risk for undocumented persons, because it is never guaranteed that they will not be deported.

■ **Access to health services for uninsured/undocumented sex workers**

Usually, the private sector provides services for a fee. Low-threshold services for uninsured/undocumented persons are largely provided by NGOs, which are unable to cover all medical needs and whose services and the continuity of the services strongly rely on their resources. In some cases, local municipal health services or independent sex work projects carry out outreach work and offer health and social services.

Access for sex workers to health services therefore is dependent on several factors:

- legal or residence status
- insurance status
- proof of employment/income
- financial resources
- interpretation of the medical case as an emergency
- cooperation, good will and individual decisions made by the health service providers
- confidentiality and discretion of the health service providers regarding the service user's legal and occupational status

- availability of social assistance services i.e. NGOs services and resources

These factors are severe barriers regarding access to public health prevention, treatment, care and support services for sex workers, particularly for undocumented and uninsured sex workers.

## HIV/AIDS testing and treatment

The access to HIV/AIDS testing and treatment for sex workers is implemented in different manners in the European countries included in this study. The most fundamental differences are, on the one hand, the accessibility to prevention, information, counselling, testing and diagnostic services that are often provided anonymously and free of charge by both public health care institutions and NGOs. On the other hand, there are major barriers to accessing public treatment services whose fees are based on the person's insurance status. The following approaches to HIV/AIDS testing and treatment taken in the countries included in this study are:<sup>19</sup>

### HIV testing

- In most countries HIV testing and counselling are available free of charge, voluntary and anonymous, regardless of one's legal or insurance status. These services are provided by state-supported anonymous facilities (**Estonia**), public health care services (**France, Germany, Greece**), or NGOs.

### STI testing

- Free of charge, voluntary and anonymous STI counselling and testing is accessible at (public) health care services. (**Germany, Switzerland**)

- Free access to STI screening as well as to treatment is available regardless of one's insurance status. (**Netherlands**)
- Everyone within the national territory has access to prevention, information, counselling, testing, diagnostics and initial treatment free of charge. (**Norway**)
- Insurance is required for STI testing as well as for treatment and rehabilitation services. (**Poland**)

### HIV/AIDS treatment

- For uninsured persons, treatment is usually possible if paid for privately.
- HIV/AIDS treatment is considered a long-term illness and free care is accessible to everybody, regardless of one's legal or insurance status. (**France, Italy, Luxembourg, Slovenia**)
- Free HIV/AIDS treatment is accessible to everybody. Undocumented migrants, who do not have access to HIV/AIDS treatment in their country of origin, may apply for a residence permit for humanitarian reasons. (**Greece**)
- National citizens and asylum seekers have full access to HIV/AIDS treatment. Migrants receive vital, necessary initial treatment. Full HIV/AIDS treatment will be provided during one's stay in the country – unless one will leave the country in the near future and treatment is available in one's country of nationality. (**Norway**)
- HIV/AIDS testing and treatment are free for national citizens, regardless of their insurance status. (**Bulgaria, Estonia**) Testing and treatment services are free also for documented migrants for the duration of their stay. (**Bulgaria**)

- Access to public HIV/AIDS treatment is bound to one's insurance status. (**Finland, Germany**)
- If the illness is clinically defined as having reached the stage of AIDS, treatment is available in public hospitals free of charge, regardless of one's residence or insurance status. Such decisions are made individually, on a case-to-case basis. (**Finland**)
- As urgent medical aid, access to free of charge treatment to combat HIV is available to undocumented persons. However, most doctors are hesitant to administer treatment, because they are afraid that any long-term treatment could be interrupted in case of expulsion or deportation of the patient. (**Belgium**)
- There are very few possibilities for undocumented persons to access HIV/AIDS treatment. In some HIV clinics, HIV-positive persons may receive – independent of their legal status – free of charge HIV treatment and support. Although this is not an official policy, it is applied in several (university) hospitals. The treatment is confidential; however, the person must give her/his real name and address. The treatment does not include any other medical services, e.g. dental care, or social assistance, e.g. help in finding a place to stay. The waiting time between diagnosis and receiving actual treatment in one of these 'migrant friendly HIV clinics' can be long. This is because those diagnosed as HIV positive at another health service are often left without any HIV counselling or referral to a specialised clinic. This is due to the fact that there is no adequate outreach or social support for these persons. (**Netherlands**)

- Some cities have informal networks of doctors or institutions offering support. (**Germany, Switzerland**)

Contacting official health agencies is highly dangerous for undocumented sex workers, increasing the likelihood of police investigations and repression, expulsion or deportation. Making HIV/AIDS treatment dependent upon one's (long-term) legal status, insurance status (and therefore also on a employment relationship requiring insurance), a registered home address and on documents that serve as proof of identification poses a tremendous barrier for undocumented/uninsured persons seeking to access services. In addition, in some countries today, being HIV-positive is still considered as grounds for imposing restrictions on entry, residence and stay.<sup>20</sup>

For this reason, NGOs are usually the first place that undocumented and uninsured sex workers turn for HIV/AIDS prevention, treatment, care and support services. Additionally, they also serve as an interface to other informal services available in the health sector.

## Drug use and harm reduction programmes

Harm reduction programmes are distinguished between those offering basic services and those offering comprehensive services. Those offering basic services primarily function on an anonymous basis, are low-threshold and – where available – are accessible regardless of one's legal or insurance status. In most cases, basic services include drop-ins,



supervised injection sites, needle exchange programmes, condom distribution, STI testing and sometimes include methadone distribution programmes. In most cases, comprehensive services include substitution programmes (including methadone distribution and methadone-assisted detoxification programmes), shelter and housing programs as well as vocational training and job placement. The accessibility of these services often depends on one's legal status, insurance status, proof that one is indeed able to take part in a long-term harm reduction programme and the language skills required to ensure the effectiveness of the programme.

The following approaches to harm reduction programs can be found in the countries included in this study:<sup>21</sup>

- All programmes are free of charge. (**Denmark, Finland**)
- Harm reduction programs are provided exclusively or largely by NGOs. Access and availability depends on resources and on the NGO's approach to the issue. (**Finland, France, Hungary**)
- Basic harm reduction programs are anonymous and accessible regardless of legal or insurance status although the availability of the programmes may vary. (**Austria, Bulgaria, Estonia, Germany, Italy, Netherlands, Norway, Romania, Slovenia, Spain, Switzerland, United Kingdom**)
- Insured persons (migrants or nationals) have full access to harm reduction programmes (**Netherlands**).
- National citizens have full access to harm reduction programmes. Uninsured national citizens will be assisted in obtaining insurance. (**Netherlands**)
- Comprehensive harm reduction programmes are bound to one's residence status. (**Italy**)
- Methadone treatment programmes are accessible only if paid for privately or for nationals and documented migrants. They are not accessible for undocumented individuals. (**Estonia**)
- Methadone programmes are only accessible with health insurance. (**Slovenia, Switzerland**)
- Access to substitution programmes is accessible to EU citizens if they can prove that they already followed a programme in another EU country. (**Luxembourg**)
- Access to methadone programme is accessible to undocumented and/or uninsured persons if they speak one of the national languages to ensure effective monitoring and good comprehension throughout the participation in the programme. (**Luxembourg**)
- Undocumented persons do not have access to detoxification programmes, long term treatment or the prescription of methadone or opiates unless in connection with other vital medical treatment. (**Norway**)

Most harm reduction programmes are carried out by NGOs. The type, scope and duration of the services are dependent upon the institution's resources. Most NGOs can therefore only provide basic services, short-term housing solutions and long-term treatment only to a limited number of persons, who are placed on waiting lists. Although low-threshold services – where available – are indeed accessible to undocumented and/or uninsured sex workers, it is

virtually impossible for them to receive long-term treatment. Therefore, the public health sector follows an exclusionary approach that poses barriers for undocumented and/or uninsured sex workers and essentially excludes them from making use of essential services.

## Protection from deportation

The non-refoulement<sup>22</sup> principle prohibits persons from being deported to a country in which they, based on the fundamental rights of refugees, are in danger of persecution or torture, inhumane treatment or other serious violations of human rights. This principle is based on international law and restricts the rights of individual states to include in their common law the power that would allow them to, in any way, reject migrants at the border as part of their right to exercise their sovereignty, deny them asylum or other forms of protection and to issue their deportation from their own territory. The real function of the non-refoulement principle is to safeguard human rights. It does this by referring to 'life' and 'freedom' as rights that must be protected. Although the protection of life and freedom, from torture and the death penalty are the foremost rights mentioned under refoulement protection, in principle, any severe form of endangerment or threat to a person's human rights can be the grounds to call for principle of refoulement protection.

In the countries included in this study, the interpretation of this obligation for protection in terms of the human right to health is extremely vague and there is no explicit mention of legal protection. This approach also fails to consider the situation of female, male and transgender sex workers, who are

not only affected by multiple forms of stigmatisation and discrimination but their human right to health has also yet to be implemented in a sufficient manner. In terms of implementing legal protection from deportation, no considerations have been made that take into account the multi-dimensional reality of migrant sex workers and ways in which they are also affected by multiple mechanisms of exclusion.

The approaches to this issue taken in the countries in this study are:<sup>23</sup>

- HIV-positive individuals cannot be deported if treatment in the country of nationality/origin or wherever the person would be deported to is not guaranteed. (**Greece, Italy**)
- The decision to grant someone asylum depends on the stage of illness and is decided individually. (**Germany**)
- Being HIV-positive does not necessarily assure the regularisation of a person's stay for medical reasons. The absence of access to healthcare and treatment in the country of origin must be demonstrated. (**Austria, Belgium, Norway**)
- Non-nationals cannot be deported if they establish through medical certificates that their health requires medical care, that they would suffer consequences of exceptional gravity in the absence of such care and if the evidence relates that they cannot receive appropriate treatment in their country of nationality/origin. (**Luxembourg**)
- There is a possibility to grant a residence permit based on an acute medical situation. A temporary residence permit for one year will be granted if in the country of nationality/origin the person would die within three months or undergo serious physical or mental damage




because of lack of access to treatment or if it is anticipated that treatment will last longer than one year. (**Netherlands**)

- There is a possibility to grant a residence permit in case of exceptional gravity and without appropriate health care in the country of nationality/origin. A temporary residence permit for one year will be granted which is renewable every year during one's sickness. There is no fixed list of illnesses. The decision depends on the country of nationality/origin. Real access to healthcare in the country of origin is not taken into account. (**France**)
- If there are urgent vital medical reasons one cannot be deported. HIV-status alone is not a reason for granting a stay on humanitarian grounds. (**Norway**)
- Patients with advanced AIDS who are in clinical treatment will not be deported. (**Hungary**)
- Undocumented persons will be deported. (**Bulgaria**)

In almost every country in this study, protection from deportation and some form of residence permit are provided only in the case of a life-threatening situation. In addition, there is an extremely high threshold to receiving protection from deportation and a residence permit for medical reasons, and there is a great tendency toward imposing further restrictions on such permits. A person's status as HIV-positive alone is not considered grounds enough for a person to receive asylum or a legal permit. In most cases, the person is also required to prove that the health services in one's country of nationality/origin cannot assure (sufficient) treatment, posing a serious health hazard for the applicant.

There is no further legislation on this issue nor are there any clear legal guidelines.

The decisions are usually made on an individual case-to-case basis and do not review the actual accessibility of these (theoretically available) services. This has particularly fatal consequences for sex workers. When attempting to make use of the public health services, they are often faced with exclusion and discrimination and therefore only have very limited or no access to these institutions. According to the regulations currently in place, sex workers must make the authorities understand this when applying for protection from deportation.

In turn, this requires a non-stigmatising approach to sex work and administrators of the law who are able to identify and recognise the ways that sex workers are excluded from public health care systems and address the issue in a sensitive manner. Nonetheless, in most cases it is virtually impossible to prove this exclusion that takes place due to the repressive legal situation and social stigmatisation that sex workers face. Despite international treaties and the obligations of the states derived from the treaties, protection from deportation for sex workers still depends on the legal interpretation. 



## SUMMARY

### Barriers to accessing public health care services

There are great shortcomings in the accessibility of public health care systems in the countries included in this study, none of which show any integrative approaches to protecting the rights of sex workers. Undocumented and/or uninsured sex workers are explicitly excluded from most of the systems. In addition, sex workers are implicitly excluded from the systems through stigmatisation, discriminatory attitudes and treatment as well as racist and sexist stereotyping and prejudice.

Most of the public health systems rely on a person's citizenship, legal status, residence status and/or insurance status. In turn, this means that there is a direct, or in some cases indirect, link to one's employment status. In most of the countries, residence permits and health insurance are bound to employment relationships (requiring insurance). It is impossible for sex workers to provide these papers, except in the countries where sex work is recognised as a form of labour or where sex workers can register as self-employed. This is, however, not the case in the majority of the countries. Because of this sex workers belong to a group of persons who are structurally excluded from the public health systems and whose health care needs (with the exception of emergency treatments) are assigned to the NGO sector.


Between the contradictory contexts of legal status, insurance status and employment status, sex workers are faced with a series of barriers, which make it extremely difficult to access public health services.

The specific access barriers to public health services for sex workers include:

- linking access to public health institutions to one's legal, residence, insurance and employment status
- lack of options for accessing services anonymously
- ID-ing and the practice of recording the full range of a person's data to a central data base, meaning once a person is registered, information on their status is available to all social institutions
- fear of expulsion, deportation or residence prohibition
- lack of protection from deportation
- stigmatising attitudes and discriminatory treatment towards female, male and transgender (migrant) sex workers by the administrators at public health services
- lack of trust in public health institutions due to sex workers' experiences of exclusion and stigmatisation
- language barriers and lack of services that are respectful of one's culture (including information material in several languages, multicultural staff at public health services, cultural mediators)



- lack of access to information on public health services, the structure of the national health system and service providers (incl. services run by NGOs)
- lack of knowledge of one's own rights
- lack of resources for public and NGO health services
- stigmatisation, discrimination and repressive controls implemented by a system of mandatory health checks for sex workers

In order to create accessibility to public health services for sex workers – through an inclusive approach – these barriers and their serious negative effects must be taken seriously and eliminated. Only if this is done, will it be possible to implement and guarantee a holistic approach to health as a human right for sex workers, including for migrant and mobile sex workers. 



<sup>15</sup> Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19 - 22 June 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948. The Definition has not been amended since 1948.

<sup>16</sup> The human right to health is affirmed by and explained in the following international agreements:

(1) The European Social Charter (1961) entails a total of 19 social rights, including the 'Right to Protection of Health' in Art. 11.

(2) Art. 12 of the UN Social Pact (1966) entails the right to the highest attainable standard of physical and mental health as well as the right to medical care for all persons.

(3) The General Comments of the United Nations CESCR Committee on Economic, Cultural and Social Rights (2000) interpret the right to the highest attainable standard of health and elaborate on what it means in practice.

(4) According to Art. 35 of the Fundamental Rights Charter of the European Union (2000), everyone has the right to have access to health care and medical treatment.

<sup>17</sup> The Contagious Diseases Acts in Great Britain (1864) are a highly debated example of a public health policy that focuses on the control of sex workers.

The Contagious Diseases Acts consisted of legal decrees on the control of contagious diseases, particularly sexually transmitted diseases. Under the pretence of a concern for public health, sex workers were subject to arbitrary treatment by the officials, mandatory medical examinations, arrest and compulsory commitment to hospitals for 'rehabilitation'.

<sup>18</sup> These are examples that relate to some of the countries. Although they may appear in slightly different ways or in combination with one another, they reflect the core elements that can be found in each of the countries included in this report.

<sup>19</sup> The references to the countries serve as examples.

<sup>20</sup> As of 2008, 67 countries impose some form of restriction on the entry, stay and residence of people living with HIV. (cf. UNAIDS 2008)

<sup>21</sup> The references to the countries serve as examples.

<sup>22</sup> Non-refoulement is a fundamental principle of international law that is codified within the 1951 Geneva Convention (Convention Relating to the Status of Refugees).

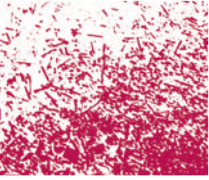
<sup>23</sup> The references to the countries serve as examples.



# RESPECTIVE

**EUROPEAN PERSPECTIVE**





## EUROPEAN PERSPECTIVE

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Across Europe legislations, policies and practices regarding sex work are becoming increasingly more repressive. Instead of laws that empower, support the independence and autonomy of sex workers and improve their working and living conditions, measures are being implemented that undermine the dignity and self-determination of sex workers and violate their human rights.

Characteristic elements of the current situation and the legal changes proposed in the European countries included in the scope of this report are:

### **An increase of repressive and punitive laws that criminalise sex workers**

Throughout Europe, increasingly repressive and punitive legislations and policies are applied regarding sex work, which marginalise and criminalise sex workers. This includes:

- legal frames that consider pimping, pandering and procuring as crimes and thus often also criminalise sex workers' families, partners, co-workers and managers;
- laws that aim to prevent the organisation of prostitution into a business or criminal enterprise thus also criminalising sex workers, groups of sex workers that work as collectives and business managers;
- laws that target the promoters of prostitution and also criminalise business managers who provide safe and fair working conditions;
- laws that aim to eliminate the 'public nuisance' of prostitution by prohibiting its visible components such as (active and passive) soliciting, negotiating, advertising, kerb-crawling and loitering and criminalise sex workers and their clients;
- laws that prescribe registrations and mandatory health checks for sex workers and thus promote a public health policy that excludes and stigmatises sex workers.

These measures are not always based on regulations that specifically target prostitution or on changes in legislation, but instead are bylaws or legal practices related to 'public security' or 'public order' that national or local authorities utilize to regulate sex work. This results in police repression against street-based sex workers, systematic police raids of indoor premises, a climate of intolerance especially from local residents as well as increased aggression, violence and hate crimes against female, male and transgender sex workers.

### **The de jure and de facto criminalisation of sex workers' clients**

The criminalisation of clients, in law or in practice, is a widespread phenomenon throughout Europe. Currently, Sweden and Norway criminalise all clients of sex workers on principle. Finland prohibits the purchase of sexual services from those coerced into prostitution and from victims of trafficking. In practice, clients are criminalised in many countries for loitering, kerb-crawling and soliciting with the

intention of purchasing sexual services whereas this may be based on domestic security regulations or on local or municipal regulations. In addition, there is persistent public debate about the further legal codification of client criminalisation throughout Europe (e.g. in Denmark, Estonia, Luxembourg, the Netherlands and United Kingdom).

The criminalisation of clients is a practice that is harmful to sex workers and, contrary to its denoted aim, does not contribute to a decrease of violence or trafficking. While clients are becoming less accessible as allies and sources of information in cases of situations of violence or trafficking, sex workers are exposed to a greater deal of pressure, more difficult working conditions and are increasingly becoming more dependent on the mediation of third parties in executing their activities.

### **A clamp-down on street prostitution**

Policies that aim to make sex work invisible and that exclude sex workers from public places add to the stigma, the social exclusion and the vulnerability of sex workers. Throughout Europe, there is an increase in laws and policies that aim to eliminate the ‘public nuisance’ aspects of prostitution by prohibiting street-based sex work, implementing repressive zoning policies and by criminalising visible components such as (active and passive) soliciting, negotiating, advertising, kerb-crawling and loitering. This removes the protection of the law from sex workers, increases social exclusion and violence and creates unsafe working conditions.

### **Increase in repressive policies and juridification**

Prostitution and migration legislation and policies are constantly becoming more restrictive and heavily regulated by law. Over the past few years, the migration laws in EU countries have markedly cut back on the labour migration of non-EU citizens and eradicated the possibilities for migrant sex workers to attain independent residence or work permits. Because of this repressive legal situation, migrant sex workers are under the constant threat of being expelled, deported or banned from residence.

The juridification within the field of sex work is expressed in an increase in written laws through the constant drafting of new laws and a standardization of previously unregulated areas of law (expansion of the law), as well as through the fragmentation of an offense into individual legal entities, creating a number of individual offenses (elaboration of the law). Among other things, this is conveyed in an increase in:

- the registration of individual sex workers,
- licensing and probity checks,
- planning permits,
- land use approval,
- landlord approval,
- zoning regulations,
- local council jurisdiction on the locations of sex businesses,
- bans on brothel keeping,
- bans on premises to be used for the purposes of prostitution.

These measures do not focus on the protection of sex workers' human rights, but rather on the so-called 'public order' and 'public security' and aim to eliminate the 'public nuisance' aspects of sex work. They are not only detrimental to the living and working conditions of sex workers, they also increase the vulnerability of people in the sex industry.

### **The conflation of sex work and trafficking and the instrumentalisation of combating trafficking**

In this common practice, trafficking is usually understood in a reduced way that is focused on sexual exploitation and ignores other forms of exploitation, forced labour or services or situations similar to slavery and servitude. In this approach, sex work is, wrongly, equated with sexual exploitation and thus with trafficking. The incessant links made between discourses on sex work and trafficking within socio-political, legal and media debates stigmatize sex work as an inherently violent profession and sex workers – particularly migrant and mobile sex workers – as victims.

Failing to differentiate between the issues further validates approaches that do not perceive sex workers as active subjects, but define sex work as violence and place the focus of government and charitable resources on 'rescuing' sex workers and punishing clients. In addition, by equating sex work with trafficking, efforts to combat trafficking are designed to combat sex work. Instead of providing comprehensive rights and protection programs for victims of trafficking, punitive measures against sex workers, in particular against migrant and mobile sex workers, are being implemented. Such measures

endanger the security and well-being of sex workers, compromise their working conditions and enable more frequent situations of dependency and exploitation.



The dominant trend toward criminalisation and the repressive and excluding legislations and policies also means severe violations of the human rights of sex workers. This is highlighted by the lack of sex workers' access to health prevention, treatment, care and support services. The possibilities for implementing good principles within the context of universal access depend on the legal framework that regulates the working and living conditions for female, male and transgender sex workers.

Prohibitive and criminalising measures exclude sex workers from making use of public health services that are there to ensure and protect their health and well-being as well as the health and well-being of their families.

## CASE STUDIES

The following case studies from Finland, Norway, the United Kingdom and Italy entail an analysis of the specific forms in which the European trends are put into practice.

### FINLAND

#### **The Finnish Model: Difficulties and unwanted consequences of an attempt to reduce trafficking by criminalising the purchase of sexual services**

By Pro-tukipiste

Prostitution and sex work have been on the political agenda and a topic of interest in the media since the mid-1990s in Finland. After the collapse of the Soviet Union, prostitution in Finland changed dramatically. Since the 1990s, control of prostitution and sex work has also become stricter, as new laws have been enacted and the existing laws amended. Historically, prostitution has been handled in many different ways in Finland: as a social problem, as a gender equality issue, as a question related to public order and organized crime and also as a question of migration. All Nordic countries have had a long tradition of viewing prostitution as a social problem and that all possible social efforts should be made to 'help' people to stop working in prostitution. Restrictive (legal) measures have been put in place in order to support this objective.

Trafficking in persons and the measures to combat it are also a high priority in Finnish politics. Public discussions and political concepts/policies both easily get the concepts and definitions regarding these

measures mixed up. Trafficking in persons and restrictions on trafficking have also been used to justify restrictive prostitution policies. In particular, combating the trafficking in persons and restrictions on regulating the demand for prostitution are often considered to be the same target.

During the two last decades, one major question has dominated the Finnish debate on prostitution policy: should Finland adopt the so-called 'Swedish model' or not? The Swedish model entails a general ban on the purchase of sexual services. In Sweden, purchasing sexual services became a criminal offense in January 1999, and the law was amended in 2005. The penalty ranges from fines (minimum of 50-day fines) to six months imprisonment.

In 2005, after a long debate and preparation phase, the Finnish government proposed that the purchase of sexual services be generally criminalised. The bill proposed by the Finnish government was identical to the Swedish model. The proposal, however, was met with strong resistance in the Parliament. The main points of critique were that:

- general criminalisation restricts self-determination in cases when it is a consensual agreement between two adults;
- the description of crime is too broad i.e. it is not specific enough; and that
- the results of the Swedish model are debatable and controversial.

After numerous hearings, the Legal Affairs Committee created a limited version of the Swedish model and presented the Parliament with a recommendation to accept a law that prohibits buying sexual services from those coerced into prostitution and

from victims of trafficking (Art. 20:8a of the Penal Code on the exploitation of a person subjected to sex trade). This limited version was also in line with the government's target to reduce trafficking and the demand for sexual services provided by trafficked persons. The most crucial difference from the Swedish model is that the Finnish model clearly distinguishes between prostitution and trafficking.

The law came into force in Finland in October 2006. Within the ongoing debate this limited version has received criticism from both sides, while one side considers the law and its implementation too confusing, the other side feels it waters down the idea of the Swedish model.

In practice, the law has not been actively enforced and its interpretation in the court has been ambiguous where it has been employed. Although this law has been in force almost for three years now, it has only been applied a few times. The first case was in December 2006, when six men suspected of buying sexual services from procured prostitutes were caught in a raid on an illegal brothel. After the pre-trial investigation, only one man was prosecuted for attempting to purchase sexual services, but when the case was brought to court, the charges were dropped due to a lack of evidence.

The first serious attempt to use the law was done in a case involving a young Estonian woman who had been brought from Tallinn to Helsinki by two Estonian young men to sell sexual services in summer 2008. The police utilised telecommunication information to round up the clients (over 100 men) who were then called into the police station for a hearing. Forty-one of the men were accused of exploiting (or attempting to exploit) a person subjected to working

in the sex trade. For some reason, these 41 cases were divided into three trials. Four men were tried in connection with the main offense (trafficking), 21 men were brought to court in the second trial and 16 men in the third trial. The interpretation of the law appears to entail some troublesome undertones and features. In all three trials, the law was interpreted differently – although each case involved the same 'person subjected to working in the sex trade'.

A different judge presided over each of the three trials and the way each case was handled in the courtroom greatly varied as well. Even the verdicts and reasonings varied from the first to the second trial: In the first case (four clients altogether), two men were prosecuted but the charges against both men were dropped, because they had voluntarily refrained from buying the services after they noticed that something was 'wrong'. In the second case (21 clients altogether), 19 clients were convicted and two had their charges dropped. During the trial, most of the clients admitted to buying sex from the person, but argued buying sexual services is not a crime under Finnish law.

It was not evident if the accused actually understood which crime they were on trial for. The reasoning of the verdicts was also confusing, because there was no discernable analysis of how they could have known that the person was being pimped or a victim of trafficking. The only grounds listed were that they should have known because the girl is Estonian, with poor Finnish language skills, young and inexperienced.





There were also differences in the interpretation of the reasons for dismissing the charges: some clients who refrained from buying were convicted for attempting to do so, while others on trial before were dismissed for the same reason. In the third trial (16 clients altogether), the process was difficult to follow and the interpretation seemed to differ from that of the two previous trials. The verdicts are expected to be published in June 2009.

It is too early to say how the Finnish model will work, but the experiences so far have not been encouraging. While the definition of the offense is unclear, the interpretation of the law is even less clear. Although the evidentiary problems were factual, the confusing interpretation will have a negative influence in the future on the clients' willingness to inform the police if they notice any exploitative circumstances. The government's target to reduce trafficking and the demand for the services of trafficked persons could be achieved more efficiently if clients were encouraged to report the cases where sex workers' rights and personal integrity are violated.

The Ministry of Justice must offer the Parliament an account of the application of the law before the end of 2009. In order to obtain information 'from the field', Pro-tukipiste was asked to evaluate sex workers' opinions on the consequences of the Finnish model. We briefly sketched out a map of the responses after speaking to 47 sex workers (43 women, four men) over the course of one week in the spring of 2008. All in all, the general message was that the law has made their situation worse than it used to be. All of the respondents condemned all kinds of force and exploitation, but did not understand how this law could protect them in any way. They did howev-

er express that it would be good if they could trust the police to protect them from exploiters and from individuals who force them to give their money away, to do something against their own will or to continue to work in the sex business against their will.

## NORWAY

### **Criminalising the purchase of sexual services: On Norway adapting the Swedish law**

**By Pro Sentret**

#### **The present situation**

In spring 2008, all three political parties in government voted in favour of a law that prohibits buying sexual services in Norway. This law came into force on 01 January 2009. Since then it has become illegal for Norwegian citizens and permanent residents of Norway to buy sexual services, within the country or abroad.

#### **Background for the shift in Norwegian policies**

Since the idea was introduced in the early 1980s, the political majority had opposed criminalising the purchase of sexual services in Norway. One major reason was that the health and social services (including Pro Sentret) had advised against criminalisation. The main argument was that they feared such a law would jeopardize the health and safety of sex workers and drive the market underground. Something has however happened, which changed the political climate – particularly within the Socialist/Social Democrat movement. The factors that most likely led to this shift are:

- The visible on-street prostitution scene has changed considerably over the past three years. Nigerian (and to some extent Bulgarian) women have come to dominate the street scene, with some even selling sex outside the traditional prostitution zones. Most politicians (and many others) assume they are victims of trafficking. This has not only led to a concern for the well being of the presumed victims, but also to a fear that organised crime is on the rise. There may also be an element of xenophobia mixed in with these concerns. Although the total number of sex workers has not increased dramatically, the nationality, skin colour and visibility of sex workers have indeed changed over the past few years.
- The issue of public nuisance has also played a considerable role in the discussion. The ‘dignity and cleanliness of our streets’ etc. is seen as being threatened and the proper response seems to be to establish law and order (this is – as we know – a trend in many European cities). Not only sex workers are affected by this, but also beggars, homeless people, unemployed migrants, people of the Roma community, drug users etc.
- Sweden has been very successful in lobbying for their model, claiming that it is a very effective instrument for fighting human trafficking, that public attitudes have changed in Sweden and that prostitution is diminishing.

### **What do we anticipate in the long run?**

Looking at Swedish experiences, we can assume that the effect will depend very much on how the law is applied. The political signal sent by the draft is that the law is intended to be enforced and not function merely as a symbolic law. Policing has increased in most places where prostitution takes place, both indoors and outdoors. When a new law is introduced, the legislator needs to show that there is indeed a shift in policy on the issue. As it will be difficult to effectively apply the law to the clients (in Sweden only a small percentage of the actual ‘crimes’ is prosecuted), disrupting the daily business on the market will be a likely approach the police may take.

Based on the Swedish experience, we can also assume that street prostitution will dramatically decrease during the first year the law is implemented, but that it will slowly pick up again later. It is also likely that the sex workers who choose to remain on the streets will be the ones with fewer options, such as drug users and a number of migrants. Already they report to be exposed to more difficult clients, because the ‘good’ clients decide to no longer come or choose to seek sexual services in more secluded areas. Many sex workers expect to become more dependent upon facilitators (landlords, organisers, advertisers, managers, pimps etc.). As mentioned before, quite a few are considering working indoors and using Internet for advertising. In order to do this, however, they usually require the assistance of another person. Some clients, probably the ones who themselves morally question buying, will stop buying.

Although it remains uncertain, a nonetheless disturbing perspective is that the shift toward more restrictive laws may easily lead to more restrictive measures and attitudes in the long run. Already we have reports of more harassment towards sex workers. It is unfortunate that so few decision-makers have viewed the issue of criminalisation within a broader context, for instance in terms of the overall politics of criminalisation (what should be the grounds for (re)introducing legislative measures in the Penal Code, how do we relate to the zero-tolerance policy, what should society's priorities be, how are these measures linked to other kinds of marginalized groups etc.?). We have also taken note of the fact that Sweden is also discussing an increase of the penalties, including the law on pimping within trafficking regulations, and also considering making use of the full penalty (= prison sentence). Some of the arguments used also closely resemble arguments that support a ban on prostitution altogether (both selling and buying).

### Lessons learned

The discussion on client criminalisation is presently taking place in several European countries.

For those facing such discussions it may be useful:

- To make a clear distinction between trafficking and sex work – also considering the Finnish model.
- To highlight the importance of an approach that focuses on the human rights of those involved and thus takes into account the protection of the human rights of sex workers, including migrant and mobile sex workers.
- To point out the lack of documentation of the effects (and costs) of the Swedish model.

- To point out the fact that most arguments in favour of such a law are of moral nature and do not consider the practical effects, costs or those who pay the price. The argument against criminalisation with the greatest impact is that it puts the safety of sex workers at risk.
- Not to underestimate the fear of trafficking – also questioning if the Swedish model is indeed an efficient instrument for fighting human trafficking, for which there is no solid evidence.
- Not to underestimate the fear of the 'contamination of public places'. Be aware that changes in the public prostitution scene, including the appearance of unfamiliar groups and approaches in public space, easily trigger the demand for simple, restrictive measures. We must think about ways of dealing with this.
- To consider what approaches to take towards clients ('the convenient enemies').

Those who wish to follow the current discussions, may visit Pro Sentret's website providing information on the most important developments in Norwegian and English at [www.prosentret.no](http://www.prosentret.no).



### **Sex Work and the Policing & Crime Bill: A briefing on the comprehensive failings in the UK draft law**

**By The International Union of Sex Workers**

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Few industries are as controversial as the sex industry; few industries contain such human rights abuses. Often debates on this issue are polarised and simplistic, and exclude those most affected. There is no more valid group of stakeholders in this debate than we who work in the sex industry, who live with the consequences of policy decisions at a local and national level. But frequently there is refusal to acknowledge that our views on our own situation might have relevance, let alone importance. There are no more vehement or dedicated opponents of the abuse of sex workers than sex workers ourselves: we have most to gain from safe, fair and non-exploitative working environments, and from an end to social exclusion and discrimination against us. Without the contribution of those who see the day to day working of the sex industry, it is impossible to create effective policies to target the abuses which take place within the sex industry. You can personally challenge the exclusion of people in the sex industry from the decision making process by listening to what sex workers have to say.

Wholesale criminalisation actively enables trafficking and exploitation by making no distinction between good and bad practice. If policy on prostitution continues to conflate the sale of sexual services with trafficking, abuse and exploitation, legislation will be at best ineffective, at worst harmful. The draft

Policing and Crime Bill, if enacted and enforced, will increase the vulnerability of people in the sex industry. It will drive the industry back underground. Robbery and violence will increase in both indoor and on-street sex work. This will make a repeat of the events in Ipswich in 2006 more, rather than less, likely.

The Policing and Crime Bill currently before Parliament is intended, in the words of the Home Office, to ‘protect vulnerable groups, particularly women and children by tackling the demand for prostitution and strengthening arrangements around sex offender prevention orders and foreign travel orders’. However, despite avowed intentions of targeting violence, exploitation, coercion and abuse, none of the provisions on sex work in the Policing and Crime Bill actually refer to these acts and offences. Laws that do not target abuse are useless in tackling abuse. In fact, the draft legislation will increase the vulnerability of people in the sex industry.

- Section 13 will aid traffickers by ensuring clients are less likely to report anxieties about victims of trafficking.
- Sections 15-19 will increase violence against street sex workers, waste public funds and increase the impact of street sex work on communities.
- Section 20 will remove the protection of law from almost everyone who works in the indoor sex industry, with a corresponding increase in robbery and rape that criminals know will go unreported. Of all the unworkable and ineffective provisions in the Bill, this is the one that will result in the greatest violence against sex workers.

### **How these provisions will increase trafficking, violence, exploitation and social exclusion of sex workers**

These provisions, individually and collectively, entirely fail to target violence, coercion, exploitation or trafficking. They will, however:

- assist traffickers by decreasing reporting by clients of anxieties about victims of trafficking.
- remove the protection of the law from those of us who work indoors – if by reporting crimes against us, we risk arrest and immediate closure of our businesses, many will choose not to report.
- increase violence against those of us who work indoors as criminals will know we are unlikely to report crimes against us.
- remove the protection of the law from outdoor sex workers by narrowing the definition of ‘persistent’ soliciting.
- increase violence against those of us who work outdoors by making it more dangerous to negotiate with clients and those who present as clients but intend to do us harm.
- deprive those seeking to move on from prostitution of support to help do so, due to the waste of public funds on ‘rehabilitation’ as form of punishment.
- increase the social exclusion of us all by making us more vulnerable to violence and vigilantism from the general public.
- perpetuate the social exclusion of sex workers by teaching us that our lives, our livelihoods, our safety and our opinions are irrelevant to policy makers.

### **Violence and change**

- The majority of violence against sex workers comes from those who do not pay for sex. Many assailants express hatred of sex workers and appear to feel their actions are legitimated by society’s abhorrence for commercial sex. A substantial amount of violence to street sex workers comes from members of the ‘general public’, such as gangs of youths, local residents and vigilantes.
- In contrast, 40% of nurses have suffered assault or harassment in the past 12 months.
- In Liverpool, where violence against sex workers is treated as hate crime, police are achieving a 40% conviction rate for rape; six times higher than the national average for all women.
- The Home Office’s own research shows that enforcement and police crackdowns are ineffective in terms of reducing street sex work, and that the most effective solution was ‘the right support ... available at the right time’.

### **Clients**

- According to the 2000 National Survey of Sexual Attitudes and Lifestyles, 9% of men in London had paid for sex in the past five years, compared to 4% across the UK. In a survey of 16,000 gay & bisexual men, 10.4% had bought or sold sex in the past year.
- Less than 5% of clients said they would be deterred by legal sanctions, though 20% said they would stop buying sex if they had a girlfriend.

- There is no evidence that most purchasers of sexual services wish to buy services from the unwilling.
- There is no evidence that trafficking for sexual exploitation is demand-led. In London, where the vast majority of sex workers are non-UK nationals, demand seems to have fallen.
- Clients can be part of the process of identifying trafficking. In Turkey the government set up a well-publicised hotline for reporting trafficking, across all industries. In the six months to January 2006, three quarters of the tip offs came from sex workers' clients.

Policies that solve problems are based in reality and on evidence, not on ideology, assumption and stereotypes. The debate around sex work customarily excludes those who sell sexual services. The inclusion of sex workers themselves, and the recognition of the diverse realities of sex work, is the only ways to create effective laws for sustainable positive change.

## ITALY

### **Anti-Prostitution ordinances: A report on the effects of the 2008 ordinances issued in several Italian cities**

**By the Committee for the Civil Rights of  
Prostitutes onlus/CDCP onlus**

The 2008 security package (Law nr. 125 of 24 July 2008) issued by Interior Minister Maroni invests mayors with the judicial power to declare anything that might endanger the security and decorum of the

cities an emergency. Sex workers and their clients are subject to special ordinances that allow municipal policemen to administer fines as high as 500 EUR. A total of 56 municipalities enacted the law. In other words, 11 out of 20 Italian regions have endorsed the law, although there are slight differences in how it is enforced.

During the same period, the government also announced other provisions. Including, for example the Carfagna Bill, which would foresee a modification of the law on prostitution by adding a maximum of 15 days imprisonment for sex workers and clients for on-street prostitution; additional norms have been introduced into immigration laws, making it a penal offense to entry and stay on Italian territory illegally. Consequences for illegalised migrants include the exclusion from health services, inability to register newly born children and the arrest, confinement and subsequent deportation of all illegalised immigrants, including minors. Altogether, these bills have stirred up fear to the extent that foreign sex workers now avoid using health services. In practice, migrants do not go to health centres anymore. They seek help on underground markets where all their needs are met by an illegal support network that is much more costly and obviously managed by criminal organisations.

Following the enactment of these laws, 24 NGOs that work with sex workers and operate mobile street units began to monitor the situation on the streets and record the effects of the ordinances throughout Italy. A final report, issued in July 2009, clearly states the lack of collaboration with local authorities and NGOs, the state of fear and insecurity among sex workers, and the re-organisation of criminal activi-



ties especially with regards to sexual exploitation. Outreach units spend several hours at night in search of their customers in far-off roads in the provinces to no avail and, if they are lucky enough to find them, it is difficult to talk to them. In some areas, sex workers begin working at 2am as an attempt to avoid police control.

### **Immediate effect of the ordinances**

Increased repressive tactics have completely driven sex workers away from the streets. As expected, there has been a drastic reduction of their presence in several areas although surprisingly enough, in some areas there have been no significant changes. In all towns monitored, the anti-prostitution law had an immediate effect that prompted all sex workers to leave the streets. This however was a temporary strategy to avoid the police, as several then returned and, in some cases, even in higher numbers once police raids became less frequent.

As expected, indoor prostitution has increased. Each town has its own specificities regarding work indoors. For example, there are sex workers who work in country houses and in some towns like Bologna, Eastern European women register at the university and show their student cards if they are controlled, although they work as sex workers. In Naples, sex workers who earn less are forced to rent rooms in rundown areas and work in very poor conditions. Working indoors means higher fixed costs, as sex workers must then also pay for rent and newspaper ads. Experienced sex workers can rely on word-of-mouth and have access to an ample range of clients, while younger sex workers new on the market barely have enough clients and thus must advertise in dailies. This goes hand in hand with a generally

poorer quality of life for sex workers regardless of their level of autonomy, self-emancipation or level of exploitation.

Although indoor prostitution is not a new phenomenon, new trends include the following:

- Social exclusion is on the rise, as not all sex workers can afford to rent flats. The only alternative is to move to remote areas that are not mentioned in the ordinances.
- There is an increase in criminal organisations exploiting sex workers who must rely on them to look for flats and working areas.
- Contacts with NGOs and law enforcement agencies have become more difficult, if not impossible. As a consequence, information on health and legal issues, services available and possibilities for leaving prostitution or access to protection programs have decreased.
- There has been an increase in health risks. Young sex workers, especially Nigerians, frequently accept unprotected sex, as they find their negotiation power is drastically reduced when forced to work in densely populated areas. In addition, many sex workers are under constant pressure to work more to pay their debts.

Although Italian sex workers are still present on the streets, they have also been hit hard by the new ordinances. They often work in hidden or remote areas and usually have fixed clients. Generally, they are aged 40 and up, have a low income, are socially ostracized and are partly dependent on social services to make ends meet. They hardly earn enough to be able to pay a 400-500 Euro fine or risk losing clien-

tele, most of whom avoid the streets in order not to receive these high fines.

Transgender persons have also been stopped by the police and fined if found working in unrestricted areas. The ordinances have increased stigmatisation against them to the extent that many have become unable to work. Consequently, there has been an increase in transgender sex workers who apply for economic assistance, job placement and housing. They also now tend to work indoors as their clients do not want to be subject to the fines for working on the streets.


On the whole, all the repressive tactics aimed at guaranteeing security have resulted in a greater marginalization and vulnerability of these groups.

### **Impact of the ordinances on criminal organisation**

Strategic changes are underway, criminal organisations and the Mafia have actually diversified the sex work market by placing sex workers from the EU (e.g. Romanians) on the streets, as it is virtually impossible to deport EU citizens, while those with an irregular position under the law are placed 'under cover'. They also have the financial power to buy houses thanks to the economic crisis, which has led to lower housing costs. In addition, the Mafia is in control of several public entertainment sites and can easily make sex workers move to work indoors.

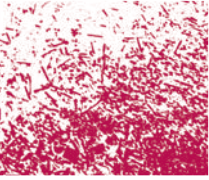
### **Conclusions**

The repressive policies on immigration and prostitution as well as the decrees are counter-productive, useless and costly because the phenomenon constantly reappears at the first sign when police controls become more relaxed. The probability of an

increase in health risks for sex workers and, consequently, for the 'general public', is high. Criminal networks are becoming stronger thanks to the fact that they have found a favourable situation that responds to the needs of a market that is currently being restructured. Paradoxically, the police are now even more engaged in applying the new bill to ensure the security and decorum of the municipalities, which has led to such a large scale of new illegal actions taken against migrants that the police now have little time to combat real criminality. 







## RECOMMENDATIONS

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Drawing from the assessments of legislations and policies on sex work, migration and health in 25 European countries and building upon the principles of a human rights framework, the TAMPEP network puts forward the following recommendations in order to support and stipulate further action. The recommendations summarize key issues of concern regarding the equal treatment of female, male and transgender sex workers – including migrant and mobile sex workers – and the full protection of their human rights. They are directed at policy makers and specifically address representatives of EU and UN bodies, national and international public authorities and the health care sector.

The TAMPEP network urges the implementation of the following recommendations:

### General recommendations

- Acknowledge the intersectionality of sex work, migration and health policies and their effects on the living and working conditions of sex workers. Adopt and implement holistic policies that include sex workers and protect their human rights.
- While sex workers are marginalised and discriminated against through social stigmatisation and (legal) exclusion, they are, at the same time, part of the 'general population' and have the same

needs and rights as other individuals. Do not exclude sex workers by treating them as a threat to public health and security; instead ensure that public policies take into account the health, well-being and security of vulnerable groups, including sex workers.

- Include sex workers and sex workers' projects as experts into all phases of policy design, development, implementation and evaluation that affect sex workers and their well-being.
- Together with sex workers and sex workers' organisations, ensure the continued monitoring of policies, their implementation and outcome with respect to the full protection of sex workers' human rights, including their access to public health and social care services.
- Provide sufficient resources for sex workers' organisations and (health and social care) services in order to ensure the availability and accessibility of non-discriminative support services.
- Trafficking in human beings and sex work are two essentially different issues and should be treated as such. Trafficking in human beings is a severe human rights violation while sex work is per definition an occupational activity. Anti-trafficking policies should not be used as instruments to target sex workers, in particular migrant and mobile sex workers, and curtail their rights. Instead, all measures should be based on an inclusive human rights framework.



## Recommendations regarding SEX WORK policies

- Acknowledge the realities of sex work in the European countries and implement inclusive politics that protect the human rights of sex workers, including migrant and mobile sex workers. Adopt a stance that actively seeks to protect the human rights of sex workers and is based on non-discrimination and inclusion.
- Abolish laws and policies that criminalise sex workers, in particular all punitive measures that violate sex workers' human rights.
- Respect and protect the human rights of sex workers, including the right to work, the right to free choice of employment and the right to just and favourable work conditions.
- Sex work policies should provide empowerment and legal protection. These are core elements for ensuring autonomy and independence and preventing dependencies and exploitation.


## Recommendations regarding MIGRATION policies

- Acknowledge the global reality of migration, including transnationalism in the field of sex work. Provide for the possibility for migrant sex workers to obtain residence and work permits in order to increase the autonomy and independence of migrant sex workers and to prevent dependencies and exploitation.
- Respect and protect the human rights of migrant sex workers, including the rights to freedom of movement and residence, the right to equal protection under the law and the right to the

highest attainable standards of physical and mental health.

- Consider migrant and mobile sex workers as active agents of choice.
- Ensure the participation of migrant and mobile sex workers in the design, development, implementation and evaluation of migration policies.

## Recommendations regarding the public HEALTH care sector

- Base public health services on the principles of universal accessibility. The use of all services must be voluntary and confidential.
- Ensure sex workers' access to public health services independent of their legal, insurance and/or occupational status.
- Ensure immediate and comprehensive STI, HIV and AIDS treatment, care and support – independent of legal, insurance and/or occupational status.
- Provide periodic sensitisation trainings on the issues of sex work and migration for the staff of public health care services in order to reduce stigmatisation and discrimination of sex workers. Ensure the inclusion of sex workers as experts in the design and implementation of such trainings.
- In recognition of the transnationality of sex work, include cultural mediators as professionals and as integral part of the team into the staff of public health care services. 



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# REPORTS

**NATIONAL REPORT  
SUMMARIES**



# NATIONAL REPORT SUMMARIES

## AUSTRIA

### Sex work policies

According to the currently undisputed 1989 ruling of the Austrian Federal Supreme Court, today in 2009, sex work is still considered 'contra bonos mores' or against good morals. Sex work is neither recognised as a trade or a profession nor as a gainful occupation and there is currently no possibility to legalise employment relationships based on sex work. It is compulsory for sex workers to be registered with the local authorities (municipal office and in some provinces the police department). Sex workers must undergo regular mandatory health checks and are taxed as self-employed workers.

There are national and provincial laws that regulate prostitution in Austria. On a national level, prostitution is regulated by the following legislation: Civil Code, Penal Code, Alien Police Law, Sexually Transmitted Diseases Law, AIDS Law, Income Tax Law, Immigration Police Law and in the National Insurance Act. According to the National Constitution, prostitution is an issue to be dealt with on the level of the provinces. Provincial laws address prostitution using a regulative, prohibitive or sometimes even abolitionist approach. There are nine provinces or federal states in Austria, each of which regulates the initiation and provision of sexual services through different laws. Specific laws on prostitution

exist in Carinthia, Lower Austria, Styria and Vienna. In Burgenland, Upper Austria, Salzburg and Tyrol sex work is addressed under the public administrative Penal Code; and in Vorarlberg sex work is addressed within the Police Law on Vices. There are two main legislative models in Austria:

- The 'brothel model' prohibits exercising and soliciting prostitution unless it takes place in a licensed brothel. This model is applied to the legislation in Styria, Tyrol, Carinthia, Salzburg, Upper Austria and Vorarlberg. However, this only exists in theory in Vorarlberg, because there are no licensed brothels there. In Styria, home visits are also legal.
- The 'prohibited zones' model allows prostitution anywhere outside designated 'prohibited' zones. The 'prohibited zones' model is applied in Vienna, Lower Austria and Burgenland.

### Migration policies

In principle, as of 1 January 2003, only self-employed persons or employed 'key professionals' may immigrate to Austria for the purpose of gainful employment. Requirements for this include, amongst others, training or knowledge that is specifically in demand, a minimum income of approximately 2,100 EUR before taxes and that this job significantly contributes to the national labour market or sector. There is no quota for persons without specialized qualifications. As of 1 January 2003, non-EEA (European Economic Area) persons who received a residence permit after 1 January 1998 and non-EEA residents granted their first residence permit after 1 January 2003, are also obliged to fulfil the requirements of the so-called 'integration agreement'.

On 1 January 2006, a new ‘immigration package’ came into effect, including revisions to the Asylum Law, Immigration Police Law and Settlement and Residency Law. This brought about drastic changes and immense difficulties for non-EU migrants. One of the changes directly impacts the situation of (non-EU) migrant sex workers: The former so-called ‘prostitution visa’, i.e. its equivalent for dancers, which actually was a short-term residence permit for self-employed individuals to work in prostitution, is no longer being issued. It has been ‘substituted’ by a standard visa (visa type D+C), a new short-term (3-6 months) legal permit for non-EU migrant sex workers. The initial application and any ‘extension’ must be made from abroad, i.e. from the country of origin. This visa is issued for a maximum of 6 months within a 12-month period. This leaves migrant sex workers with no long-term perspective for managing their lives and future in Austria. They have no possibility to consolidate their residency, to continue to work or to ensure their health and well being. Such short-term permits force them into a state of constant mobility and greater dependence.

The instability of long-term residency and the fact that their work is not officially recognized has made them more vulnerable to exploitation. Sex workers who had previously been working and living legally in Austria for years on the basis of the former short or long-term residence permit have effectively become illegalised. They have moved into other less visible areas of prostitution, other regions or now find work through informal networks.

Since 2003, asylum seekers are able to engage in sex work within the legal framework of the ‘new self-employed’ regulation.

The general changes in the new immigration legislation (Immigration and Citizenship Law) have brought about even more restrictions for migrants in general, e.g. regarding marriage to an Austrian citizen, consolidation of short or long-term residency etc. Migrant sex workers are heavily affected by these restrictive measures. Migrant sex workers face expulsion and deportation if charged with an offense regarding prostitution laws or for living and working in Austria without a valid permit. If a person’s residency in Austria is considered a threat to the public order and security, which can include grave offences against the prostitution law or other regulations on prostitution, they are barred from receiving a residence permit.

### **Health policies**

Municipal or regional public health care services in Austria are part of public administration. Sex workers are obliged to register at the security direction of the police in Vienna, i.e. at the local magistrate in the other provinces. Upon registration their data is automatically transmitted to the local health care institution. Before starting work, sex workers must undergo health exams for STIs and HIV/AIDS. While working, sex workers have to undergo weekly health check-ups for STIs and HIV-testing once every 3 months. Health care service providers are not able to determine a sex worker’s migration status, as this is not considered vital information for health service institutions. Although health care information may be considered confidential, after a person’s file has been entered into the system, the question whether or not health services are anonymous becomes obsolete. Although the provision of certain services is prescribed by law, not all institutions offer all serv-

ices. The services vary, as there are no standard guidelines regarding the provision of health care services. In almost every capital city of the nine provinces there is an official health office where sex workers receive free (mandatory) health exams for STIs and HIV testing. In other regions and in smaller towns, sex workers have to visit local specialists and pay the costs for the compulsory testing.

Sex workers are issued a control card with their name on it. Each health check is registered on the card. In case of an infection, the authorities keep the control card until treatment is completed. The control card must also be shown at police checks. The threat of deportation is problematic for persons with health issues. According to Art 2 and Art 3 of the ECHR (Right of Life and Prohibition of Torture), these persons may not be deported. But in practice, it is necessary to 'defend' this legal provision for each individual, e.g. submitting an application to suspend an order of deportation issued on the basis of the Alien Police Law.

## BELGIUM

### Sex work policies

Since the 21 August 1948 legal enactment that lifted the official ban on prostitution in Belgium, sex work is no longer a criminal offence. However, any conduct that poses an offense to the public order, including pimping, are still punishable under Belgian law. The legislation concerning sex work is applicable on both national and local levels, which is enforced by municipal authorities.

On a national level, Art. 380 quater of the Belgian Criminal Code declares kerb-crawling or soliciting

a criminal offence, which 'shall be punished by imprisonment from eight days to three months and a fine [...this applies to] whomever, induces a person by words, gesture, or signs to engage in debauchery in a public place'. Art. 380 quinquies of the Belgian Criminal Code declares advertising services of a sexual nature a criminal offence, which even includes 'dissimulating the nature of the service under the artifices of language'. Art. 380 bis of the Belgian Penal Code declares pimping a criminal offense, which 'shall be punished by imprisonment of one to five years and a fine [...]'. 'Serious' pimping is defined when the offender employs violence, threats, fraudulent behaviour, or any form of constraint; abuses a person in a weak and vulnerable person due to their illegal or precarious status, pregnancy, illness, mental or physical weakness or dis/ability. When minors under 16 years old are involved, the penalty is greater, i.e. 10 to 15 years imprisonment. Purchasing sexual services does not constitute a criminal offence in Belgium.

A law was enacted in April 1995 to prevent human trafficking. This law was reviewed and amended in August 2005; however, since then, human trafficking has been redefined exploiting persons and making them work in conditions contrary to dignity. In this way, human trafficking is not only concerned with the exploitation within the context of sex work, but also with the exploitation of consenting victims, whether they are foreign citizens or not. The punishment for this is one to five years of imprisonment and a fine. Restrictions can also be applied to enterprises that generate income from sex work, and as a result, establishments may also be closed.



## Migration policies

The Immigration Law enacted on 15 September 2006 regulates entrance and residence permits for foreigners in Belgium. This new law entails substantial amendments to the law that had been in effect since 15 December 1980. The 2006 law regulates migration for the purpose of working as a salaried employee, freelance or self-employed work. However, no work permits or professional cards are granted to persons who intend to practice sex work in Belgian territory. It is prohibited for foreigners with a tourist or student visa to engage in sex work. In the event of a police inspection, they are reported to the Foreign Office and will receive a court order to leave the country and even risk deportation.

In the event of a police inspection, migrants whose applications for residence permits are being processed found visibly practicing prostitution can be considered to be disturbing the peace. After the Foreign Office has been informed, the person risks having their application rejected, receiving a court issue order to leave the country or outright deportation.

Persons illegally residing in Belgium who experience violence on Belgian territory have the right to file an official complaint with the police; however, the police are obliged to report this to the Foreign Office, which then issues a court order to leave the country or may decide to deport the complainant.

Only victims of human trafficking can apply for a residence permit if they file official complaints against their exploiters, provided they agree to stop sex work.

## Health policies

All persons living in Belgium have health insurance. Migrants who are not part of the Belgian national health system and have private health insurance in their countries of origin can receive files on the medical care and treatment received in Belgium so they can apply for reimbursement in their own country, if applicable.

Medical care and assistance are available to migrants with papers, regardless of their financial means. In case of a need for financial assistance there are social workers who make sure the necessary care is administered.

Urgent Medical Aid (UMA) or emergency medical attention is also available for persons regardless of their legal status. Under Belgian law, the Belgian social welfare centre (CPAS) is obliged to provide urgent medical attention to foreigners without financial means, even if their form of stay is illegalised. Persons in need of medical attention must provide a certificate, dated and signed by an approved physician, to prove they are eligible for receiving medical aid. The attending physician then makes sure that the person does not have to pay for the consultation. Urgent medical aid can be preventive or curative, as long as it aims 'to avoid a risky medical situation for the person and their surroundings'.

The CPAS of one's place of residence is responsible for ensuring that UMA is available. For the homeless persons, it is the CPAS at the local hospital can provide information and access to a network of assistants on duty who handle such cases.

AIDS referral centres are part of hospitals affiliated with universities. They offer medical and psycho-

logical assistance as well as social guidance and support for persons with HIV/AIDS. They also run a hotline and conduct screenings. Urgent medical aid allows persons whose stay is illegal access to free-of-charge treatment to combat HIV; however, most doctors hesitate to begin treatment because of the strong likelihood that the treatment could be interrupted in the event of deportation. Moreover, a diagnosis as HIV-positive does not necessarily ensure a person will receive a residence permit for medical reasons. In order to apply for such a permit, the applicant must prove that health care and treatment are not accessible in the applicant's country of origin. In the event of a police check in a place of prostitution, the Foreign Office, which is responsible for processing residence and work permit applications, will be informed of the migrants found working there. This could lead to deportation on the grounds of 'disturbing the peace and public order'. This, however, does not apply to persons who have obtained a residence permit for medical reasons.

## BULGARIA

### Sex work policies

The legal framework in the country does not directly address sex workers. In the Republic of Bulgaria, the Penal Code addresses issues regarding regulations placed on sex business entrepreneurs and human trafficking. Under the national Penal Code, the following are defined as criminal acts: pimping/persuasion into prostitution; organising and offering venues for prostitution; forced prostitution and the prostitution of minors; and trafficking people for the purpose of prostitution.

There is an article that addresses 'unearned income through immoral means', which directly applies to sex workers. This old article of the Penal Code that states that able-bodied persons of age who continuously fail to engage in socially beneficial work or those who receive income through unwarranted or immoral means are subject to up to two years of imprisonment or probation. Recently, sex workers have been repeatedly arrested on the basis of this article. Upon their arrest, they are urged to sign a written statement and after three protocols they must appear in court. In some cases, as far as we know, sex workers are fined or punished for not engaging in a 'socially beneficial' form of labour. This article is applied in particular in cases of street prostitution.

Police often detain street-based sex workers and charge them with violating the public order, with having no IDs etc. It is common for sex workers to have a criminal record; for instance, that clients have filed complaints with the district police that the sex worker has engaged in illegal activities. Because sex work is not regulated, there is a great amount of police corruption, violence, blackmailing and arbitrary treatment of sex workers. If sex workers wish to avoid legal problems, they must maintain a good relationship with representatives of the law, i.e. police officers, which usually means paying them off.

The Tax Law contains a section regarding income tax for 'natural persons'. According to this section there is an 'annual tax rate' on the income of natural persons and self-employed workers (e.g. privately-owned entrepreneurship) not registered as charging VAT (value added tax). Escorts and masseurs are included in the list of these self-employed types of 'registered activities' and 'annual tax rates'. It is legal

to offer massage and escort services, and they are therefore liable to taxation. It is a 'public secret' that most of the clubs and apartments offering paid sex are registered as massage parlours or escort agencies. Independent persons could theoretically register a business as sole proprietor, but the tax is extremely high. Therefore, in practise, only very few register a business in this form.

### **Migration policies**

The laws relevant to sex work apply to all persons in Bulgaria regardless of their nationality or citizenship. Sex workers in Bulgaria are mainly nationals who are part of a flow of migration within and outside the country. The largest group in the sex industry consists of Bulgarian nationals. A very small group of transient sex workers is exclusively comprised of women from the Balkan and former Soviet countries.

Sex work outdoors takes place on the street or along roads or highways. These are the most precarious work settings for sex workers. Sex workers who work outdoors often have the lowest levels of education, are least likely to seek out health care services and are exposed to the greatest violence from clients and other persons – which is partly due to the fact that such areas are largely controlled by criminal organisations. A mixed setting of outdoors and indoors is sex work done in motels and parking lots. There are several international highways in Bulgaria and truck drivers are the main clients. Sex workers in these areas are predominantly members of the Turkish and Roma minorities and have a very low level of education. Sex work done indoors often takes place in hotels, mainly in tourist areas and during the summer and winter tourist seasons. Apartments are

another indoor setting for sex work, which also includes so-called 'clubs', 'offices' or 'brothels'. This is the most diverse sector of the sex industry: The workplaces include: bars, striptease clubs, massage parlours; as well as escort services and sex work at resorts.

The working and living conditions of sex workers vary, depending on their ethnic background, social situation, rural/urban living area and the sector of the sex industry in which they work. Those working on the streets are in the most disadvantaged position, because there is a high level of criminal activity, threat of violence and extremely poor working conditions. They are also the ones with the lowest educational and health levels with very limited access to services. The majority of street-based sex workers are from Roma and Turkish minority groups. Sex work outdoors could potentially also be an option for those who choose to work independently, however without any protection whatsoever. Transgender sex workers and some more experienced female sex workers take the risk of working without 'protection' in the hope that they will earn more, as they would not be obliged to share their money. Some pay a 'bodyguard' or work with the police.

### **Health policies**

There is no mandatory health care provision for sex workers. Testing, medical exams, etc. are purely voluntary. Sex work is not regulated by law. As a result, in terms of health insurance, there is no differentiation between the general population and sex workers. Uninsured persons can use public health care services if they pay a form of income tax, the amount of which is determined by the state.

Everyone, including sex workers, who needs medical care and does not have health insurance may access to any medical service for the regular cost of the service. There are low-threshold services especially for sex workers (regardless of one's legal status, nationality, health insurance etc.). Various NGOs also offer free or low cost services for sex workers. Using such services is a good way to educate people to care for their personal health, however they are not able to cover all their needs.

Access to HIV/AIDS testing or treatment is free for the general population, including sex workers, regardless of their health insurance status. Migrant sex workers with Bulgarian citizenship have access to HIV/AIDS treatment. Migrants with a Bulgarian ID card have the same insurance status as nationals. Migrants without Bulgarian citizenship and a legal residence permit (e.g. students, work visa holders, etc.) also have access to HIV/AIDS treatment.

Those illegally residing in Bulgaria, including sex workers, can be subject to deportation. A diagnosis as HIV-positive does not constitute grounds for deportation. Foreigners legally residing in Bulgaria can become exempt from deportation for medical reasons; however, it is also possible that a person is not granted entry into Bulgaria for medical reasons.

Most sex workers have no insurance and, as a result, are lacking clear information on the necessary steps to accessing medical services. Another problem is that oftentimes sex workers are not able to pay the fees for health care services for uninsured persons.

Extensive discrimination by the public at large is a fundamental reason that sex workers are extremely reluctant to allow themselves to be identified as sex workers. That is one of the main reasons that sex workers refrain from seeking medical or other forms of assistance.

## CZECH REPUBLIC

### Sex work policies

In the Czech Republic, sex work is not yet regulated on a national level. The municipality of the city of Prague has been working on the draft of a law regulating prostitution. The latest version of the draft still closely relates to aspects of the criminal code but through the lobbying of our organisation, R-R Bliss Without Risk, is slowly starting to incorporate aspects of trade legislation. The main contemporary trend is to expel prostitution from the city borders. Sex work has become more invisible due to new legislation that came into effect in March 2007, which gave municipalities the right to designate areas for sex work or to ban sex work altogether. This has pushed sex workers from working on the streets (outdoor sex work represents less than 20% of all sex work) into working in private apartments, clubs and windows. This legislation has caused a change in the statistics on the locations where sex work is done. Sex workers must now stay outside the borders of the municipality; this often means working along highways and roads or near parking lots and petrol stations. There is also a new combination of outdoor/ indoor work settings, e.g. running out from behind the windows when a car comes or into the club when a police officer approaches (e.g. in

Teplice). This regulation has pushed workers into private apartments or clubs and increased their dependence on pimps and brothel or agency owners.

Sex workers are thus more easily exploited and abused. There continue to be few contracts or safe and secure work conditions. We would like to point out that inaccurate definitions often obscure the difference between brothels/clubs and apartments. Currently, in the Czech Republic, there are bars with only one sex worker and apartments that are occupied by up to eight women. Also, sex supermarkets are on the rise – clubs with around 150 women each shift. Another location where a lot of sex workers gather as a consequence of the legislation that has been pushing sex work away from the streets is the areas inside and around the main railway station in Prague.

### **Migration policies**

There are an estimated 10,000 to 13,000 sex workers in the country, most of them (95%) female. 58% of all sex workers are Czech; the rest are from other countries, typically from Central, Eastern, or Southeastern Europe (including Slovakia, which Czechs do not typically regard as a foreign country). There is a continually increasing demand for 'exotic' women, in all prostitution settings. Traditionally, Roma women were considered 'exotic' but now women from Africa (Nigeria, Ghana) and Latin America (Brazil) have come to represent the new ethnicities among sex workers in the Czech Republic. This demand for ethnic and racial diversity is primarily visible near the borders to north-western Bohemia (Cheb, Mariánské Lázně). R-R Bliss Without Risk is looking to expand the range of languages available and to at least make our information

material available in Portuguese and eventually French. Another trend is that sex workers who used to come to the Czech Republic as their target country from new EU countries, such as Bulgaria, now bypass the Czech Republic and go further to Western Europe (e.g. Spain, Germany).

New research by R-R Bliss Without Risk that analyzed the situation of about 42 workers (one third migrant and two thirds Czech) found that, surprisingly, there are many well-established migrant sex workers in the capital who work in better conditions than their Czech counterparts. R-R has also found that the women who tend to live and work in the apartments where sex work is provided tend to be Czech rather than foreign, which can mean worse work conditions – as they might have to work more/flexible hours than women who commute. Only a small number of respondents reported problems with the 'managers' or pimps.

Almost all sex workers, both nationals and migrants, give a portion of their earnings to pimps and owners. This won't change until there are better legislative provisions allowing workers to receive fair contracts and, of course, until sex work is legalised. The three most frequently cited problems national sex workers face are:

- client violence;
- economic issues for single mothers: inadequate childcare, lack of other services for single mothers, and
- unattractive job opportunities – because well-paid (managerial-level) jobs are either time-consuming, less interesting or require skills and qualifications they do not have.

In sex work, women can make enough or at least 'good' money and still have time to look after their children during the day. 42% of R-R Bliss Without Risk clients are single mothers.

For migrants, a big problem is the vulnerability in their relationships with pimps and traffickers. Due to their weak legal status, disconnection from their families and other barriers (language, new place), migrant women are more likely to be exploited and abused – not only by those running the sex industry but also by clients. The lack of information about their rights and services available to them can be improved through raising awareness about these issues. R-R Bliss Without Risk workers distribute flyers, mirrors, lighters and other items with emergency numbers on them. It would be a good idea to also distribute whistles for women to use in the case of attack. Sex workers have been reporting several cases of client violence and demand improvements in security and safety provisions, whether this be through installing alarms, cameras etc. into door frames or elsewhere.

The awareness about safe sex practices among sex workers is generally very high.

There are higher levels of violence and abuse in the sex business than there are among the general population. Women experience attacks with guns or knives, threats, rape, verbal and physical abuse and blackmail. The situation tends to be worse among migrants. However, because women have been pushed outside the city limits, they are exposed to much more crime and violence, which also makes them more vulnerable.

R-R workers distribute flyers, mirrors, lighters and other items with emergency numbers on them. In addition, it would be a good idea to distribute whistles for women to use in the case of attack. There must be more close collaboration between law enforcement agencies and the women working; it would be good if the police would check on the women regularly and if they would come immediately when they are called and offer support on all possible levels. If sex workers decide to report abuse, the police and other agencies must ensure the safety of the victim and make sure they have a place at a shelter or a safe house.

### **Health policies**

Practically all health and social services are available to sex workers who can pay for them. Social services such as counselling, outreach programs or needle exchanges are free of charge. In terms of free services, in 2008 a new one-time project has been initiated offering Hepatitis B and C testing and vaccinations for street-based sex workers and drug users. A new agreement between R-R Bliss Without Risk and a health agency will enable free annual Hepatitis testing. However, in order to increase the awareness on safer sex practices and safety in general, there needs to be comprehensive sex education among the general population. Primary prevention programmes that provide children and youth of all ages with information on safer sex practices, AIDS and STIs must become part of the curricula of the state schools. It would also be helpful to pressure the clients in a way that would encourage them to demand the use of a condom. This can be done through raising awareness among clients.



## DENMARK

### Sex work policies

There are three forms of national legislation concerning prostitution in Denmark: (1) various provisions in the Penal Code; (2) the Alien Act/Immigration Law; (3) the Law on Public Order.

- Danish Penal Code: Prostitution is not illegal; neither is selling or buying sexual services, except from persons under the age of 18. (Art. 223 a) According to Art. 228, pimping is prohibited in Denmark. Under this article, the following acts are criminalised: leading somebody to offer sexual services; leading somebody to offer sexual services or obstructing someone offering sexual services from quitting sex work for the purpose of personal gain; running a brothel, that is, a business where clients can pay for sexual services. A person who runs a brothel must have an economical interest in sex work. The punishment for these acts is up to 4 years of imprisonment. The Danish Parliament took the necessary step on 31 May 2002, of adopting new legislation on human trafficking into the Danish Penal Code. Adding section 262a to the Penal Code has strengthened prosecution of traffickers. This new provision is based on the UN additional protocol on human trafficking and on the EU framework decision on trafficking.
- Alien Act: In 2007, new provisions were adopted into the Alien Act/Immigration Law (Art. 33, 14 and 15) that specifically addressed the residence status of victims of trafficking. According to the new act, presumed trafficked persons are permitted to stay in Denmark for up to 100 days.

Art. 33, 15 allows trafficked persons convicted of falsifying identification papers etc. and sentenced to deportation to remain in Denmark and receive access to the services described in the government 'Action Plan to Combat Trafficking in Human Beings 2007-2010'. Previously, trafficked persons who had been convicted were considered criminals sentenced to deportation under the law; whereas now they have the possibility to stay in Denmark up to 100 days. The Action Plan focuses on supporting the women exposed to abuse and on preventive measures. During the extended deadline for departure, the women can stay in a safe house with immediate access to resources for social, medical and psychological support.

- Law on public order: Street prostitution is regulated under Law 444 Art. 23. This states that the police may prohibit anyone to stop on a certain spot or walk up and down shorter distances if any of these activities results in inconvenience for the persons living around or people passing by. (Law 444, Chapter 2 Art. 6)

There are two ongoing political discussions in Denmark: The first is on trafficking, particularly on how to combat trafficking in persons. The government has issued its second Action Plan for 2007 – 2010. The second discussion, which is sometimes linked to the trafficking discussion, is whether or not clients should be criminalised. If the present Danish Action Plan to combat trafficking in persons does not change the situation and decrease the numbers of victims of trafficking, the government may feel pressured to find other solutions, such as criminalising clients.



As it is, the situation now makes it hard to predict whether or not clients will become criminalised.

### **Migration policies**

There are no legal provisions for migrants regarding sex work in Denmark, as working in prostitution is not considered a form of labour but as a 'social problem'. Therefore, no regulations even conceive of granting a residence or work permit to migrants for work in the sex industry (e.g. special visa or limited residence permits).

EU citizens can enter and reside in Denmark on the basis of the EU regulations on the free movement of persons and services. They may reside freely in Denmark for up to three months. EU citizens seeking employment during their stay may stay for up to six months. If one's stay exceeds the three or six-month limit, a proof of registration (for EU/EEA citizens) or a residence card (for third-country citizens) becomes mandatory. Unlike a residence permit, which is issued and regulated under Danish Aliens Act, proof of registration is simply proof of the rights you already hold according to the EU regulations on free movement of persons and services.

A non-EU resident may obtain a residence and work permit for a specific period of time if the person has an offer for a specific job in Denmark for which the person is specifically qualified. Non-EU migrants cannot obtain a work permit to work as a sex worker; therefore it is not possible for non-EU migrants to legally work in sex work in Denmark.

The structure of migrant sex work in Denmark is divided into two areas: Indoors and outdoors. There is a group of Thai women working in massage parlours in or around Copenhagen. The majority of

the women are 18 – 24 years old. They live in hotels, with friends or acquaintances. There is a frequent change in the women who work in the massage parlours. There is a group of Thai women living at the massage parlours or their own residences who work in the area of Århus (the second biggest city in Denmark) or in southern Jutland. The majority of the women are 25 years old or older. There is a group of women from CEE countries working in massage parlours. There is a smaller group from Latin America working in massage parlours.

There is a group of African women (the vast majority from Nigeria) working in the streets of Copenhagen. There is a group of women from CEE countries working in the streets of Copenhagen.

### **Health policies**

Sex workers in Denmark are not obliged to undergo any kind of health tests/controls or other tests/controls. All persons in Denmark, regardless of their legal status, have the right to health care in case of acute illness. In case of a critical health situation, all migrant sex workers have free access to all services except treatment for any long-term conditions (STI, HIV/AIDS, cancer, hepatitis, malaria and drug rehabilitation treatment), regardless of their work or residency status.

A residence and work permit in Denmark (and job consisting of work at least nine hours per week, 18 hours every second week or 39 hours a month) entitles the holder to public health insurance under the same conditions as national citizens.

Abortion is free for victims of trafficking and is paid by private organisations.



The possibilities for uninsured Danish sex workers to access (HIV/AIDS) treatment are the same as for all national citizens in Denmark, which is free of charge. Uninsured migrant sex workers can get an HIV test for free. There is, however, no possibility for them to receive long-term treatment. Asylum seekers may be treated if their condition (e.g. due to AIDS) has become acute or severe. It is also possible for women to get treatment if they wish to get pregnant and prevent the child from becoming infected.

## ESTONIA

### Sex work policies

The provision of sexual services is not regulated at all, it constitutes a 'grey area'. It is not a crime to identify or work as a sex worker. There are only national laws concerning involvement in prostitution, aiding the sale of sex services etc. Estonia has no legislation that contains the term 'trafficking in human beings', there are however several paragraphs in the Estonian Penal Code that can be applied to trafficking in human beings or aiding the sale of prostitution. Relevant criminal offences mentioned in the Penal Code are covered the following articles: Art. 133 on enslavement, Art. 134 on abduction, Art. 136 on the unlawful deprivation of liberty, Art. 138 on the illegal conducting of biological research on humans, Art. 139 on the illegal removal of organs or tissue, Art. 140 on inducing person to donate organs or tissue, Art. 143 on compelling persons to engage in sexual intercourse, Art. 172 on kidnapping, Art. 173 on the sale or purchase of children, Art. 175 on disposing minors to engage in prostitution, Art. 176 on aiding prostitution involving minors, Art. 177 on the use of

minors in manufacturing pornographic works, Art. 178 on manufacturing works involving child pornography or making child pornography available, Art. 259 on the illegal transportation of non-nationals across state borders or temporary borders of the Republic of Estonia, and Art. 2681 on aiding prostitution which includes the prohibition of brothel keeping.

These laws apply to anybody on Estonian territory, although there is not one example of a court case involving pimps or traffickers from abroad.

There are no current changes in legislation, notwithstanding of the constant debates in mass media with participation of politicians and abolitionist organisations about the necessity of criminalising buyers, especially before this legislation was introduced in Finland. The official point of view, announced by the Minister of Internal Affairs Rein Lang, however, reflected that there was no intention to introduce the same legislation as in Finland, not even an 'abbreviated' version as discussed in the Finnish Parliament. Also, several scholars from Open Estonia Institute who conducted research on the issue found that the Estonian public was not ready for this kind of repressive legislation and also showed that there were quite liberal attitudes towards sex work in general.

### Migration policies

There is no legislation regarding migrants and sex work. There are no employment regulations in the national legislation involving migrants that refer to sex workers (or dancers, artists etc.). There are no regulations according to the Estonian Immigration Law that explicitly refer to sex workers, can be applied to sex work, or that correspond with regula-

tions regarding sex work (e.g. residence prohibition or deportation due to irregular work in the sex industry, administrative offences etc.) There are no regulations that foresee the possibility of granting a residence or work permit for migrant sex workers for work in the sex industry (e.g. special visa or limited residence permits).

## Health policies

Uninsured Estonian sex workers have great difficulties accessing public health care because all services must be paid for. Because of this, it is important that they have access to free and anonymous health care services, HIV tests and STI testing and treatment, free condoms and lubricants. The only organisation currently providing these services is the NGO AIDS Tugikeskus, which works in collaboration with the medical centre Tervisekeskus Elulootus. There are, however, some exceptions: ARV treatment for all Estonian citizens and residents with a permanent residence permit is free of charge regardless of one's insurance. There are special financial resources available for ARV treatment and medical follow-ups for uninsured persons. Free of charge HIV tests and counselling are available in state-funded, anonymous locations in Tallinn and larger cities in other areas of Estonia. Some harm reduction services (e.g., methadone treatment, needle exchange or some rehabilitation drop-in centres) are available to uninsured sex workers who are Estonian citizens or residents with a permanent residence permit.

For uninsured migrant sex workers it is also very difficult to access public health care, because all services must be paid for. Because of this, it is important that they have access to health care services, HIV and STI testing and treatment, free condoms

and lubricants. The only organisation presently providing these services is the NGO AIDS Tugikeskus, which works in collaboration with the medical centre Tervisekeskus Elulootus. There are also exceptions to this: Free of charge HIV testing and counselling are available at state-supported anonymous locations in Tallinn and larger cities in other areas of Estonia. Some harm reduction services (e.g., needle exchange or some rehabilitation drop-in centres) are available and free of charge to uninsured migrants.

Free of charge ARV treatment for HIV-positive undocumented migrants is not available. There are no special financial resources for ARV treatment and medical follow-ups for migrants in Estonia. Methadone treatment is available for documented migrants; however, this is contingent upon their ability to pay for it and if they have a permit to stay in Estonia. The same applies to uninsured migrant sex workers.

Some harm reduction services, for example methadone treatment, needle exchange or some rehabilitation drop-in centres, are available to national sex workers, regardless of their insurance status. Some harm reduction services (e.g., needle exchange or rehabilitation drop-in centres) are available to migrant persons, independent of insurance or legal status. Methadone treatment is available for migrant persons, only for payment and if they have permission to stay in Estonia. Methadone treatment, however, is not available to undocumented migrants.

There is no legal regulation on deportation for medical reasons, e.g. if a person is HIV-positive.

The main barriers for national sex workers are the lack of insurance and lack of trust in institutions. The main barriers for migrant sex workers are lack

of trust in institutions, lack of insurance, which is compounded with their legal status.

Health risks are high due to unprofessional medical treatment. For example, there have been cases of 'over-diagnoses' by dermatologists, venerologists and family doctors.

## FINLAND

### Sex work policies

Sex work per se is unregulated in Finland. It is neither a legal nor a criminal activity. Buying sexual services from the victims of human trafficking or the targets of panderers or from a person less than 18 years old are criminalised.

After a long lasting debate and preparation the Finnish Government proposed in 2005 that the purchase of sexual services should be generally criminalised in all situations. The Government Bill was identical to the Swedish model. However the proposal met strong resistance in Parliament.

The main criticism concerned following issues:

- general criminalisation restricts self-determination in cases when it is a consensual agreement between two adults,
- the description of crime is too broad; it is not distinctive enough,
- the results of the Swedish model are debatable and controversial. After numerous hearings the Legal Affairs Committee created a limited version of the Swedish model and recommended to the Parliament to accept the law, which prohibits buying sexual services from procured prostitutes

and victims of trafficking (Exploitation of a person subjected to sex trade, Penal Code 20:8a).

This limited version was also in balance with the Government's target to reduce trafficking and the demand for the services of trafficked persons. However the most crucial distinction to the Swedish model was that the Finnish model made a clear difference between prostitution and trafficking. The law came into force in October 2006. In practice the law has not been enforced actively and its interpretation in the court has been ambiguous. Even if it has been in force almost for three years it has been used only a few times.

Both pandering and aggravated pandering are criminalised. Aggravated pandering is easier to perceive, whereas normal pandering is more difficult to interpret accurately because of its wide scope of application.

Although sex work per se is not regulated, it does not mean that sex workers are free to do their work or that they will have legal protection. As prostitution is considered to be an act against public decency, sex workers do not have work-related legal rights. Sex work, as the sale of sexual services, is not criminalised. However, setting up a firm whose field of activity would be prostitution is not possible. The labour rights of sex workers are not defined anywhere. As the marketing of sexual services is criminalised as well, advertising opportunities are very few. In a broad sense, in Nordic countries prostitution is considered a social problem and sex workers are seen more as a special target group for social work rather than being seen as workers with rights of sovereignty.

According to the tax law, all income is taxable. Paying taxes is problematic if one works as a prostitute. Even if one should want to pay taxes, in practice, it is impossible to do so. Because prostitution is considered to be an act against public decency, sex workers cannot establish their own business nor can they work for somebody else because the employer would be considered a pimp. Other forms of sex work (striptease dance, porn film actors/actresses, intimate massage, etc.) have a legal status, which means that a sex worker can run his/her own business or may work for someone else.

Legally, the status of prostitution is very vague. The violence against sex workers often remains hidden in the cases of pimping or trafficking. The general attitude is that prostitution already includes violence; therefore, it is not treated separately as a violation of sex workers rights and integrity.

### Migration policies

According to the Aliens Act, an alien may be refused entry into the country if there are reasonable grounds to suspect that he or she may sell sexual services. A person has to be under suspicion; entry cannot be refused by one's appearance. If a person is refused entry on an earlier occasion, a new visa is not granted. EU nationals and people coming from third countries are not treated equally. There are no consequences for EU citizens. For people coming from third countries, the suspicion of selling sexual services is grounds for refusal of entry.

In general, a residence permit for an employed person is granted in a two-phase process. First, the Employment Office ascertains that the preconditions for the work are fulfilled. In the second phase, Finnish

Immigration Service decides whether or not to grant the permit of residence. These principles are applied to migrant sex workers as well. However, because the legal status of sex work and prostitution remains vague and the legal provisions that are relative to the penal code and the Aliens Act have an influence on the employment as well, it is not possible to furnish general rules or definitive principles.

The following employment decisions related to sex work have been made: Within the last few years migrant sex workers have been granted a work permit/permit of residence in the following way:

- no work permit has been applied nor granted for prostitution;
- within the last five years, very few permits of residence/work for strip-teasers or dancers have been granted in southern Finland;
- within the last five years, Thai-masseuses have been granted less than ten permits of residence or work permits;
- a few entrepreneurial permits of residence or work permits have been applied for, but none have been granted.

Sex work per se has not been the grounds for rejection; however, the lack of information concerning the requester or his/her qualifications relative to the enterprise have been cited as reasons.

### Health policies

There are no mandatory healthcare and treatment provisions for sex workers in Finland. In principle, all Finnish citizens living in Finland are eligible for Finnish social security benefits. They are issued a health insurance card, which enables them to use

the public health care system. HIV/AIDS treatment is part of this system. In Finland, the health insurance system is based on residency. All permanent residents (whether Finns or foreigners) have the right of access to public health care. Permanent residents are issued a health insurance card.

Social security coverage for other than permanent residents is dependent on whether one's residency is temporary or permanent. In general, a person is covered under the social security system (or is eligible for it) after having lived in Finland for two years or more. The country from which the person comes is also relevant, given that students who come from a country that is not a member of the European Union are, in general, ineligible for Finnish social security benefits, which is possible only after studies have continued for more than two years.

Uninsured migrant sex workers have to rely on private sector health services or on those health services provided by NGOs for exceptional treatment of a first aid nature. For an uninsured undocumented sex worker, it is difficult to gain access to public HIV/AIDS care and treatment centres. In principle, a person must be covered by Finnish social security in order to gain access to public HIV/AIDS care and treatment centres. If AIDS is in the clinical phase, the treatment is always given free-of-charge in a public hospital regardless of the legal status of the patient. Also, in practice, if the need for HIV treatment is close to that of an emergency need, treatment is provided. These practices are common, but it is not based on the certainty of specific rules or regulations. Decisions are made a case-by-case basis.

Harm reduction programmes in Finland are mainly administered by the third sector (nongovernmental

organisations). There are no national or municipal harm reduction programmes for drug-users, but if a municipal party is involved in the programme (e.g., funds the activity or provides the premises), the programmes are nevertheless based on anonymity.

Difficulties are related to the attitudes rather than substance or the existence of the health care system. There is sometimes poor knowledge on how to deal with people from different backgrounds and cultures. Sex work is still strongly stigmatised, and many sex workers feel that they do not receive good service because of their work. They are not forced to reveal that they are sex workers, but in many cases the service that they receive would be more accurate, if they could do so. In addition to poor service, migrants are confronted with language difficulties and with a lack of cultural sensitivity.

## FRANCE

### Sex work policies

In France, sex work is structured in the following manner: 71% of the sex workers are women, 10% are men and 19% are transgender. About 60% of the sex workers are migrants, although this is an underestimated percentage as migrants often work in hidden places, which makes it harder to reach them. Most of the migrant sex workers come from Eastern Europe, Africa and Latin America. To our knowledge, 35% of the persons work indoors, mostly in apartments. We assume, however, that there is in fact a higher percentage working indoors. Most sex workers still do work outdoors on city streets (44%), in parks (11%) or outside the city (6%) in order to flee from the repression against sex workers and



the ongoing controls. Working outdoors, however, also makes them more vulnerable.

In France, sex work is neither prohibited nor regulated. There is no legislation that clearly targets 'sex work' or uses that term. Related regulations address the rights of migrants, as in health care, migration or employment laws, although certain laws mainly address the rights of nationals, as in the health care system regulations.

The 2003 Law on Inner Security, also known as the 'Sarkozy II Law', introduced a new type of offence: 'passive soliciting' (Art. L225-10-1 of the Penal Code). Passive soliciting concerns any person who 'has the intention to offer sexual service for money'. This is forbidden in any public place such as streets, bars, public gardens, roads, park places, woods etc. Punishments for 'passive soliciting' are two months imprisonment and a 3,750 Euros fine. The police only have the right to question and detain a person for up to 72 hours. After this, the prosecutor decides whether to start a legal procedure. Although this is a national legislation, it is applied on a regional level and according to the local prefectures. In 2007, the municipals tightened regulations in several cities. For example, Lyon and Bordeaux issued decrees that discriminated sex workers by prohibiting them to work at their usual place of work. Police controls have also become more frequent in other cities, such as Paris, Nantes and, recently, Marseille.

Procuring is forbidden. The legal term 'procuring' refers to: helping, assisting or protecting the prostitution, sharing or receiving the money coming from prostitution (Art. 225-5 of the Penal Code), acting as an intermediary or living with a sex worker without having any proper resources or not enough to live

(Art. 225-6 of the Penal Code). 'Procuring' covers a broad range of actions. Thus, partners of sex workers can also be charged with pimping.

## Migration policies

The only legislation regarding sex work for migrants is the one regarding human trafficking. According to the law (Art. L 316-1 of the CESEDA), a foreign person who files a complaint of sexual exploitation/ 'procuring' or functions as a witness in a legal procedure can be granted a temporary residence permit for a minimum of six months (the duration depends on the regional authorities), which also includes the right to work. This document can be renewed until the legal procedure, in which the person is involved, is over. When a pimp or trafficker is convicted, the person filing the complaint can receive a residence permit. Since September 2007, victims of trafficking have 30 days to consider formally submitting a complaint, during which they are allotted a temporary residence permit.

Aside from this law, there is no legislation regarding sex work for migrants. There is no reference to sex work in employment legislation nor are there any regulations to provide migrant sex workers a residence or work permit to work in the sex industry.





This lack of legislation increases the percentage of indoor and hidden forms of sex work.

However, as 'procuring' is forbidden in France, when migrant sex workers are in a situation involving a paid middleman, or are teaching the codes and practices to new-comers in sex work, they are also considered a pimp and can be accused of 'procuring', which poses a threat to the public order. This can result in withdrawal of the right to residency or deportation.

Non-EU citizens need to fulfil basic conditions to enter France: they must have a visa for their stay and a valid passport. They must provide proof of accommodation or residence in France, the financial means to live in France, and insurance. The Hortefeux Law from 20 November 2007 posed greater restrictions on non-EU citizens entering and living in France. This law entitles the officials to conduct statistics based on ethnicity and use them as a basis for granting permits; it also introduced the integration contract (contrat d'accueil et d'intégration), obliging migrants to learn and respect the French laws and values and to pass a test on French language and culture. Non-EU Citizens can be granted a residence permit for one year. The application process is extremely detailed and restrictive. Some of the requirements are: providing the purpose of stay (as a student, intern, scientist, employee) and assessing if they have family in France (e.g. a French partner, children, parents etc). Controls have also become more frequent. The first and foremost requirement for obtaining a residence permit is one's legal or 'regular' or lawful entrance into the country. The permit is renewable, depending on the new situation. People who have resided 'irregularly' unlawfully for at least seven years and have established France as

their main place of residence can also apply for a one-year residence permit. Residence permits contain the right to work (except permits for students and interns). If a person is ill (e.g., HIV positive), they can also receive a one-year renewable residence permit for medical reasons. However, this also depends on the person's country of origin. This permit also entails the right to work.

EU-Citizens have the right to enter and stay in France with a valid passport or a valid identity card. Nationals from the new EU-countries, however, require a residence permit in order to work or stay longer than three months.

## Health policies

In France, the recent tendency has been to decrease the public health insurance and coverage for certain types of medicine. There are two main medical coverage systems for unemployed or low-income persons:

- Universal Medical Care (CMU) is available to low-income persons who live and have worked in France. CMU covers medical expenses (80% for medical services and 30-60% of the costs for medicine) for all those living in France with a low income. This only applies if the person is not covered by any other insurance and has worked in a legally recognised job for at least three months. Persons with very limited resources have the right to free CMU. There are exceptions, however. Full coverage is afforded to those with long-term infections, those in need of treatment for HIV, and those with at least 80% disability (most HIV-positive are included here). Until 23 November 2007, EU citizens without social insurance had also been included in the CMU

program. However, this is no longer the case. EU citizens who do not actively reside in the country are only eligible for National Medical Aid or AME.

- National Medical Aid (AME) was introduced in January 2000 and was created to provide basic medical care for illegal migrants and non-resident EU citizens. Since January 2003, in order to be eligible for AME, migrants must prove over 3 months of uninterrupted residency in France by showing a valid entry visa, bill or contract signed during this period. If their stay is shorter than three months, they are covered by emergency health care. However, many migrants are de facto still excluded from the system. AME covers the costs for eligible persons and gives them the right to full medical coverage, hospital stay, medical examinations, free examinations, nurse care, pregnancy-related care, dental and hospital care. This insurance, however, does not cover glasses, medical prostheses or apparatuses. According to the law, AME provides beneficiaries with access to treatment by doctors (liberal medicine), but in practice, some doctors refuse to provide their services to certain people. In particular, this is often the case for many gynaecologists.

In case of emergency, health care is free of charge. Emergencies are medical situations that are life threatening or may cause permanent damage to a person's health, or where immediate treatment is necessary for contagious diseases such as HIV, tuberculosis, etc.; emergencies also include examinations during and after pregnancy or abortion.

For those who are not eligible for AME, there is also free access to gynaecological care, HIV and STI test-

ing and treatment, contraception and mental health care, through NGOs or free service centres (mainly for HIV and STI testing). Harm reduction programmes greatly rely on the NGOs offering these services. Access to these programmes depends on which areas the NGO can cover. NGOs have several harm reduction programmes that do not require any insurance. There are also services specifically for undocumented people, including methadone, needle exchange and drug rehabilitation treatment.

Regardless of a person's legal status, migrants and nationals have free access to HIV and STI testing and treatment. The testing is free of charge, voluntary and anonymous at a CIDAG (Centre d'Information et de Dépistage Anonyme et Gratuit). HIV/AIDS is considered as a long-term illness, and therefore everyone is eligible for free care and 100% coverage. According to the law, migrants in need of medical care, the absence of which would put one's life or long-term deterioration of one's health at stake ('risk of exceptional gravity') due to a lack of appropriate medical care in one's country of origin, are eligible for a one-year, renewable residence permit for the duration of the medical condition. Since 2008, the tendency has been to issue less residence permits of this kind. There is no fixed list of illnesses and it always depends on the country of origin (real access to health services are not taken in account). There is today no real protection from deportation for HIV-positive persons.



## GERMANY

### Sex work policies

The Prostitution Act of January 2002 (Act Regulating the Legal Situation for Prostitutes) is a national law addressing civil, labour and social aspects of the relationships between sex workers and their clients and/or employers. The Prostitution Act has had the following effects:

- It abolished the ‘immorality’ aspect of sex work by permitting self-employment as well as employment contracts in prostitution. It gave sex workers access to the social security systems such as unemployment, pension and health insurance.
- It declared the exchange of sexual activities for payment legally valid. It made the (verbal) agreement between sex worker and client regarding the service and price a legally binding contract. Sex workers can enter into an employment contract with a brothel owner and have a legally enforceable right to wages.
- The Prostitution Act also decriminalised the promotion of sex work, thus making the promotion of appropriate working conditions no longer punishable.

Limitations: Related laws (on pimping, taxes, trade, building and zoning and migration) were not changed to correlate with the Prostitution Act. There are no uniform guidelines or standards as to how the Prostitution Act is to be implemented, it is interpreted and applied differently in each of the 16 federal states of Germany. Sex work is not recognised as a trade or a profession, but as an activity. This limits the labour rights of those working within this

sector. Improvements in the conditions for migrant sex workers depend upon their residential status. In Germany, it is not possible to obtain an entry visa for the purpose of working as a sex worker.

Prohibitions: Pimping, exploitation of sex workers, advertising sex work and working on the street in a prohibited zone (the so-called Sperrgebiet) in some German towns are prohibited.

Tax Law: Self-employed sex workers have to register at the finance office as ‘sex worker’, ‘model’, ‘hostess’, or ‘escort’ in order to get a tax number. The income of a self-employed sex worker is classified as the income of a business enterprise and an annual income tax declaration is to be submitted. Dependently employed sex workers must, on principle, provide their employer with an income tax card. The income tax is retained in this way. Obligations prescribed by the Social Security Code, such as payment of health and pension insurance contributions, are taken into account.

Building and zoning laws: Brothels are only permitted in commercial and industrial areas, self-employed sex workers may also work in residential areas.

### Migration policies

The rights of EU citizens: Citizens of the EU-15 member countries as well as from Malta and Cyprus are privileged with respect to entrance and residence in Germany. They enjoy the freedom if they wish to remain in the country as employees, to find work or receive vocational training. In addition, they have the right to a self-employed occupation without fully establishing themselves. Migrants from the EU-15 countries (including Malta and Cyprus) are allowed

to engage in dependent forms of employment in the sex work sector. They must register their occupation with the tax authorities or trade office. The autonomy of citizens from the EU-8 member states and from Romania and Bulgaria is limited: they may engage in sex work only if they are self-employed. Before entering into an employment relationship in a gainful occupation, new EU citizens are required to obtain a work permit from the employment agency. Currently, permits for sex work are not being issued.

The rights of non-EU citizens: It is not possible to obtain an entry visa for the purpose of working in the sex work in Germany. Although sex work is regarded as an 'activity', it is not listed as an acceptable occupation. The National Employment Agency does not accept activity in the prostitution sector.

Therefore, no residence permits for the purpose of gainful employment in this sector are issued. Self-employed or dependent gainful occupation are permitted for persons with a settlement permit, a residence permit as family members of Germans, a resident permit as a person with the right to asylum, those recognised as refugees and those with residence permits as family members of foreigners – provided the person from whom the right of residence is derived is also entitled to gainful occupation.

### **Health policies**

Since January 2001, the Law for the Protection of Infectious Diseases abolished the compulsory requirement of HIV and STI testing for sex workers. HIV and STI testing is now voluntary, anonymous and free of charge. It is part of the public health care services available to both German citizens and migrant sex workers, regardless of a person's health insurance status.

Since January 2009, it is mandatory for all persons in Germany to have health insurance. Most German and migrant sex workers in Germany are self-employed and can obtain private health insurance without risk assessment (no health examination is required beforehand) and without risk loading (no higher costs are demanded because of the risks involved in this work). The same health insurance agency that last insured the person is obliged to insure the person again.

EU (European Union), EEA (European Economic Area) and Swiss citizens registered in Germany must have health insurance offering the same services and governed by the same regulations as German citizens. Non EU-citizens must have health insurance through their employer or private health insurance, depending on their residence permit. Undocumented migrants may obtain limited medical care through the Social Welfare Centre. By law they have the right to very restricted care for minor health problems. However, other laws make it extremely difficult for undocumented migrants to make such claims without risking deportation.

HIV testing is voluntary, anonymous and free of charge. Regardless of a person's health insurance status, by public health care services are offered to German and migrant sex workers. HIV/AIDS tests may only be done with the consent of the person. Those without valid health insurance must pay for all costs related to HIV/AIDS treatment. However, in some towns there are informal networks of organisations and doctors who offer support. Information is available at local health care services and counselling centres. In each German state, the regulations vary on whether HIV-positive migrants with temporary residence permits are allowed to stay in the country



despite the lack of life-saving treatment in their countries of origin. Each German state has its own legislation on this matter. In many cases, the decision to grant asylum depends on the stage of the illness.

Harm reduction programmes are available to all persons, regardless of nationality, legal status and health insurance status. There are no nationally uniform harm reduction programmes. In general, services are mostly available in the north and in the central regions of Germany. These include national and local strategies of dealing with drug dependence, like the prescription of methadone, distribution of needles and syringes and supervised injection sites.

## GREECE

### Sex work policies

In Greece, sex work is not considered a profession but it is a legal 'activity'. The legislation on sex work in Greece is linked to employment conditions. Health screenings are mandatory in order to obtain a license to work as a sex worker. This legislation applies to any person who wants to work in the sex industry (nationals, EU citizens or migrants) with the exception of minors (< 18 years old) and married women. In Greece, sex work is only legal in brothels, although street prostitution is very common. The brothels are supposed to be 200m from schools and churches; and they can only be located in residential areas if all the residents agree. Pimping, aiding persons to work as sex workers, child pornography, smuggling and trafficking in humans are illegal.

EU citizens, who wish to stay in the country for more than three months, must have a health insurance in order to get the residence permit. Those without legal status in Greece are not permitted to work as a sex worker.

### Migration policies

There is no specific mention of sex work in Greek Migration Law. Art. 3386, on the 'Entrance and stay of aliens on Greek soil (dominion) as well as the acquisition of the Greek citizenship' from 23 August 2005, is the most recent example of Greek legislation on a crucial issue for Greek society, as it addresses the status of legal, but more importantly of illegal, 'aliens' in Greece. This legislation does not apply to: Individuals ruled by the legislation of the EEC/EU (European Community legislation); refugees under the Geneva Convention of 1951 and the New York Protocol of 1967 or on individuals that have applied for refugee status according to the Geneva Convention of 1951; or individuals with multiple nationalities, even if one of their nationalities is the Greek.

Citizens from other countries are allowed to enter the Greek dominion only if they have the proper travel documents such as a passport, visa etc. and only through certain control points along the Greek borders.

Citizens from other countries who have legally entered the Greek dominion can be granted permission to stay in Greece in order to:

- study at a Greek educational institution;
- work under a certain labour contract;
- develop a form of independent economical activity,

- be reunited with one's family (family reunion); or
- if one is married to a Greek citizen or to a citizen of an EU member country.

Further reasons are in order to:

- be employed as professional athletes or professional athletic trainers/coaches;
- to develop commercial activities as members of boards of directors, managing directors, administrators or members of personnel in legal entities, such as commercial companies with a franchise in Greece;
- develop cultural or artistic activities (cultural creators such as authors, writers, directors, painters, actors, choreographers, members of artistic groups and circuses);
- live in a monastery; or
- for humanitarian reasons.

Those who apply for permission to stay on one of the grounds listed above are obliged to prove and previously declare the following:

- the ability to afford the cost of one's residence in Greece;
- proof of insurance with a Greek social and medical Insurance fund or institution;
- proof of the purpose for residency in Greece (certificate of enrolment in an educational institution, labour license and work contract, certificate of family status, educational and professional certificates/licenses );
- a certificate or any other kind of document issued by the Greek employer (commercial

companies, athletic clubs, individual entrepreneurs etc.) expressing an interest in employing the applicant;

- health certificates issued by Greek hospitals certifying that the applicant is not suffering from a disease that can be considered as a threat to the public health according to international Health Regulation and the World Health Organization.

Greek authorities may deport aliens if convicted for penal offences or if their presence in the Greek dominion is considered a threat to the security of the Greek state or public security. Deportation (expulsion) of a citizen from another country can also be ordered by the Greek authorities if the person is suffering from a disease considered a threat to the public health according to international Health Regulations and the World Health Organisation and if the person refuses to comply with the measures suggested by the medical authorities, although one has been properly informed and updated on one's medical situation. Deportation/expulsion procedures may be temporarily postponed on humanitarian grounds, especially for issues relating to a person's health, social or family life. Deportation of citizens from other countries who agree to cooperate with the authorities in order to punish acts of persuading or forcing prostitution may be postponed.

Deportation is prohibited if the person is:

- a minor and one's parents legally reside in Greece;
- over 80 years of age;
- a parent of a Greek citizen of minor age and the person is responsible for the minor's upbringing



Hotel managers, directors of clinics and health institutes are obliged to inform the authorities of the arrival or departure of citizens from other countries that they host. Those working illegally in Greece are subject to deportation – and the same applies to sex work – with the exception of the persons considered to be trafficked. Victims of trafficking have special rights. They are entitled to a residence permit until the legal procedure begins in order to decide whether to act as a witness. During this period (of three months) they are given medical aid, support and shelter. Until now, there is one official state service (a shelter) responsible for supporting victims of trafficking and there are four NGO shelters that face great difficulties regarding traffickers. ACT UP HELLAS was forced to close the first shelter for male victims of trafficking, working for 12 months. A change of the law has been proposed as it does not refer to 'labour trafficking', there is nothing referring to men or boys as victims of trafficking and primarily treats women who have been trafficked as possible witnesses.

### **Health policies**

It is mandatory that legal sex workers get a free STI screening every 15 days. For migrant sex workers, HIV, syphilis and gonorrhoea testing and treatment are free of charge. The services provided by the public authorities offer STI and HIV treatment to undocumented migrants. Seropositive people can even obtain a permanent visa in case ARVs are not available in their country. However, there is a grave lack of cultural mediators in all areas of service provision. The asylum service is the only one which uses interpreters.

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The main barriers migrant sex workers face when accessing health care services are: barriers because of their legal status, language barriers, cultural differences, ignorance, fear of deportation. Undocumented migrants lack access to public services, with the exception of medical emergencies. Undocumented migrant sex workers also lack access to legal information, emergency accommodation and social care.

## **HUNGARY**

### **Sex work policies**

Several laws and orders regulate prostitution on a national level. The most important legislations are the regulations on organised crime and the Ministry of Health's decree on mandatory regular health checks. According to this law, sex workers should register as a business (self-employed), pay taxes as well as social security and health care fees. The Hungarian Tax Authority requires sex workers to have a tax number and be registered with the local social and health insurance agencies. The Hungarian Constitutional Court has deemed prostitution a legal enterprise. Sexual activity, as defined in the Treaty of Rome, has also been incorporated into Hungarian law. In order to obtain a license to provide sexual services, sex workers must prove they have no crim-



inal record, a flat lease, registration with the local government, a school report and a birth certificate. There are police rules and regulations too. The Hungarian vice squad, also known as the 'Sexual Moral Protection Squad', has been working with the Department for Combating Organised Crime, which is part of the Budapest Police Headquarters. The purpose of the Squad is to investigate crimes related to prostitution. It deals with street prostitutes, brothels, nightclubs and prostitution related to foreign countries.

There are 'protected zones' where prostitution is not allowed and 'zones of tolerance' where prostitution is allowed. The local government is responsible for setting up. Zoning is particularly relevant, as it applies to areas where sex work has consistently been visible in public areas, i.e. in towns with over 50,000 inhabitants.

Consequently:

- prostitution is only allowed as an individual activity,
- prostitution can only be practised outside the protected zones,
- prostitution can only be practised after regular mandatory health check,
- sex work is forbidden in brothels and sex clubs, massage parlours.

The so-called 'protected zones' where prostitution is not allowed are: public roads used for the traffic of vehicles; territories within 100m of motorways, carriageways and other public roads marked by one or two figure numbers outside inhabited areas; territories within 50 m of the main road of inhabited towns; places located 300m of buildings in which

parliamentary, public administrative, judicial bodies, prosecution services, diplomatic and consular missions or international organisations enjoying same rights are located; buildings which are meant to serve as places for public and higher education, child welfare, child care, social services and public culture; terminals used for passenger traffic; places used for services of registered churches; bases of armed forces; cemeteries and other memorial places, as well as public places.

'Protection zones' are also near educational institutions, medical centres, housing for minors, as well as places where child welfare, childcare services are located/operated. The provision of sexual services is prohibited in: residential areas jointly owned or used by tenants, vehicles and places other than personal residences. It is prohibited for sex workers and clients to offer or accept sexual services within protected zones. Furthermore, it is forbidden to offer or accept sexual services from persons under 18 years of age and to offer services in a way that is offensive to other people.

Any violation of these rules results in a fine. The police heavily controls sex work on the street regardless if practised by migrant or non-migrant sex workers. Criminal acts sanctioned under Penal Code are: upholding or providing an infrastructure for the purpose of prostitution, e.g. managing a brothel, providing financial means to run a brothel, providing a place for others to practice sex work, exploitation and forced prostitution of others. Offering sexual services without a medical certificate is also subject to punishment under Hungarian law.

Policy implications include the problems that emerge in practice. For example, there are hardly any

actual ‘zones of tolerance,’ which forces sex workers to work illegally. It is also extremely difficult to find places to work outside the ‘protected zones’. There are no maps that clearly mark the boundaries of the ‘protected zones’. There is no communication about who is in charge of designating such zones or how they come to be defined as such. There are only very few prostitutes who actually have the required medical certifications and papers. There is no exact data on the number of sex workers, as prostitution is constantly being re-structured and hidden, which makes outreach work, planning risk reduction and other health promotion very difficult.

On the one hand, the legislation became less rigid, sex work is no longer a criminal act, but on the other hand, there are greater obstacles (protected zones, mandatory medical check ups). Several problems have arisen in the wake of this change in legislation. The legal status of sex workers (including migrants) has become less certain or stable. There is also no accurate research on the effects of these laws and regulations on policy-making.

### **Migration policies**

The legislation applies to both Hungarian and EU citizens. Theoretically it could be applied to other citizens as well, however nobody is known to request for this kind of permission. The legislation relating to sex work does not differentiate between professions and therefore the legal provisions for migrants regarding sex work are no different than those for other occupations performed by migrants. It is necessary for non-EU citizens who wish to stay for more than 3 months to obtain a permit. Regarding employment and health care issues, migration legislation does not make any specific distinctions between

migrant sex workers and other migrants. Trafficking in human beings is forbidden under the Criminal and Penal Code as ‘crimes against personal freedom and human dignity’. A new amendment that harmonises the definition of trafficking in human beings, according to the new developments and international documents, has also been incorporated into Hungarian law.

### **Health policies**

Health services, including STI screening and treatment, are provided by the state health care system and free of charge for those with valid health insurance. There is not sufficient information for migrant sex workers, and for this reason they are less likely to make regular use of the medical care services and are more likely to only make use of them in an emergency situation. Emergency health care is also free of charge. It is mandatory that sex workers get screened for the following every three months for Chlamydia, Hepatitis B, HIV, syphilis and gonorrhoea. The examination fee is 17,000 HUF (approx. 70 Euros). There is only one place in Budapest offering screenings. Apart from serious emergencies, uninsured national, migrant and undocumented sex workers are obliged to pay for health services.

Patients in the later stages of HIV/AIDS who are undergoing treatment supported by the Department of Immunology at St. Istvan Hospital cannot be deported. In practice, however, there have been no deportations of patients for HIV/AIDS or other medical reasons. National and migrant sex workers face similar barriers in accessing health care and treatment: lack of health insurance, lack of trust in institutions and lack of information about the free projects and services provided by NGOs.

### Sex work policies

In Italy, prostitution is regulated under the Penal Code. There is no explicit mention of prostitution; therefore it is neither illegal nor legal. The Merlin Act of 1958 shut down all state-run brothels and freed sex workers from mandatory registration and medical check-ups. Indeed abolitionist in spirit and intent, the act imposed numerous restrictions on sex workers and made sex work subject to legally marginal conditions regardless if it is done indoors or on the street.

In Italy, it is prohibited to work in closed quarters of any sort. In practice, however, private apartments with only one sex worker are 'tolerated'. It is prohibited to induce, facilitate, aid or abet, and, of course, to exploit anyone who does sex work. Art. 3.1 of the Merlin Act refers to a list of places, such as houses, hotels, dance halls, entertainment clubs or other areas open to the public that are closed quarters where prostitution is prohibited. In addition, there is mention of aiding and abetting women – the law exclusively refers to 'women' – to engage in prostitution either by renting a house or building or by tolerating the presence of prostitutes in bars, clubs, dance halls or other public facilities. Employing a person to work as a prostitute is severely punished under the Penal Code, as it constitutes an offence of aiding and abetting (Art. 3.8). One can even be accused of aiding and abetting for helping a sex worker on the street. Soliciting, which is now subject to a fine, is defined under the law as unabashedly inviting clients on the street; it does not, however, prohibit loitering whilst awaiting clients on the street.

Furthermore, sexual exploitation of any manner, form or means is expressly prohibited and subject to punishment. In particular cases, more severe sentences apply to those who caught exploiting minors, disabled persons, and wards of the state and others. Exploitation as a criminal offence can also be applied to partners living with or married to a sex worker – especially if these persons are unable to provide proof of a gainful employment that produces sufficient income for them as an individual. Art. 7 prohibits any form of mandatory examinations for sex workers, including periodical medical check-ups and police registration.

In actuality, the state seeks to prohibit or drastically reduce street prostitution. Interior Minister Maroni's security package of June 2008 invests mayors with the judicial power to declare anything that might endanger the security and decorum of the cities an emergency; for this reason, sex workers and their clients have been subject to special ordinances that allow municipal policemen to administer fines ranging from 400 to 500 Euros. In addition, this new Public Security Law enables the local chief constable (quaestor) to impose and enforce a mandatory expulsion of persons from a city in which they do not officially reside. Currently, foreign citizens of other European countries who violate this ordinance are fined, while non-European citizens, especially those from Africa, are put in temporary detention/identification centres and, in accordance with the laws on immigration, are subsequently deported.

The issue of human trafficking is addressed by the Italian Law 40/1998, Immigration Act, and by the related Legislative decree nr. 286/1998 to combat human trafficking and law nr. 228/08 from August 2003 to combat slavery. Both provide for lengthy

sentences those who bring foreign nationals into the country for the purpose of inducing them into sex work or exploitation (see: Art. 18 ex 16). Although the law contains repressive aspects, it also provides social protection for victims of such exploitation. Law nr. 228 gives a more precise definition of the crime by extending it to include the concept of subjugation through such acts as well as trafficking for purposes other than sexual exploitation. It also reinforces punishment for criminal organisations involved in racketeering and trafficking. There are two ways in which the provisions of Art. 18 can be understood as a provision for:

- reporting exploiters to the police and
- escaping serious threats of violence.

The latter, however, is used less frequently and, generally, the victim is expected to report the individuals responsible for the exploitation.

### **Migration policies**

Because sex work has always been unregulated, there are no specific provisions regarding sex workers within Immigration Law. For this reason, it is virtually impossible for migrant sex workers to obtain a residence or work permit for the purpose of sex work. Immigration Law Art. 27 provides that special work permits be issued to employees in the following categories: lyrical shows, theatre, concert or ballet; and to dancers, artists or musicians employed in entertainment clubs. This type of residence permit allows a one-year maximum stay and does not allow a change of workplace. Although it is forbidden to perform in sex work in clubs, nude dancing is tolerated. More often than not, clubs suspected of facilitating sexual encounters are closed down.

Those from EU member countries and those from outside the EU who hold a regular work or residence permit, or a visa for the purpose of marriage, family reunion etc. may engage in sex work and are entitled to the same rights and privileges as an Italians and are, in effect, not criminalised. However, a way that the officials exploit sex workers is to charge them with stiff fines. It is not a rare occasion that the police revoke residence permits and begin deportation procedures for persons working in sex work.

Only asylum seekers from certain countries are entitled to apply for and receive the status of an asylum seeker. Many women from other countries, particularly Nigeria, apply for asylum, and their requests are frequently rejected. Upon rejection of their application, the women must return to their country of origin, and are considered illegal aliens from that point on. Some appeals where women argued that, if rejected, they would be subject to rape or trafficking, have been accepted by the courts.

### **Health policies**

The national health system in Italy issues health insurance cards to all citizens, thus ensuring access to the public health care services for all. Access to public health centres is dependent on one's ability to pay for the services. Nationals unable to afford a service or those who earn less than the minimum salary fall into the category of 'underprivileged'. The underprivileged can access health care services free of charge. The same regulation is valid for all employed legal migrants. Most migrant sex workers are not documented and, as a consequence, are uninsured. They can apply for a special health card for 'irregular' migrants (STP or Temporarily Present Alien Card) that guarantees illegal migrants treatment in

hospitals and health care centres. Treatment is either free or affordable, depending on the treatment. Uninsured and undocumented sex workers can apply for the STP card and therefore have access to basic health care.

We would also like to underscore that the government has attempted to modify the law that provides for minimum health assistance for irregular immigrants (Art. 35 of the Bossi-Fini Legislative Decree on Immigration 286/98). For now, the government has been unsuccessful in its attempt to abolish or drastically reduce the access to basic health care and treatment. There is, however, a legal proposal that aims to abolish any sort of assistance by obligating doctors to report irregular immigrants to the authorities.

All undocumented immigrants, including uninsured migrants, are entitled to emergency treatment in hospitals or health care centres, particularly if the treatment is considered necessary, i.e. will reduce the danger of a long-term disease or infection, and thereby safeguard the public from contracting contagious diseases. Uninsured undocumented migrants are guaranteed health care and treatment in case of: pregnancy, health care needs for minors, vaccinations and for the prevention and diagnosis of infectious diseases.

HIV testing is voluntary and is only carried out with the consent of the patient who must have received previous counselling and information. HIV/AIDS treatment is open to all citizens of all countries. By law, uninsured/undocumented (migrant) sex workers have access to free HIV/AIDS treatment. An HIV-positive person cannot be deported if treatment cannot be guaranteed in one's country of origin.

Since August 2008, a special service desk opened at ANLAIDS where acts of discrimination against HIV-positive migrants can be registered. This was set up, because of cases where people were denied treatment and deported despite their legal right to stay and receive treatment.

Generally, with or without insurance, drug users have access to harm reduction programmes. There is no distinction regarding sex workers. Drug users are registered residents of any given town can take part in vocational job placement and housing programmes. The same applies to drug users who are migrant sex workers with insurance. Undocumented migrants, even those without a STP card, have access to harm reduction programmes, which however only provides them with the bare minimum. Such programmes do not include job placement, housing or other assistance. Although drug addiction is considered a disease and its diagnosis enables one to receive the right to obtain a residence permit for a medical condition, hardly anyone in this condition applies for it in practice, because this type of permit does not allow the permit-holder to work.

At the moment, in addition to other bureaucratic hurdles, it is very often the case that public health services do not receive adequate funding and are therefore unable to provide treatment for irregular migrants. Moreover, many migrants have now become very hesitant to even approach the health authorities, and therefore only ask for assistance if their condition is severe.





## LATVIA

### Sex work policies

Latvia strongly regulates sex work with the aim of reducing prostitution and prescribes regular mandatory health checks for sex workers. Adult prostitution (providing sexual services in exchange for money) is allowed but procuring is not:

- Article 1631 of the Criminal Law provides penalties for the establishment, management, maintenance and financing of a brothel;
- Article 164 of the Criminal Law provides punishment for involving persons in prostitution and the procuring of persons for prostitution, using their trust in bad faith, or by means of fraud, or by taking advantage of the dependence of the person on the offender or of his or her state of helplessness;
- Article 165 of the Criminal Law provides punishment for a person who commits taking advantage, for purposes of enrichment, of a person who is engaged in prostitution;
- Article 1651 of the Criminal Law provides punishment for sexual exploitation of a person with his or her consent

Prostitution is regulated by the 'Provisions Restricting Prostitution' that were amended in January 2008. Compared to the previous regulations (2001), there are more limitations. The most important change contains the strict regulation of where it is allowed to offer, provide and receive sexual services. This was done in order to achieve a decrease of the accessibility of sexual services. If the 'Provisions Restricting Prostitution' are violated, administrative liability is

applicable. If the violation is repeated within a one-year period, criminal liability is applicable. The new provisions (2008) contain the following set of rules:

- Engaging in prostitution is prohibited for underage persons and persons who do not have a health card. A health card is issued to sex workers by a certified dermatovenerologist upon an initial examination. Medical institutions and medical doctors receive the cards from the governmental health statistics and medical technology agency.
- Persons are allowed to offer and provide paid sexual services in indoor premises (apartment, house) that they own or rent.
- Prostitution is prohibited in the following indoor premises: if located less than 100 meters from educational institutions or churches; if located close to underage children/young people; if other individuals who reside in the same premises object to it. If these regulations are violated, the premises will be closed down.
- It is prohibited to offer and provide sexual services in groups.
- Managers of entertainment and vacation places are responsible for public order. They are obliged to restrict prostitution within their premises.
- Sex workers must undergo monthly mandatory health checks with a certified dermatovenerologist. Information about the health status is recorded on the health card.
- Sex workers are not allowed to continue work while in medical treatment or medical or serological surveillance for an infectious disease. This applies to the following infections: ano-



genital herpes (virus infection); dermatophytosis (trichophyton, microsporum); pubic lice; gonococcus infection; chlamydia trachomatis; scabies; leprosy; syphilis.

- If HIV-antibodies or an AIDS infection are detected, it's prohibited to work as sex worker.
- The advertisement and promotion of sexual services through the Internet, in the press and other mass media (except for erotic editions) as well as through another person's mediation is prohibited.
- Any action by a third party to promote prostitution is prohibited.
- Sex workers have to display the health card at the client's demand.

According to the data of the State Police, sex workers work mainly in the capital city Riga or close to it. They work near harbours in Ventspils and Liepaja. Sex workers also work in clubs or bars. There are a few individual sex workers working in the bars in Jelgava (a town in the central part of Latvia) and near the bus station. Some individual sex workers work in Daugavpils (the Eastern part of Latvia) through internet, advertisement or in bars. Some sex workers in Valmiera use taxi drivers as mediators. Prostitution also takes place along highways (up to 50 sex workers are working close to Riga), with most of the clients being truck drivers (according to information from the mobile unit of the NGO 'DIA+LOGS'). Drawing from the analysis of advertisements and other visible information in the mass media, we would estimate 200 to 400 sex workers who work either on a regular or occasional basis. A part of Latvian sex workers is working abroad.

## Migration and human trafficking policies

Since 2000, Latvia continues to improve normative documents for combating human trafficking. Human trafficking is considered a serious violation of human rights and is sentenced with up to 15 years in prison. Latvia has signed the key international documents with regard to trafficking, most recently, the Council of Europe Convention on Action against Trafficking in Human Beings. To combat human trafficking, the 'State Program for Prevention of Trafficking in Human Beings 2004-2008' has been implemented. The program clearly defined long-term principles and directions for action. The objectives were only partially met due to insufficient financing. State funded social rehabilitation for victims of human trafficking has been stipulated by the law, the Criminal law has been improved, awareness raising campaigns about human trafficking were implemented in order to increase the understanding about trafficking in society. In 2009, a new 'Program for Prevention of Trafficking in Human Beings 2009 – 2013' has been elaborated by the involved ministries but it is not yet approved by the Cabinet of Ministers.

## Health policies

The 'Provisions Restricting Prostitution' prescribe monthly mandatory health examinations for sex workers that have to be conducted by a dermatovenereologist. Information about the health status is recorded on a health card (the so-called 'yellow passport'). Sex workers are not allowed to continue work while in medical treatment or medical or serological surveillance for infectious diseases. If HIV-antibodies or an AIDS infection are detected, work in prostitution is prohibited. Sex workers have to pay for the





health checks and for the health card. There are some services that are provided free of charge: specialist consultations and HIV rapid testing (provided by the NGOs 'DIA+LOGS' and 'AIDS counselling service' under the GO 'Latvia Infectology centre'); harm reduction services (available in 16 cities or towns in Latvia). The NGOs 'Support Centre for women MARTA', 'Centre against Violence DARDEDZE' and some crisis centres provide support, advocacy, housing or rehabilitation. Free access to HIV/AIDS treatment is available for Latvian nationals and for those who are residents. In a case of any other STIs, treatment costs have to be covered privately.

## LITHUANIA

### Sex work policies

Since 1992, the administrative practices regarding sex work in Lithuania have become stricter. Legislation regulating sex work is exclusively strict – punishing both sex service providers and those using their services. Our analysis of the administrative regulations of sex workers reveals that they have been enforced less since 2005. In the larger Lithuanian cities, an issue of exceptional concern has been the increase in sex work. Engaging in sex work or receiving remuneration for sexual services can be charged with a fine of 300 to 500 Litas (85 to 145 Euros). If it can be proven that a person has engaged in such actions, the offender is administered a fine of 500 to 1,000 Litas (145 to 290 Euros) or up to thirty days imprisonment.

The following laws are relate to sex work:

- Article 307. Earning a Profit from Prostitution by Other Persons: (1) Any person who earns an income from another person's engagement in prostitution or pandering for prostitution shall be punished by a fine or restriction of liberty or detention, or imprisonment for a term of up to 4 years. (2) Any person who organises or manages the prostitution or transports the person with his/her consent to the Republic of Lithuania or from it for prostitution shall be punished by imprisonment for a term up to six years. (3) Any person who earns an income from prostitution of a minor or who organizes or manages the prostitution of a minor or transports the minor with his/her consent to the Republic of Lithuania or from it for prostitution shall be punished by imprisonment for a term from two up to eight years.
- Article 308 of the Criminal Code. Engagement into Prostitution: (1) Any person who engages another person into prostitution shall be punished by a fine or restriction of liberty, or detention or imprisonment for a term of up to three years. (2) Any person who engages into prostitution another person who is dependent on him economically, through employment or in any other way, or engages another person into prostitution by force or coercion, or deceit, or who engages a juvenile into prostitution in whatever way shall be punished by imprisonment for a term from 2 to 7 years.
- Article 182 of the Code of Administrative Offences. Engagement in Prostitution or Remunerated Use of Prostitution Services: The engagement in

prostitution or remunerated use of prostitution services is subject to a fine from three hundred to five hundred Litas. The same actions, evidenced by persons punished by administrative penalty for the offences specified in paragraph 1 of this article, are subject to a fine from five hundred to one thousand Litas or administrative detention for a term of up to thirty days. Note: A person who was engaged in prostitution shall not be prosecuted to administrative liability if he was involved in prostitution being dependent economically, through employment or being dependent in any other way, or engaged into prostitution by force or coercion, or deceit, or was engaged into prostitution in whatever way whilst being an underage or/and is a victim of trafficking in persons and is recognised as a victim in the legal proceedings.

### **Migration policies**

There are no specific legal provisions for migrant sex workers in Lithuania. General immigration legislation covers the following areas: Rights and Duties of Aliens in the Republic of Lithuania, Entry of Aliens into the Republic of Lithuania, Obligation to Have a Valid Travel Document, Residence Permit in the Republic of Lithuania, Types of Residence Permits, Conditions of Issue or Replacement of Residence Permit, Issue of a Residence Permit, An Alien's Obligation to Obtain a Work Permit in the Republic of Lithuania, Grounds for Issuing a Work Permit, Validity of a Work Permit.

### **Health policies**

There are no mandatory provisions for sex workers in Lithuania. In Lithuania, health insurance is compulsory. If sex workers are not insured, access to public health care is possible through the NGOs or other institutions. The same applies to uninsured migrant and undocumented sex workers. Access to HIV/AIDS treatment is available to Lithuanian nationals and those with a residence permit. National, migrant or undocumented sex workers have access to harm reduction programmes, regardless of their insurance status. HIV-positive persons will not be deported. The main barrier for national sex workers for accessing health care and treatment services is discrimination. Migrant sex workers additionally lack the necessary information about the national health sector, they experience discrimination and stigmatization and also lack self-confidence because of constant marginalization.

## **LUXEMBOURG**

### **Sex work policies**

Sex work is regulated under national law in Luxembourg. The law prohibits those under 18 years of age to work in sex work. For those 18 years or older, there is no further mention in the law.

In the city of Luxembourg there are legal regulations on street prostitution. Sex work is only permitted on two streets near the station of the city of Luxembourg and may only be done between 8:00 p.m. and 3:00 a.m. The police regularly patrol this area. Those found working outside these times or the area face fines of up to 2,500 Euros. It is clear that the spatial

and time restrictions pose a number of problems for the sex workers. For one, too many sex workers share the small space foreseen in the regulation. Because of this, they end up dispersing into other streets near the station and risk fines or arrest for if found working outside the legally designated zone. Sex workers are forced to work at night, are forced to cope with a more dangerous clientele and their schedule poses great difficulties in managing their family life. The fines for sex workers go up to 2,500 Euros. It is permitted to pay the fines through weekly pay-offs, but this becomes a vicious circle: sex workers obliged to pay the fines must work more hours to be able to pay the fine. Because of this, their work hours often exceed the time the regulations, as sex workers must then work during the day or in other places pay off the fines and debts.

Due to the small size of sex work scene and the country itself, it is easy to, get in touch with peers, stay connected and obtain information on services and regulations for sex workers. It must be noted that because the sex work scene is limited to the restricted zone around the station in Luxembourg City, that particular district has become a hotspot for marginal populations. Regarding future trends, there is already a proposal for a law on prostitution. This draft for this law aims to add a ban on the purchase of sexual services to the Penal Code. The legislators of the proposed law are now arguing for conventional sentences (fines and jail sentences) and considering the Swedish model as the only acceptable way of approaching prostitution. This means that they intend to focus on raising awareness among those purchasing sexual services. According to their plans, the present law should be revised in the following manner: Those purchasing or attempting to buy sexual

services will be punished and sentenced to 10 to 20 hours of community service or interactive seminars on sex work. The public debate on the proposed law took place a year ago. The political parties discussed the pros and cons of the new proposal. It is hard to tell whether or not this law will actually be adopted, because there has not been much mention of it in public debates. In any case, the debate last year caused great confusion and led to a heightened sense of insecurity among sex workers and customers. This has been expressed by an increase in police visibility and repression.

### **Migration policies**

The legislation regarding migration in the grand duchy of Luxembourg is regulated under the national law concerning freedom of movement for persons and immigration in general. EU citizens have the right to stay in Luxembourg for over three months if they fulfil one of the following conditions:

- work as a salaried employed or self-employed (independent activity);
- can provide adequate finances to support oneself and family, so as to avoid becoming a burden to the state welfare system, and can show proof of health insurance; or
- are registered members of a public or private institution, accredited in the grand duchy of Luxembourg, for the principal purpose of pursuing one's studies or professional career, while being able to provide adequate finances to support oneself and family, so as to avoid becoming a burden to the state welfare system, and show proof of health insurance.

EU citizens who intend to reside in the Luxembourg for over three months must register with the municipality of one's place of residence within three months after arrival.

The new law creates a unique form of residence permit for all third country nationals. The type of permit matches the permit holder's legal entitlements. Depending on the entitlement, bears permit has a different title and grants different rights to the holder.

There are residence permits, which include those for salaried workers, highly skilled workers, independent workers, athletes, students, interns and volunteers, researchers, family members of third country nationals, long-term residents. Third country nationals must submit an application for a residence permit at the ministry. It must be approved before entering Luxembourg. The applicant must act upon ministerial approval within 90 days of receipt. The person must take the approval to the municipal of the place they intend to reside within three working days from the date of entry and submit a statement of arrival. The person receives a copy of the statement as a receipt. This receipt authorises the correctness of one's stay until the residence permit is issued.

The new law also provides for four new categories of residence permits for:

- private reasons,
- exceptional reasons,
- people receiving medical treatment, and
- victims of trafficking.

## Health policies

Sex workers residing in the grand duchy of Luxembourg who do not qualify for regular health insurance, have the right to pay for voluntarily health insurance. This type of health insurance does not begin immediately, but only after three months after their application was submitted in the Common Centre for Social Security. The applicant must also provide a certificate of residence with the application form.

Those without any legal status in Luxembourg run the risk of being registered with police. In such cases, however, health care and medical treatment are also provided. Non-nationals cannot be deported if they can provide proof, for example through medical certificates, that their health requires medical attention and – if this is not provided the consequences would be exceptionally detrimental to their health – that the necessary medical treatment is not available in the country to which they will be deported.

Uninsured Luxembourgian sex workers and uninsured or undocumented migrant sex workers have access to free HIV/AIDS treatment. Organisations, such as Aidsberodung, Red Cross Luxembourg, provide emotional, psychosocial and practical support for people living with HIV/AIDS and their friends and family. They also work to counteract the spread of HIV, for example, through initiating prevention campaigns.

Non-national sex workers from EU countries may be permitted to take part in substance abuse programmes during their stay in Luxembourg, if they can prove that they had already attended such a programme in another EU country. This also applies even if a person is simply on holiday in Luxembourg.



People without any legal residence status and without health insurance can be admitted to the methadone programme if their knowledge of one of the languages of Luxembourg (Luxembourgish, German, French, English) is good enough to ensure an effective monitoring during the treatment. In such cases, applications for treatment that must be submitted to the Ministry of Health are anonymous. Providing the person is willing to cooperate, during the treatment and observation phase, everything will be done to regularise the legal situation of the person and to get them health insurance.

## NETHERLANDS

### Sex work policies

In 2000, legalisation was introduced to regulate and control prostitution businesses and to improve the situation of sex workers. This is a national law that allows, under certain conditions, forms of prostitution in which adult sex workers voluntarily engage. This means that the sections that previously posed an overall ban on prostitution were deleted from the Dutch Penal Code (Art. 250b concerning the commercial exploitation of prostitution by third persons). At the same time, stricter forms of punishment were introduced targeting 'undesirable' forms of prostitution and the sexual abuse of minors. The new section 250a of the Dutch Penal Code penalises all forms of exploitation of persons in the prostitution sector. The Penal Code only lifted the ban on brothels and the part about third persons exploiting prostitution for profit and substituted the old article with a new definition of pimping and the involuntary exploitation of prostitutes and underage per-

sons. The jurisdiction for regulating prostitution and implementing prostitution policy now lies with the city councils. Prostitution is only permitted in licensed sex work establishments; in principle, there is no street prostitution, apart from four authorised zones for sex workers with a special permit.

In practice, the government drew up guidelines for the local authorities (i.e. municipalities) that referred to regulations on commercial exploitation of prostitution within the municipalities. The municipal authorities have a great deal of freedom in choosing how they want to deal with prostitution, but they do not have the power to completely ban prostitution from their area. They may, however, distinguish the regulations permitting prostitution within their district. Only establishments that comply with the regulations may receive permits to start or continue to business. The municipalities are obliged to determine regulations concerning the location and size of brothels, e.g. the brothel may not disrupt the neighbourhood's residential setting or quality of life; brothels are prohibited near churches or schools; brothel owners cannot have a criminal record. Municipalities also distinguish their own regulations regarding hygiene and safety, e.g. the minimum size of the working area, hot and cold running water, supply of condoms, compliance with fire safety regulations. The municipal authorities are obliged to distinguish special services responsible for checking if the workplaces comply with the regulations (including protection of the physical and mental integrity of sex workers, no underage prostitutes, no prostitutes without a valid work permit). If the owner does not meet these requirements, the brothel is closed.

At the moment, sex workers are not obliged to register with the municipalities. However, it is anticipated that in the near future – due to a new law proposal – sex workers who work as self-employed must register with the municipality. They would receive a document that certifies their registration. Sex workers who work in a licensed sex business would not be required to register. The new law proposal also prohibits a business of prostitution unless it has a municipal license. This includes escort and internet agencies that would have to present an actual street address and a non-mobile telephone number which will all be included in a national register. Businesses that provide access to sexual services without having a license will be closed. Self-employed sex workers who work without registration would be fined. In addition, this law proposes that clients who purchase services from non-registered sex workers or those working at illegal(ized) workplaces are sentenced to prison. To prevent this they should verify the licence of the sex business or the registration of the self-employed sex worker.

### **Migration policies**

Only EU citizens are permitted to work in prostitution, because they are not obliged to apply for a work permit. This is not due to the laws regulating prostitution, but to the general laws governing labour and access to the Dutch labour market. According to the laws that regulate access to the labour market, the most recent EU member countries (Romania and Bulgaria) are permitted access to the labour market as self-employed. There is, however, no uniform policy for the municipalities. In some cities Romanian and Bulgarian citizens may only work in prostitution if self-employed, which means they have to register

their purpose of business (as self-employed) with the Chamber of Commerce. In practice, each city (and even districts in some cities, such as Amsterdam) has a different policy on the labour status for persons from Bulgaria and Romania. Those from the remaining new EU member countries have the same legal status as sex workers with Dutch citizenship – meaning there is no specific legislation.



For non-EU citizens: Sex work is the only type of work for which work permits (WAV: Wet Arbeid Vreemdeling) are not issued. The procedure and logical framework regarding this exception to the labour and the law on foreigners is as follows: As soon as a (non-EU) citizen intends to work for a third person, the employer must apply for a work permit. Given that prostitution is a legal form of work, applying for a work permit should be possible, the law however explicitly specifies that activities bound to offering sexual services (including erotic shows) for and with third parties are not eligible for a work permit. This prohibition dates back to the time before prostitution was legalised and refers to the provision in the law that it was not possible to obtain a work permit for an illegal activity.

Regarding the category of self-employed, i.e., entrepreneurs in prostitution: they are not obliged to apply for a work permit, because the abovementioned law only refers to persons working for third parties. In principle, self-employed sex workers



should be able to legally establish their businesses and receive a residence permit. The authorities, however, refuse to issue residence permits for self-employed persons for the purpose of working in prostitution on the grounds that they do not contribute to fulfilling any Dutch interest on the labour market. In addition, the Ministry of Economic Affairs argues that sex workers are not independent workers and that sex work is not an activity of economic importance.

### **Health policies**

There is no mandatory testing for sex workers. In some municipalities, the licence system includes the obligation of the brothel owners to stimulate a safer sex policy in their establishments. This includes giving health authorities access to sex workers and providing sex workers with access to prevention and safer sex materials. There are also regulations on hygiene and safety at the workplace. In a majority of the municipalities, the local public health agencies are responsible for checks and inspections related to these regulations. This means there is no national legislation and that only municipal-level regulations exist.

In the Netherlands, it is compulsory that all persons have health insurance. All prevention services (child and family care, infectious diseases, basic inoculation etc.) are municipal/public services that are accessible for all citizens. Uninsured migrant sex workers have access to STI screening and treatment and some child and family care. EU citizens are considered covered by their respective national health insurance agencies for short-term health care. Undocumented sex workers have very limited access public health care. In larger cities there are health

care centres run by voluntary general practitioners. STI screening and treatment are free and accessible to all. In case of emergency, doctors and hospitals must provide basic health care. One of the greatest barriers for undocumented sex workers for gaining access to health care in The Netherlands is a general lack of knowledge of how health care is organised which is due to language barriers, social isolation and limited mobility. Uninsured persons must pay for health care services from their own pocket. Although hospitals are not permitted to deny emergency health care, they are often very reluctant to offer it. Most of the hospitals have special funds to finance medical care for uninsured persons. Any additional care beyond the basic services depends on the discretion and good will of the medical staff – particularly regarding undocumented migrants' access to treatment by specialists. In case of a serious illness, the majority of sex workers return to their home country and/or postpone doctor's appointments and tests until they visit their home country, which can have serious effects on their health and increases the risk of chronic disease.

Most of the major prostitution area is covered by the services of local municipal health services who either carry out outreach work and invite the sex workers to their STI centres, or hold a consultation hour on the prostitution street. Some of them offer, next to health services, also social services. In some cities social assistance is offered by independent sex work projects who specialize in offering social services to sex workers.

In some clinics specialised in HIV treatment, HIV-positive persons (independent of their legal status) may receive free HIV treatment and support. Although this not an official policy, it is a common



practice in several (university) hospitals throughout the Netherlands. The treatment is confidential, however, the person must give her/his real name and address. The treatment does not include any other medical services, e.g. dental care, or social assistance, e.g. help in finding a place to stay. In such 'migrant-friendly' HIV clinics the waiting time between diagnosis and actual treatment can be long. This is because those diagnosed as HIV positive at another health care service are often left hanging without any HIV counselling or referral to a specialised clinic. This is due to the fact that there is no adequate outreach or social support for these persons. In case of an acute medical situation, it is possible to apply for a temporary residence permit valid for one year that can be renewed each year. The definition of an acute medical situation is: if, due to the lack of access to treatment in one's country of origin, a person would die within three months or be subject to severe physical or psychological damage. It is also possible to apply for a residence permit if the projected period of medical treatment is over one year.

Dutch sex workers who use drugs have full access to harm reduction programmes, those without insurance receive support in applying for health insurance. Migrant sex workers who use drugs with a valid residence permit and health insurance have full access to harm reduction programmes. Uninsured persons have access to basic harm reduction programmes, such as drop-ins, needle exchange, condom distribution and STI control programmes, but often face difficulties in receiving medical treatment. Due to the 'Koppelingswet' (the computer database accessible to all public offices that also contains the personal data of everyone registered), as soon as a person is registered and their status recorded, it is

difficult to get insurance without registering for residence. There are, however, some individual cases in which unregistered persons have indeed received insurance. Basic harm reduction services, such as drop-in centres, on street counselling, needle exchange and condom distribution programmes are generally available for undocumented migrant sex workers. Contacting an official authority, however, does increase the risk of investigation (concerning a person's residency status) and, in the worst case, deportation.

## NORWAY

### Sex work policies

On a political level, prostitution is regarded as an unwanted, social problem and is not considered a form of labour. The most important legislation is the General Civil Penal Code. In November 2008, the Norwegian Parliament voted for changes in the legislation on prostitution, in effect criminalising the purchase of sexual activity or a sexual act, by introducing a new section 202a. A separate section (203) applies when the relevant acts are committed against a person under 18 years of age. Section 202a came into force on 1 January 2009. It applies to nationals or any resident of Norway found engaging in such activities, even abroad.

Art. 202 of the General Civil Penal Code forbids pimping, which is defined as promoting or facilitating prostitution, including advertising and renting out premises for prostitution. Until recently, the law on pimping was rarely enforced, especially on advertising and renting out premises. Within the last year, the police have more frequently enforced the

regulations on renting out premises. In order to charge pimps, the police often work undercover and pretend to be a possible client, calling sex workers working indoors. After making an appointment they come to the premises and, if sex is offered for money there, they show their police badge and demand the name of the landlord. The next step is to contact the landlord and threaten to prosecute him/her if sex work continues on the premises. The result is usually that the sex workers are given notice to leave the premises (hotels, private flats, massage parlours). These regulations effectively make indoor prostitution illegal.

Exploiting and forcing persons to engage in prostitution is included under the legal provision on trafficking (Art. 224 General Civil Penal Code). If pimping or trafficking is found to be part of organised crime, the punishment may be doubled (Art. 60). It is forbidden to buy sex from anyone under the age of 18 (Art. 203). This also applies abroad, regardless of the local legislation. The Child Welfare Services Act deems the age of sexual consent to be 16. For anyone under 18 years of age – including migrants – prostitution (or living among prostitutes) is regarded as endangering the child's growth and development. In such cases, child welfare begin procedures including examinations that may result in counselling, financial help or placement in institutional or foster care. Public servants are obliged to notify the authorities if they observe children or youth in prostitution.

In principle all income is subject to taxation. Therefore, income from sex work may be taxed on the basis of estimations from the tax authorities. This is rarely enforced, but it is however still possible according to the law. Sex workers rarely register as self-

employed and pay taxes, those who do register are registering as masseuses, aroma therapists etc. This is only possible for Norwegian nationals and those who have a work permit.

Norway has ratified the Palermo Protocol and since 2003 the Norwegian Civil Penal Code includes Art. 224 prohibiting trafficking in human beings. It is a priority for the police to enforce this; Norway also has also drawn up an action plan to combat trafficking.

### **Migration policies**

A Supreme Court decision from 1999 ruled that prostitution is not considered a form of labour under the law. Therefore, migrants are unable to apply for a work permit for sex work, and cannot be charged for unlicensed labour.

Those holding a passport from a Schengen country can stay in the country for six months at a time and may look for work. Those entering the country on the grounds of family reunion are entitled to residency and work permit. Their exact permit, however, remains tied to the status of the family member with whom they are united (usually the spouse) for several years. Legal residents of another Schengen country who hold a passport from another country may stay in Norway for three months as a tourist but are not eligible for a work permit.

Tourists must prove they are able to support for themselves for the duration of their stay and return travel. If not, they are subject to being sent out of the country. Many tourists are denied entry for this very reason.

In principle, there are no legal differences between Norwegian citizens and migrant sex workers. There

are no regulations that serve as a basis for deportation or denial of residence due to sex work (as it's neither legally defined as work or as a criminal activity).

Migrants working in striptease or as dancers are not eligible for artist's work permits. At the moment, the market in Norway is very limited and this type of work is not considered relevant on the labour market.

In practice, the police rigidly enforce the Immigration Laws regarding migrant sex workers. Regular checks often result in deportation if migrants cannot provide valid identification papers, a residence permit or that they have enough money to support themselves. Migrants who file a claim as victims of trafficking are offered a residence and work permit for so called 'reflection period' of six months. It is extremely difficult to receive asylum as a refugee; in addition, the decisions are made rapidly, so only few sex workers actually apply. Norway also strictly enforces the Dublin Convention.

### **Health policies**

There are no mandatory provisions for sex workers in Norway. By law, medical staff members are obliged to maintain strict confidentiality about patients, regardless of their migration status, i.e. if they are illegal or not. In practice, medical personnel comply with these rules.

Migrants, sex workers and all other persons have access to public health services, but are liable for the costs, which depend on their residence permit. For example, a non-resident may have an abortion, but is obliged to pay around 1,000 Euros for the service, while it is free for nationals. For any necessary med-

ical treatment, EEA citizens who hold a European Health Insurance Card pay the same share of costs as Norwegian citizens. This also applies to migrants who hold a residence and work permit (for example citizens of Schengen countries and asylum seekers). Generally, undocumented migrants can receive the same treatment as documented migrants, however it is up to the service provider to decide if the treatment will be administered or not. In practice, most places deny them health care unless it is an emergency. By law, migrants, documented or not, have the right to emergency medical aid and treatment, for which they usually receive a bill.

The Communicable Diseases Control Act applies to everyone residing (temporarily or permanently) in the country – legally or illegally. The Act grants the right to prevention, information, counselling, testing and diagnosis, and provision of any necessary and initial treatment, which is always free of charge. According to this law, treatment can be instructed, but this has never been applied to our knowledge. It is reasonable to say that voluntary testing and treatment is a basic principle of Norway's policy on communicable disease control.

Norwegian sex workers and asylum seekers have full access to HIV/AIDS treatment. Migrant sex workers receive vital, necessary initial treatment. If someone is diagnosed as HIV positive while staying in Norway, decisions on further medical treatment will be made purely on medical grounds, regardless of their legal status. Usually a person will receive the full treatment necessary for the duration of their stay in the country, regardless of one's legal status. The only known exception is when it is certain that they will leave the country soon and treatment is easily accessible in the country they are travelling to.



Treatment is always free of charge and is also available to undocumented sex workers.

There are low threshold harm-reduction services in most cities in Norway, which provide health care, counselling, needle-exchange, condoms etc. Migrant drug-users can use the low-threshold facilities on the same terms as nationals. However, they usually do not receive access to detoxification programmes, long-term treatment or prescriptions for methadone or opiates, unless these are issued in conjunction with other necessary medical treatment. This applies to all migrants, including undocumented persons.

If is an urgent, life-threatening medical reason, deportation is prohibited. If a person is in need of long-term HIV/AIDS medical treatment that is not obtainable in the country of destination or if a person faces serious exclusion because of his/her medical condition, it is possible to apply for a residence permit on humanitarian grounds. In practice, the threshold for such provisions is rather high. HIV status alone is not considered reason enough to be granted residence on humanitarian grounds.



## POLAND

### Sex work policies

There is no specific legislation related to sex work in Poland. However, according to the Polish Penal Code there are some activities related to sex work that are penalized on a national level. These are: forcing someone into prostitution (art. 203, Penal Code); inducing someone to work in prostitution or facilitating it (art. 204 § 1); benefiting from someone's work in prostitution (art. 204 § 2); abducting someone abroad for the purpose of prostitution (art. 204 § 4). Inducing someone to work in prostitution or facilitating it (art. 204 § 1) and benefiting from someone's work in prostitution (art. 204 § 2) in practice influence the legal status of an agency owner, usually an older or former sex worker who owns an apartment and rent rooms to other sex workers. Such a person may create very convenient conditions of work but even though is treated as an offender because of the breach of above mentioned provisions of the penal code.

The Polish penal code makes a very clear distinction between trafficking in general and trafficking for sexual exploitation through prostitution. This second case is regulated by art. 204 § 4 of the Penal Code, which penalises abducting somebody for purpose of commercial sex abroad: 'Whoever entices or kidnaps another person to do commercial sex work abroad is liable to punishment of 10 years of the deprivation of liberty.'

Other crimes, functioning independently but connected to sex work: knowingly exposing someone to HIV infection (art 161 § 1), knowingly exposing someone to an STI infection (art 161 § 2).

## Migration policies

There are no special immigration laws that refer to sex work or sex workers. The only distinction is being made on the ground of the 'legality of stay'.

EU citizens can stay in Poland without any further permits required, however some EU citizens still need a work permit. Non-EU citizens need to get a work permit. For some citizens there are some facilities to get a work permit based on bilateral treaties, e.g. for Ukraine citizens.

Undocumented persons, including undocumented sex workers, will in general be deported. This is based on the illegal stay, not because of their activity in the sex industry because of the non-regulated status of sex work in Poland which is not treated as work.

If a migrant has a residence permit and works as a sex worker, there is no legal ground to deport her/him on this ground because sex work itself is not illegal. However, as sex work is not legal either, it cannot be treated as a regular way of earning money for living. This means that a sex worker cannot have self-employment by running her/his own business in sex work. This also refers to Polish citizens. But there are no obstacles to employ a person who has got a labour permit as a dancer, waiter/waitress or an artist. In practice, it is the most common way of proceeding with people who can work legally in Poland. The only relevant criteria are having a residence and labour permit.

## Health policies

Every screening and other medical check up must be based on informed, freely given consent. Otherwise they are illegal and anyone who conducts medical treatment without freely given informed consent commits a crime upon Art. 192 of the penal code. Also the Law on physician's profession imposes on doctors the obligation to obtain freely given informed consent for every medical activity. The only mandatory provisions for screening and other medical exams refer to soldiers, police officers etc. and are based on specific laws regulating their service.

Everybody who is insured has the right to health care. There is a general obligation to be insured. There is one obligatory insurance institution in Poland: National insurance. Everyone is insured, even unemployed, if they are registered. It may happen that someone is not insured (rare cases) but even then in some circumstances this person has the right to medical care.

This law specifies types of medical services that might be obtained by a patient (Art. 15 of the cited law). This is a wide range of medical services; incl. all services for drug users (treatment and rehabilitation). Exceptions to free medical services refer to some medical certificates (like certificate of ability to drive a car). There are also some cases when patients must pay for his food and accommodation (not for medicines) in a rehabilitation center. But maximum highest fees are specified in this law too. This law also specifies the rules of creating the waiting list. But in urgent cases medical help must be given immediately.

There is no possibility for any uninsured person to access HIV treatment. But because of the obligation

of being insured and mechanisms that allow to get insured quite easily, it hardly ever happens in practice that a person who needs treatment is not insured. HIV screening is anonymous and does not require an ID card and insurance so it can be conducted freely even for uninsured and undocumented migrants. However there is no treatment for uninsured patients, irrespective their nationality.

Harm reduction programs are mostly conducted by NGOs. In such cases neither insurance nor citizenship matter at all. The only exception so far is methadone treatment which is a medical care in terms of the law.

National sex workers are not insured on the ground of their profession. But it does not mean they have no right to medical treatment. They usually (more than 90%) are clients of municipal social services and are entitled both to insurance and other allowances (for unemployed, for single mothers, family support). Health insurance for Polish citizens is obligatory. Sex workers with Polish citizenship are therefore insured and have access to free medical assistance, which consists of diagnosis, treatment and rehabilitation. Despite this, some sex workers still face health problems due to a lack of knowledge about the available services and assistance rather than an actual lack of services. Migrant sex workers without a regular residence and work permits do however face serious problems in accessing medical care. The problem is less severe in regards to HIV testing; HIV screening can be done anonymously and it is not required to show proof of insurance or an ID card. Screening for other STIs, however, does require insurance. This effectively excludes illegal migrant sex workers from free screening. Free treatment and rehabilitation always require insurance.

## PORTUGAL

### Sex work policies

In Portugal, there is no legislation specifically related to sex work. Sex work is not regulated and there is no mention of it in the Portuguese legislation. Sex work itself is not a crime, although sex work is not formally recognised as a profession. There is no legal framework to protect the rights of sex workers, which puts them in a vulnerable situation. For example, because sex work is not considered a form of labour, it is impossible to receive a work contract for practicing this activity.

The Portuguese Penal Code entails regulations on pandering or pimping (Art. 107 from 1 October 1995). This article states: 'Those who professionally or for profit intend to promote, favour or facilitate the prostitution of another person, the engagement in sexual activities or to capitalise on another person's economic instability or disadvantaged position in this way is subject to a prison sentence from six months to five years'.

### Migration policies

There are no specific provisions for migrants regarding sex work. There are no restrictions regarding the residency of EU citizens in Portugal. Non-EU citizens may apply for a residence permit on several grounds, including: a work contract, marriage, motherhood, sponsorship through a family member or other person, study, research etc.

For non-EU citizens, receiving a residence permit is contingent upon proof of a valid work contract. Because sex work is not recognized as a form of labour, it is very difficult to obtain a work contract in this



area of work. Although the working conditions are generally good, the fact that no sex workers have a valid work contract puts them in an even more illegal and vulnerable situation.

For example, if a sex worker is involved in a quarrel in a bar that leads to a police intervention requiring the person to provide identification, and this person's illegal status (e.g. an expired visa) is discovered, the person will receive a letter instructing her/him to leave the country voluntarily. If the person does not to leave the country and is found again by the authorities later, she or he will be detained and receive an order of deportation and subsequently barred from re-entry for at least five years.

### Health policies

According to Art. 64 of the Portuguese Constitution, all citizens have the right to health care and the duty to protect one's own health. Therefore, all immigrants within Portugal who are in need of health care services have the right to medical assistance at a health care centre or hospital (in case of emergency); no one may be refused these services on the grounds of nationality, lack of financial means, legal status or other reasons.

Foreign citizens in an irregular situation have access to the services and establishments of the NHS by presenting at the health services of their area of residence a document of proof (Certificate of Residence), issued by the Borough Council, in the terms of the provisions in article 34 of Decree-Law no. 135/99 of 22nd April, certifying that they have been in Portugal for more than ninety days. To obtain this certificate of residence, it is necessary to have two witnesses, who also reside in the area to confirm the information. They may be private individuals

(acquaintances, neighbours), or commercial establishments (the owner of the boarding house, shops where he/she is a client). After the certificate of residence is issued by the Borough Council, people should go the Health Centre for registration there (if possible with a family doctor).

If a person needs health care and finds him/herself in a situation that puts the Public Health at risk, she/he receives free care. This includes:

- all communicable diseases (namely those in the list of Notifiable Infectious Diseases, like for example tuberculosis, HIV/AIDS and STIs);
- maternal and child welfare and family planning (all the situations are included as, from the public health perspective, there are always aspects related to primary, secondary and tertiary prevention);
- vaccination (the vaccines included in the National Plan of Vaccination are free).

## ROMANIA

### Sex work policies

Sex work is criminalised in Romania, nothing concerning sex work is legal. The Romanian Penal Code Art. 328 refers to sex work in the following manner: 'the behaviour of a person who makes a living by engaging in sexual intercourse with different persons can be punished by a prison sentence of three months to three years'.

Therefore, in Romania, there are currently rarely any forms of prostitution that are not bound to some level of procuring, which puts sex workers in an extremely vulnerable situation. In the past, prostitu-



tion was more visible, as most of the sex workers worked on the streets. Since Romania entered the European Union, more aggressive and frequent police controls have led sex workers to become less visible and now more work in clubs, bars and apartments. Sex workers are fined by the police daily, resulting in expensive fees that are impossible for sex workers to pay. The fee is 500 Lei per fine, approx. 138 Euros. If the police catch sex workers with a client, they immediately receive a criminal record and are convicted; the client, on the other hand, only receives a minimal fine. Another reason for the lack of visibility is that many sex workers have left Romania to work in other European countries.

### **Migration policies**

Immigration is regulated on the basis of the National Strategy on Immigration 2007 – 2010. Most sex workers who work in Romania are Romanian citizens. Based on our experience at ARAS, there are only a few sex workers on the streets from Moldavia. Those who do not have legal papers to stay in Romania will be sent back to their country.

After Romania joined the European Union, a large number of Romanian sex workers went to work in other European countries. It has also become very difficult for ARAS' mobile outreach team to reach the sex workers on the street.

Persons from other EU countries working in legalised professions can easily work in Romania. This includes professions of 'those offering services', which also means dancers and strippers. EU citizens can easily obtain a work permit based on EU-wide legislation. Non-EU citizens must apply for a work permit from the Ministry of Labour and the company aiming to hire the applicant must prove that

it was not able to find any Romanian citizen in the country fit for the job – an extremely subjective criterion.

### **Health policies**

The only available service for sex workers is the ARAS – Romanian Association Against AIDS – outreach programme. Those without medical insurance can only access the emergency ward of the hospitals. Sex workers can access ARAS' clinic for vulnerable populations and take part in the outreach programmes. Most of the sex workers are not able to receive treatment for STI and hepatitis C and B due to their lack of health insurance. There is next to no access to health care or treatment (except emergency room care) for persons without Romanian citizenship.

Only the people who are 'officially' employed and pay state taxes have health insurance. Those without a job have the option to pay for health insurance monthly, but no sex workers choose to do this, because most are extremely poor and do not consider health (insurance) a priority.

Antiretroviral treatment is available to everybody in Romania. The treatment is only free of charge for Romanian citizens.

Drug users can access the harm reduction programmes with or without insurance. Since the harm reduction programmes are anonymous, any person can access them.

Normally, there is no protection from deportation. If a person is being treated for HIV, the country where she/he is being deported to must assure the continuation of the treatment.

The barriers for sex workers to access universal health care and treatment are linked to their legal status. Because prostitution is prohibited, sex workers still heavily rely on pimps and are therefore limited in their mobility; the majority do not have any documents; most of them (over 95%) are without medical insurance.

## SLOVAKIA

### Sex work policies

In Slovakia sex work is not regulated and there is no law that specifically addresses sex work. The Slovakian Penal Code (Act no. 300/2005), in effect since 1 January 2006, deals with pimping, trafficking in human beings and coercion into prostitution. The punishment in such cases is a prison sentence ranging from one to twelve years, depending on the severity of the crime. The Penal Code is a national law.

Some districts in the capital city of Bratislava (districts I, II and III) have accepted local regulations that go against the Slovakian Constitution and fundamental human rights. These regulations concern persons engaging in sexual intercourse in public. In reality, however, only sex workers and their clients are prosecuted under this law and subjected to fines of around 33 Euros, administered by the Bratislava city police or state police. As far as we know, there are no similar regulations in other districts or towns in Slovakia.

Sex workers working in clubs are usually hired as dancers. Generally, the provision of sexual services is not part of their official contract, if they have a contract. Sex work is not considered a legal profession in

Slovakia. For this reason, employees working as dancers, in strip clubs, bars or massage parlours belong to an illegalised sector of the labour market. Half of the employee's pay goes to club owner or to the owner of private flats.

In Slovakia, there are currently no organisations that work specifically with sex workers who work indoors, and only a few who work with sex workers who work outdoors. Almost 100% of those who provide sexual services on the street are Slovakian nationals. They demonstrate an extremely high level of mobility. Sex workers often come from smaller towns and move to the bigger cities for work. Most of them work along the highways or at truck stops. 80% of sex workers on the street in capital are drug users. The percentage differs from city to city.



### Migration policies

There are hardly any migrants in the sex industry in Slovakia and there is no legislation that specifically addresses issues relating to migrant sex workers. The only legal protection available to migrant sex workers is in relation to trafficking, coercion into prostitution and other criminal activities in the Slovakian Penal Code. Both Slovakian and migrant sex workers are subject to the same local regulations.

EU citizens are not required to apply for a residence permit; non-EU citizens need a visa.

There are four types of possible permits for migrants in Slovakia:

- Temporary residence permits are based on the purpose of stay. Purposes include: business activities, work contract, study, special activities (such as foreign language tutors, specialist skills, artistic and sports activities), family reunification or civil employees of foreign armies on duty in Slovakia.
- EU citizens are issued a temporary residence for maximum five years; non-EU citizens for a period of three years maximum.
- Permanent residence permits only apply to family members directly or indirectly related to Slovakian citizens with a permanent address in Slovakia. The first 'permanent residence permit' is valid for five years, the following permit is unlimited.
- 'Tolerated residence' applies to victims of human trafficking, those under the age of 18 found in Slovakia and those who seek temporary refuge and protection for the following reasons: military conflict, violence in one's country of origin, natural disaster or a massive violation of human rights in one's country of origin.

Asylum can be granted on the following grounds: persecution due to one's race, national or religious background; persecution due to 'inappropriate' political views or belonging to a certain social group; persecution as a result of asserting one's basic political right and right to freedom; with the aim of family reunification (joining one's wife, husband, child(ren) under the age of 18 or parents living in asylum in Slovakia).

## Health policies

Because there are no existing regulations on sex work, there are no mandatory medical examinations for sex workers. Sex workers working indoors usually visit a gynaecologist determined by the club owner twice a month. Based on uncertified information, each examination costs approximately 165 Euros.

Uninsured sex workers have the right to public health care, although it is not free of charge. The most convenient form of insurance is to register as a self-employed, which costs approx. 33 Euros per month. If sex workers cannot afford a monthly payment, by law they must receive public health care free of charge. This only applies, however, in case of a life-threatening medical emergency.

Emergency health care is provided in cases of a sudden, life-threatening change in a person's health where – if medical assistance is not offered immediately – it could have grave effects on one's health or lead to unbearable pain and sudden changes in behaviour that can be a danger to oneself and one's environment. Emergency health care includes health services necessary for pregnant women and childbirth. All persons are entitled to immediate health care, regardless of the circumstance.

There is a high threshold to taking advantage of regular health services, for example, proof of ID is most often the first thing that is asked for. Access to HIV treatment for undocumented nationals is complicated, but not impossible. There are organisations that offer assistance in obtaining the necessary documents. It is highly likely that complications arise when it becomes necessary for migrants to seek medical assistance or treatment.

### Sex work policies

Until 2003, prostitution was prohibited under The Act on Criminal Offences Disrupting the Public Order and Peace. Amendments to this act decriminalised prostitution so that it is no longer considered a criminal offence. However, this act still contains a provision that imposes a prison sentence of up to 60 days to anyone who cooperates in, facilitates, or supports prostitution. A legally liable person is punishable with a fine of up to SIT 600,000 (2,500 Euros), and an additional fine of up to SIT 60,000 (250 Euros) for the person held responsible (Art. 10).

The Slovenian Penal Code prescribes punishments in cases of exploiting persons for the purpose of prostitution. It declares that persons in any way involved in the process of another person's becoming a prostitute against his or her will, or by fraud, are subject to a prison sentence of three months to five years (Art. 185). If the person forced into prostitution is a minor, the punishment is even higher (Art. 185). In the section concerning crimes against civilians, a decree states that anyone who violates international legislation in a time of war by cooperating in forced prostitution is subject to ten to thirty years of imprisonment (Art. 374).

When sex work was decriminalised in 2003, the public debate and, consequently, media reports around prostitution addressed the issue in a bipolar manner. On the one hand, prostitution was reduced to an economic activity that should be treated as any other profitable form of business; and, on the other hand, it was magnified as a controversial issue posing a threat to 'public morality'. Consequently, the women

involved in prostitution were portrayed either as professionals, 'mobile phone businesswomen who know exactly what they want', or, in contrast, as women from abroad that are 'naïve girls from the problematic countries of south-eastern Europe'.

The media was rife with the opinions of delegates, supporters, opponents of decriminalisation, and other commentaries that more or less reflected the 'bipolarity' of parliamentary debate. In the rare examples of media reports that included sex workers' opinions, their opinions were only cited to support either an individual's position in favour or against the argument. Apart from appearing in a few media reports, the public debate did not include the standpoints of female or male sex workers, which were totally neglected.

### Migration policies

Specific regulations are only found relating to trafficking. Pursuant to the council framework decision on combating trafficking in human beings (2002/629/JHA), the Penal Code of the Republic of Slovenia was amended in April 2004 by adding two provisions for the prevention and punishment of trafficking. The Penal Code now prohibits the unlawful transfer of foreigners without permission to reside on the territory of Slovenia, and prohibits transporting and/or helping them to hide (Art. 311).

Furthermore, the Penal Code prohibits acts associated with the illegal transfer of persons, such as deriving financial profit for the illegal transport of persons, providing a labour force deprived of its rights, endangering the life or health of transferred persons, supporting terrorist activities or committing the crime of human trafficking as a member of

a criminal enterprise (Art. 311). A direct prohibition of trafficking in human beings is also included in the Penal Code.

By including the stated articles in the Penal Code, the loophole that had prevented the authorities from seriously considering the crime of human trafficking was eliminated. However, Slovenian legislation has failed to clearly define the circumstances that would enable officials to recognise victims of trafficking and to establish guidelines for steps that should be undertaken when a person is determined a victim of trafficking.

Even though Slovenia has a Law on the Protection of Witnesses, the procedure for obtaining the status of a protected witness is complicated, and even if approved, Slovenia is too small of a country to guarantee full protection. For example, it is almost impossible to ensure the concealment of the protected witness's identity. Owing to such insufficient conditions, it is highly probable that few victims of trafficking will decide to participate, and that the amendments to the Aliens Act will therefore not achieve their intended purpose.

It has been recommended that Slovenia adopt more favourable measures towards victims of trafficking without requirements and instead to offer a greater degree of protection. The state has a responsibility towards the victim because the torment and crimes (rape, abuse, beating and trafficking) to which they have been subjected took place on the territory of this state. So far there has been not one legal case of crimes against victims of trafficking that has been taken to the Slovenian courts. Such cases would be extremely important, because they would enable trafficked persons to initiate liability procedures for

compensation of damages, i.e., the money they were unlawfully deprived of by their employer, who was also responsible for abuse and criminal acts.

## Health policies

Migrants have different rights to health according to their status (whether they are asylum seekers, have been awarded refugee status or are foreigners with or without legal residence in Slovenia). The right to health care for migrants depends on their legal status issued on the basis of the Aliens Act. Migrants' right to health care with temporary residence in Slovenia is based on their employment contract. If their employment contract is terminated, they lose their health insurance or their right to reside in Slovenia. Migrants who are permanent residents of Slovenia are entitled greater protection, as they are entitled the same rights as Slovenian or EU nationals.

In contrast, the right to health care for persons with permission to stay in Slovenia because of their need for medical treatment is limited, as these persons only have the right to emergency health care. This is insufficient for migrants who suffer from chronic conditions, including victims of trafficking.

NGOs have reported that victims of trafficking and asylum seekers have been rejected medical care in the emergency room. Migrants only have the right to medical treatment when a drastic change in their condition calls for additional medical assistance. In such cases, Pro Bono, a medical centre for people without health insurance performs the initial examination, but later on if someone should need to see a specialist, they will not be taken there unless they can pay for the medical costs.

The Asylum Act regulates the rights of asylum seekers and persons with refugee status. According to this act, asylum seekers are subject to an examination for health and hygiene upon reception at the Asylum Home. The Centre for Epidemiology is responsible for determining the extent of the examination (Art. 4). In practice, the examination is superficial and only checks for visible signs of disease (hands and stomach) are conducted. No blood or urine tests are done and the HIV test is not included. The Asylum Act recognises vulnerable groups and requires that authorities pay special attention to them in terms of their reception and of their physical and psychological health and treatment. Vulnerable groups are defined as: legally inept persons, minors, unaccompanied minors, disabled persons, elderly persons, pregnant women, minors with a single parent, victims of sexual violence, victims of torture and organised crime.

Until now, the Ministry of Health finances the treatment of all HIV-positive persons and those with AIDS, including persons without health insurance, whether they are nationals or migrants. Treatment is provided for anyone who is uninsured, regardless if they are a national, migrant, or undocumented sex worker.

Harm reduction programs in Slovenia include methadone treatment and needle exchange programmes. Needle exchange programmes are accessible and free of charge for nationals and migrants; methadone treatment is only accessible for drug users with health insurance, regardless if they are a national, migrant, or undocumented drug-using sex worker.

## SPAIN

### Sex work policies

In Spain, prostitution is not specifically regulated and is therefore neither prohibited nor recognized as work. Sex workers' rights are not recognized. There is a restrictive immigration law, as in other EU countries. The only regulation regarding sex work appears in Chapter V, on crimes related to prostitution and the corruption of minors, of the Spanish Criminal Code. The main legislation is on a national level, although there are some local-level regulations in certain cities (Madrid, Barcelona, Bilbao etc.).

Prostitution is not prohibited, although it is considered a criminal offense for a person to profit from the prostitution of another (if done under certain conditions, which must include taking advantage of a person in a vulnerable or needy situation). The fact that this legislation is formulated in such vague terms leaves it wide open to interpretation. In Barcelona or in cities where the law is still pending, such as Bilbao, street sex work is prohibited under council rules on the legal grounds related to the right of the free use of public space.

The fact that prostitution is not specifically regulated allows to each council to create their own measures, which most often take on the form of police harassment of street sex workers and the creation of specific regulations on public spaces targeted at controlling sex work on the streets (e.g. Madrid, Barcelona). In Bilbao, for instance, there are regulations for the clubs where prostitution takes place, which determine the distance between clubs and rules on hygiene; a law forbidding street sex work has been proposed, but not yet come into effect.





Each council that considers prostitution to be a problem in its jurisdiction may enact bylaws or create programmes to eradicate it (particularly street prostitution). The clearest examples are Madrid and Barcelona. In 2004, the city council of Madrid launched a 'programme to combat sexual exploitation' that actually entailed police harassment against street sex workers, the control of clients or men walking around the area where prostitutes are known to work, random blood alcohol tests to control potential clients (enabling the police to send fines to their homes revealing where they were at what time), blocking the traffic flow into and out of certain areas where sex workers used to work and advertising campaigns identifying sex work and sexual exploitation with slogans such as: 'Because you pay, prostitution exists. Do not contribute to perpetuating the exploitation of human beings.' The city council of Barcelona, on the other hand, passed a bylaw prohibiting the 'inappropriate use of public places' that included sex work among the activities defined as inappropriate ways of using public spaces. This law permits the police to administer fines to both sex workers and their clients.

These politics directly lead to the creation of an underground market for services that would otherwise be offered on the street, the loss of women's power to negotiate with clients and an increase in health risks due to the increased pressure for sex workers to perform services or endure situations that they would not otherwise face under other legal circumstances. Imposing such regulations is a sustainable violation of sex workers' right to remain on the street – in public space. The implementation of these regulations are often accompanied by insults from policemen, general social and media uproar, spe-

cially regarding street prostitution, as it is easily linked to issues of procuring, human trafficking, drug trafficking, social exclusion and so on.

## **Migration policies**

There are no specific laws on sex work and migration, there is however legislation on trafficking in human beings for the purpose of prostitution. Under the Spanish Immigration Law it is prohibited to remain in the country without a residence or work permit. Because prostitution is not considered a job and is not regulated, those working in prostitution have no legal means to regularise their situation and therefore live and work under very precarious conditions that make them extremely vulnerable. This means it is impossible for migrants to improve their situation through receiving a legal status or at least attaining access to the minimum rights of citizenship. Due to their vulnerability created by the restrictive migration policies, even people who intend to work as sex worker can be faced with a situation where their labour is exploited. Due to their situation, they remain unable to report any aggression or harassment to the police for fear of deportation.

## **Health policies**

Spain has a public health system that provides health care almost for free, as long as one is registered within the social welfare system. Some health services, however, are not free, such as psychology or dentistry (on referral if the problem is really serious). Nationals must merely register in order to receive a health care card and full access to the public health system. Migrant sex workers without papers, or those in a position where they cannot say where they live, have great difficulties in fulfilling the require-



ments for ‘civil registration’, which is the minimum requirement for receiving a health care card.

This poses a problem for undocumented persons, as it is difficult for them to find an address where they can legally register. They also generally face difficulties in finding a place to rent. For this reason, undocumented persons often live in flats or boarding houses, so-called ‘contact houses’, which they use as an address for civil registration. After successfully completing the civil registration, migrants must also provide a passport number before they receive a health care card.

National drug-using sex workers with insurance may access harm reduction programmes and treatment. Uninsured national and migrant sex workers can get access through NGOs and using the health care card. The only way undocumented drug-using sex workers can access harm reduction programmes is through NGOs or other associations. Their only other option for health care coverage is to pay for private health insurance.

The illegal status of prostitutes and the stigmatization of their activities make it difficult for them to gain access to the public health system and resource networks. These difficulties arise, in part, through a lack of information, language barriers, cultural differences, general lack of knowledge about the ways in which Spanish institutions operate and discriminatory treatment during official procedures.



## SWITZERLAND

### Sex work policies

Based on the Swiss Constitution (national-level legislation), prostitution is legal in Switzerland. Art. 27 of the Constitution guarantees the freedom of commerce, providing Swiss residents (depending on their residence status, only those with long-term residence permits) with protection from government-imposed restrictions on a person’s freedom to engage in economic activity (e.g., on the same terms protecting a person’s freedom of expression etc.). The fact that prostitution is therefore ‘protected’ under Art. 27 has been confirmed in many rulings of the Federal Court.

The Swiss Federal Penal Code is the legal framework for prostitution. Art. 199 attributes the cantons the right to impose a law or regulation to prevent disturbances in local neighbourhoods. They have the power to decide on the areas, hours etc. where sex work is permitted or prohibited. Towns also have the power to create their own regulations on this matter. A few cantons also regulate the conditions of conducting a business in the sex industry. Some cities have officially prohibited prostitution in the traditional red light district (Zurich); however the sex business continues with the only difference that there are more police interventions and severe fines are imposed on sex workers.

Art. 195 prohibits the exploitation or encouragement of prostitution for adults and those under the age of 18. It is prohibited to force a person to remain in prostitution, it is illegal to take advantage of a person working as a prostitute, and it is prohibited for another person to determine where and when a sex

worker must work. Violation of any of these laws may result in a fine or a prison sentence of up to ten years. Some local laws or regulations require sex workers to register with the police or department of commerce. Today, out of 26 cantons, only three have a law on prostitution and three more are in the process of creating such a law. In general, the motor behind these new legislations are those expressing social concerns regarding issues of improving protection for sex workers, combating human trafficking, combating forced prostitution and better ways to control the sex industry (taxes). This enables the lawmakers to use the idea of 'protection' as a basis for imposing tighter regulations on or prohibit prostitution altogether. The current trend is to make it more difficult for 'freelance independent sex workers' and to stimulate the creation of new businesses.

In areas where independent sex work is permitted, it is legal for Swiss nationals and migrants to do sex work with certain permits. Prostitution is legal for Swiss nationals and for non-nationals with certain permits (C and B); there are also some trans-border agreements. Prostitution is only legal if practiced as an independent (freelance) manner. According to civil law, a sex worker should not be employed. As independent workers on the labour market, sex workers must pay taxes and social fees and abide by the same regulations as other self-employed professionals in other fields.

The legal obligation to work as independent (i.e. self-employed) is not so clear. In some cantons, it is permitted for sex workers to have an employment contract (or at least this is being discussed on a political level); despite this many sex business owners find ways to evade this regulation. Many sex workers do not know their rights, but in cases where they decide

to report forms of exploitation they are protected under law and even have a chance at winning the case. Those working in situations that do not comply with the local regulations are often afraid to file a complaint even if they are victims of violence.

## Migration policies

All non-nationals with a permit to work in Switzerland on an independent basis (freelance) with a permit type B or C are legally considered equal to Swiss nationals. Type B permits may be renewed each year, issued to EU citizens for work, or to foreigners married to Swiss nationals – in this case the permit is valid for five years. Asylum seekers are not allowed to work.

Foreigners from outside Europe may work as cabaret dancers (who are not considered sex workers) with a special short-term type L permit. This permit is very restrictive, allowing the holder to stay three to eight months a year and prohibits the holder to work in any other sector. Only cabaret dancers are permitted to enter into an employment contract as employees, as they are not considered sex workers. Citizens of 17 European countries (EU-15, Cyprus and Malta) are permitted to work for 90 days without a residence permit; during this period they are only required to register with the department of economy.

Several cantons have stopped or are considering a halt on issuing 'L permits' to dancers from outside of the European Union. This halt of issuing L permits to dancers from outside of the European Union is linked to the argument that the situation of women with an L permit is more vulnerable and that cabaret or nightclub owners are more likely to take advantage of people working with such a visa or force them into prostitution. This holding back on issuing L per-

mits means that migrants from outside of Europe now work without a permit (illegally), and therefore lack any form of protection and rendering them more vulnerable.

However, regulations are applied differently in each jurisdiction, which leads to great confusion and difficulties. Even within one single town there can be many contradictions in the way the regulations are interpreted. Although bilateral agreements have been worked out with other European countries, the agreements frequently change.

### Health policies

Migrant cabaret dancers who hold an L permit must have a medical check up upon arrival. Medical checks are conducted in order to assess a person's capability for night-time employment and do not entail STI/HIV testing. They take place at the beginning of the first job in Switzerland and must be renewed every two years. They are conducted by physicians in health centres are paid for by the employer. Health insurance is compulsory for those living in Switzerland for more than three months, even for those without a formal residence permit. Compulsory basic insurance covers treatment costs in the event of illness or accident. Those insured have the right to treatment, care and accommodation in the general ward of a hospital; for the medical costs during pregnancy and for childbirth are also covered. All insured persons are obliged to pay into the health system. Payments are made in the form of monthly premiums, a personal contribution and a fixed annual rate. If a person's income is below a certain level they are entitled to a reduction or financial support for these costs through the social welfare system.

Health and medical treatment are universal human rights. According to the Swiss Federal Constitution, every person staying in Switzerland has the right to medical treatment in an emergency, including medical attention in life-threatening situations. Art. 12 of the Swiss Federal Constitution states: 'Persons in need and unable to provide for themselves have the right to assistance and care and to the financial means required for a decent standard of living'. This right also applies to migrant and undocumented sex workers. Additionally, all hospitals and physicians in Switzerland are obliged to provide care in case of emergency.

Some cities have special services for undocumented and uninsured persons.

All Swiss nationals have the right to HIV/AIDS treatment. Due to the extremely high costs, it is very difficult for uninsured foreigners to gain access to HIV/AIDS treatment. Sometimes doctors, hospitals and HIV organizations provide free treatment for those living with HIV, but only for a very limited period of time.

Since the 1980s, aseptic injections have been available to drug users. This medication can be obtained in pharmacies throughout Switzerland. There are also a substantial number of contact points that provide medication, clean needles, condoms etc. These contact points also provide information and advice on HIV, hepatitis and STI prevention, sanitary drug use and safer sex. There is a large network of contact points and information centres offering primary care for drug users, meals, medical care and the possibility to use sanitary facilities. Many also provide spaces for safe consumption. The offers are generally open to migrant sex workers as well, but lan-



guage barriers, fear greater discrimination and stigmatization often discourage them from using the facilities available.

Health insurance is required in order to take part in methadone/heroin programmes. Voluntary counselling and testing (VCT) for migrants are encouraged more and more and the number of free local programmes offering anonymous hepatitis vaccinations are increasing, especially in larger towns.

The main barriers for Swiss sex workers to access health care services are fear of discrimination and stigmatization, lack of knowledge about their rights (health insurance) and a lack of trust in the institutions. The main barriers for migrant sex workers for accessing health care services are a fear of discrimination and stigmatization, lack of health insurance, language barriers and illegal status, lack of information and knowledge about their rights, lack of trust in institutions and only a small minority actually applies for assistance at social welfare organizations. This means that most face great difficulties in covering medical costs. Some do not begin treatment in Switzerland, because they would rather wait to go back to their country of origin thereby substantially putting their own health at risk.

## UNITED KINGDOM

### Sex work policies

The sex industry is legislated primarily through criminal and public nuisance (civic government) legislation determined by the Scottish Parliament for Scotland, by Westminster for England and Wales and by the Northern Ireland Assembly and Westminster for Northern Ireland. Immigration, employ-

ment and tax legislation are UK wide – however, they do not make specific reference to sex work.

It is an offense to loiter and solicit for the purpose of prostitution in a public place, thereby criminalising street-based sex workers across the UK. In England and Wales kerb-crawling and persistent soliciting by clients of street-based sex workers (seeking to purchase sexual services in or near a vehicle within street prostitution settings) has been criminalised since 1985. Clients of street-based sex workers were criminalised for loitering and soliciting with the intention of purchasing sexual services in Scotland in 2007 and in Northern Ireland in 2008. It is a criminal offence for a client to pay for sex with a child (defined across the UK as a person under the age of 18 years old).

Across the UK the following are criminalised: brothel-keeping (a brothel is defined as two or more sex workers working together in or sharing premises); living off immoral earnings and controlling a sex worker; procuring, causing or encouraging prostitution; procuring, causing and encouraging child prostitution (under 18 years old); and trafficking into, within and out of the UK for the purpose of prostitution (in Scotland the legislation also applies to trafficking for the purpose of pornography).

The selling of sex and being a sex worker are not illegal in the UK. However, the criminalisation of the sex industry has made it impossible for sex workers to work collectively for their safety, while the criminalisation of clients of sex workers has driven street prostitution into more isolated and dangerous settings. While brothels are illegal, many businesses, which in reality operate as brothels, have applied for and obtained licenses as places of public entertain-

ment. This allows for the businesses to be inspected by police, fire brigade and health and safety officers to ensure they comply with current business regulations, but does not legalise the selling of sexual services.

Sex workers and sex industry businesses are required to pay taxes. HMRC (Her Majesty's Revenue and Customs) have targeted the adult entertainment industry for the last two years, they have wide ranging powers to enter and inspect businesses, determine their status as employers and obtain details of 'employees'.

Across the UK there have been moves by governments to define prostitution as 'violence against women' and to focus government and charitable resources on 'rescuing' women/sex workers and 'punishing' men/clients. Further repressive legislation to control the sex industry is being considered in England and Wales where proposals have been put forward to criminalise clients of sex workers who are controlled for gain, restrict lap dancing clubs through greater regulation; and to enable police and local authorities to close brothels. In Scotland there is discussion about criminalising the purchase of sex. These proposals are being put forward as 'protection for vulnerable women and children', but in reality sex workers in the UK know it will further marginalise them and increase the vulnerability of national and migrant sex workers while doing little to actually protect those who are abused and exploited within the sex industry.

## Migration policies

Immigration legislation in the UK is complex and anyone (especially those coming to the UK from non European Economic Area [EEA] countries) considering entering the UK should seek specialist advice. There is no immigration law that refers explicitly to sex workers, apart from the very strict immigration rules about any economic activities (i.e. working in any shape or form) of non EEA foreign nationals. Any person, including migrant sex workers, found in the UK without entitlement to be in or remain within the UK is subject to removal. Any person, including migrant sex workers, found to be working in the UK without valid permission to work is subject to removal. In addition, visas are granted and extended on the basis, among other criteria, of 'good character', which may be interpreted as a reason to deny migrant sex workers permission to enter or remain within the UK.

Sex work is not formally recognised as labour within the UK, despite the fact that sex workers' income is taxable. It is therefore impossible to get a work visa as a sex worker. Despite the lack of recognition of sex work as labour, migrant sex workers have been deported for working when they have legally been in the UK but did not have the right to work.

All EEA citizens have the right to enter, reside and work in the UK; however, the UK Border Agency introduced new requirements when Romania and Bulgaria acceded to the EU, placing a quota on the number of people who could enter to seek employment and a system of applying for permission to work in the UK similar to the work permit system for non-EEA nationals. All EU citizens from the A8 countries (Czech Republic, Estonia, Hungary, Latvia, Lithua-

nia, Poland, Slovakia, Slovenia) are required to register with the UK Border Agency – this entitles them to ‘in-work benefits’ such as Child and Family Tax Credits, and Housing Benefit. If they have been registered and in uninterrupted employment for 12 months they can apply for an EEA Registration Certificate which entitles them to claim all other benefits that UK citizens can claim. Social care regulations are very complex in the UK and those who wish to access it should seek professional advice.


All EEA nationals have right of access to most of the free NHS treatments. From 1 April 2008 they are expected to show their EHIC (European Health Insurance Card) in order to access free treatment.

The majority of non-EU citizens require a visa to enter, reside and work in the UK – the ease of getting such visas depend on the type of visa and even on the person’s country of origin (including whether they come from certain Commonwealth countries), ancestry and other factors such as having an offer of paid employment in the UK. Those granted a visa to enter the UK on a tourist visa do not have the right to establish a home or to work. Not everyone who is granted a visa to reside in the UK has the right to work and those found working in the sex industry without a work visa can be detained by the UK immigration service and removed from the UK.

Asylum seekers are expected to present an application immediately upon arrival in the UK for them to be considered for asylum. There have been a few cases of victims of trafficking being granted asylum, however, the UK Border Agency has stated that it will not automatically grant asylum to victims of trafficking wishing to remain in the UK.

## Health policies

The UK operates a National Health Service providing free of charge public health care for all UK citizens. All UK citizens and EEA citizens are therefore able to access free public health care. From 1 April 2008 they are expected to show their EHIC (European Health Insurance Card) in order to access free treatment. Everyone in the UK, regardless of country of origin, is entitled to access free of charge Sexual Health and Accident & Emergency services in the UK, however, referral for further treatment is not free of charge. All NHS Boards now have ‘overseas officers’ whose responsibility it is to follow up on all patients who have received NHS care (with the exception of Sexual Health and Accident & Emergency care) and seek to obtain payment.

The majority of needle exchanges operate anonymously and can be accessed by any migrant or national drug user – with or without insurance, documented or undocumented; if the needle exchange is operated by the NHS then a migrant would be entitled to an interpreter when using the service. Only migrant drug-using sex workers with recourse to public funds would be entitled to access NHS drug treatment services, which often have waiting lists, for those without recourse to public funds private drug treatment programmes are available. 





# TAMPEP RESOURCES

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## TAMPEP General Documents

- Flyer on aims of project and network members | English, German
- Position Paper on Trafficking | English
- Beyond Tolerance and Compassion for the Recognition of Rights | English, Italian
- Position Paper on Migration and Sex Work | English, Italian
- Policies on Sex Work & Health | English, German

## TAMPEP Training Manuals for Outreach Workers

- Cultural Mediators in the Area of Prostitution | Transnational Training Manual | Leonardo da Vinci Programme, December 1998 – April 2001 | English
- Peer-Educator's Manual | Course of Prevention and Hygiene | Albanian, Dutch, English, Italian, Polish, Russian, Spanish
- Manuale del Corso di Formazione per Mediatori Culturali | Italian

## Information for Female Sex Workers |

### TAMPEP CD-Roms 1 & 2

- Flyers on: Condoms & Lubricants | When the condom bursts or slips off | Viral Hepatitis | HIV & AIDS | Contraception & Pregnancy | Protect yourself | Safer drug use | Sexually Transmitted Infections | Albanian, Bulgarian, Czech, English, Estonian, French, German, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Romanian, Russian, Slovak, Spanish, Thai, Ukrainian

## Information for Transgender Sex Workers

- Flyers on: Hormones, silicone, breast development, transformation-operation & epilation | STI, AIDS & Hepatitis B | English, Portuguese, Spanish

## Leaflets and booklets

- Augusta's Way, Safe Sex comic-strip with general information | Augusta's Way, Security comic-strip | Augusta's Way, Sabrina Peer Educator comic strip | English
- Love & Care for Myself | booklets and poster | Albanian, English, Polish, Russian, Spanish
- Teuta dhe Shoqet e Saj, comic-strip on security at work | Albanian
- L'AIDS, il virus HIV, la Stero-positività e il Sistema Immunitario | Italian
- Everything OK? | Bulgarian, English, German, Hungarian, Polish, Romanian, Russian, Spanish, Thai
- Dichos & Diretes | Spanish
- Dicas & Jeitinhos | Portuguese

## Books and Reports

- Health, Migration, Sex Work: The Experience of TAMPEP | TAMPEP International Foundation, 1999 | English
- TAMPEP Final Reports | 1993 until 2007 | English, German, Italian
- Series of reports on: Institutional Strengthening and Support for HIV Prevention Activities | European Overview of HIV and Sex Work | National Reports on HIV and Sex Work from Bulgaria, Czech Republic, Germany, Lithuania, Poland, Romania, Ukraine | Gap Analysis of Service Provision to Sex Workers in Europe | Skills, Training and Good Practice Tools | TAMPEP International Foundation, 2007 | English

## Manuals produced as a result of common projects

- Hustling for Health, Developing Services for Sex Workers in Europe | In collaboration with Europap, 1998 | English, French, German, Italian, Portuguese, Spanish
- Services in the Window: a Manual for Interventions in the World of Migrant Prostitution | Assunta Signorelli & Mariangela Treppete, 2001 | A Transnet project collaboration between Comitato per i Diritti Civili delle prostitute (Italy), TAMPEP International Foundation (Netherlands), International Network for the Fight against Social Exclusion, ExclusionNet, Azienda Servizi Sanitari No 1 Triestina (Italy), Rehabilitation Centre for Torture Victims of Ioannina (Greece) | [www.lucciole.org](http://www.lucciole.org) | English, Italian
- Professional Training for Peer Educators in Prostitution | A 2004 FENARETE project collaboration between Comitato per i Diritti Civili delle prostitute (Italy), Autres Regards (France), Amnesty for Women (Germany), Lithuanian AIDS Centre (Lithuania), TAMPEP International Foundation (Netherlands), La Strada (Poland), TADA (Poland) | [www.fenarete.org](http://www.fenarete.org) | English, French, Hungarian, Italian, Romanian
- Gender Street, a transnational initiative on social and labour inclusion for trafficked women and migrant sex workers | A 2004 Equal programme collaboration between Progetto Strada (Italy), Life (Italy), TAMPEP International Foundation (Netherlands), BLIN (Netherlands), Sila/LEFOE (Austria) | English
- Met het oog op de toekomst, De praktijk van schooling voor slachtoffers van mensenhandel, 2005 | A collaboration between TAMPEP International Foundation (Netherlands), BLIN (Bonded Labour in Nederland) | Dutch
- Resources for Sex Workers' Health & Rights, a collection of resources by and for sex workers and sex workers' rights advocates to further the health and rights of sex workers | A collaboration between the International Committee on the Rights of Sex Workers in Europe (ICRSE) and the TAMPEP Project | All the resources are drawn from actions and tools developed across Europe | The resources are available on CD-Rom and at [www.sexworkeurope.org](http://www.sexworkeurope.org) and [www.tampep.eu](http://www.tampep.eu) | English, French, Russian, Spanish

## TAMPEP 8 resources

- **Sex Work in Europe** | a mapping of the prostitution scene in 25 European countries | English
- **Sex Work, Migration and Health** | a report on the intersections of legislations and policies regarding sex work, migration and health in Europe | English
- **Work Safe in Sex Work** | a European manual on good practices in work with and for sex workers | English
- [www.services4sexworkers.eu](http://www.services4sexworkers.eu) | an online directory of services for sex workers across Europe | English, French, Russian





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# SEX WORK MIGRATION HEALTH

