



## Article

# Excluded but Fighting: Where Are the Voices of Sex Workers and Their Allies in EU Anti-Trafficking Policymaking?

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**Abstract:** The 'end demand' approach to prostitution has been popping up in Europe through the anti-trafficking debate and receives increasing attention on the international agenda. It is well recognized that improving workers' rights, increasing unionization and collective bargaining coverage are effective strategies for tackling trafficking. However, with regard to sexual exploitation, focus is not on these strategies but instead on the abolition of the entire sex industry with the help of criminal justice systems. In first decade after the Palermo Protocol (2000), international organizations (IGOs) promoted a human rights-based approach to tackling trafficking, aiming to balance the criminal justice focus of the protocol. This work guided states on how to maintain and protect human rights while combating human trafficking. However, the explosive issue of sex work/prostitution was minimized, with IGOs avoiding the topic due to the fragile consensus about the definition of human trafficking and state obligations. Meanwhile, sex workers' collectives and unions globally and throughout Europe developed their own strategies on how to address widespread criminalization, discrimination, violence and exploitation, with no or very limited funding and resources—and without recognition of their work, experience and expertise. This article presents how the European Sex Workers' Rights Alliance (ESWA) and other sex workers' rights civil society organizations have sought to challenge the harmful impacts of the 'end demand' discourse and the criminalization of sex work in the name of anti-trafficking in Europe.

**Keywords:** sex work; trafficking; end demand; sex workers' rights organizations; Europe



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## 1. Introduction

The European Sex Workers' Rights Alliance (ESWA) is a sex worker-led network representing more than 90 organizations and member groups in 26 countries across Europe and central Asia. The aim of the ESWA is to ensure that all sex worker voices are heard, and that their human, health and labor rights are recognized and protected. With their actions and approach inspired by membership community, the ESWA works to build a strong, vibrant and sustainable network that mobilizes national, regional and international advocacy activity towards long-term, systemic change. Since the second half of 2018, the ESWA and several of its members have increased their engagement with anti-trafficking and victims' rights policies and platforms, with varying degrees of success. This article uses an approach that could be described as auto-ethnographic, together with the analysis of documents, to account for the exclusion of the ESWA and other civil society organizations for the rights of sex workers from the anti-trafficking mobilization and for how they have sought to challenge the harmful impacts of the 'end demand' discourse and the criminalization of sex work in the name of anti-trafficking in Europe. This article captures the period until the end of 2021, when the European Commission opened the EU Anti-trafficking Directive for public consultation with a view to amending it. This article also partially analyzes the period leading up to this public consultation and seeks to capture the ideological influences on the implementation of the anti-trafficking policies at EU level. The debate on sex work in the context of anti-trafficking also often remains silenced at national levels (Clemente 2021).

## 2. The Roots and Trajectory of the 'End Demand' Model in Anti-Trafficking Policymaking

Over the last 20 years, sex workers in Europe have been combatting calls to 'end demand for prostitution'. These calls are rooted in the conflation of human trafficking and sex work, despite most academic and community evidence pointing to the flawed and unfounded basis of this conflation (GAATW 2011; Bernstein 2007; Cyrus 2015). Introduced in 1999, a year before the Palermo Protocol,<sup>1</sup> the Swedish model criminalizing clients of sex workers as a strategy to end demand for prostitution and trafficking has now been adopted in Norway and Iceland (2009), Canada (2014), Northern Ireland (2015), France (2016), the Republic of Ireland (2017) and Israel (2018), and continues to be debated in many other countries. The government of Sweden joined efforts with France and together in March 2019 announced their intention to develop a common strategy for combating human trafficking for sexual exploitation in Europe and globally, while the main focus of their common strategy was the need to reduce the demand for girls and women in prostitution, in Europe and globally. According to their understanding, clear nexus between trafficking for sexual exploitation and prostitution serves as the rationale for their policy.<sup>2</sup>

These policy aims and related investments in development aid and the programs of international and intergovernmental organizations have greatly enhanced the resources and capacities of prostitution abolitionists in Europe and globally and included a punitive approach to trafficking on international policy agendas. Although prostitution policies remain within the purview of states, this international discourse and approach has gained prominence through states' interpretation of their obligation to "discourage demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking" (Palermo Protocol, Article 9(5)).

Abolitionist policies focus on a punitive approach rather than a human rights-based one. Therefore, they increase the capacities of police and of immigration authorities (of relevance to sex work because the estimated majority of sex workers in Western Europe are migrants), and lead to profiling, surveillance and harassment of sex workers. As a result, these policies will reduce the safety of sex workers significantly. A feminist approach that sees increased policing, prosecution and imprisonment as the primary solution to violence against women has been described as 'carceral feminism' (Bernstein 2007). Elizabeth Bernstein (2007) examined the contemporary anti-trafficking movement in the United States by describing a type of feminist activism that casts all forms of sex work as sex trafficking. Carceral feminists (Clemente 2023; Bernstein 2018) recommend punitive approaches, such as increased criminalization and incarceration. In doing so, they fail to be intersectional as they ignore how increased policing and state power leaves certain women (including racialized women, those of lower socioeconomic status, of diverse gender identity and expression, and/or with precarious or irregular migration status, or with disability) more vulnerable to violence in general, and that greater criminalization often places these same women at risk of state violence (see also Bernstein 2012).

The 'end demand' notion, rooted in this carceral ideology, is a residuum of the political negotiations that took place in relation to the Palermo Protocol between 1998 and 2000. The United States, supported by the network of abolitionist NGOs (headed by the Coalition Against Trafficking in Women, CATW), recommended addressing the 'demand for prostitutes' (Wijers 2021). However, the proposal was dropped as it may have blocked consensus between states overall, as those that regulated or tolerated 'voluntary' prostitution would not be able to sign the protocol. At the final stage of the negotiations, the US delegation submitted a document proposing prevention measures, including demand as currently codified by international law. The text was accepted with only minor changes without further discussion and was seen as a compromise (Planitzer 2020; Cyrus 2015). Subsequently, 'in its Recommended Principles and Guidelines on Human Rights and Human Trafficking' (OHCHR 2010) the UN High Commissioner on Human Rights' has recommended that preventive measures shall address demand as a root cause (OHCHR 2010).

Article 9(5) of the Palermo Protocol obliges states to “discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking”. The same obligation has been codified by the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (Council of Europe Convention) and the 2011 EU Anti-Trafficking Directive (2011/36/EU). However, they do not make exceptions or focus on any particular sector; rather, they require states to discourage demand that fosters exploitation that leads to trafficking in all sectors and for all purposes (Planitzer 2020). Comparing how various states have transposed and implemented these international obligations into national laws is illuminating. While states that follow the example of Sweden criminalize the purchase of sex—regardless of whether trafficking is involved or not—New Zealand, where sex work is decriminalized, has implemented demand-side measures in a way that they (i) explicitly prohibit pressuring a sex worker to provide services; (ii) sanction illicit behavior of intermediaries; and (iii) seek to influence clients and intermediaries by ‘codes of conduct’ for operators within the sector (Östergren 2017). New Zealand has also developed policies that aim to improve the working conditions of sex workers and increase their safety and negotiating powers.

The desire to discourage demand that drives or fuels trafficking in human beings was also the impulse to introduce additional provisions in international instruments that encourage states to criminalize the knowing use of the services of victims of human trafficking. However, the criminalization of ‘knowing use’ is non-binding under both the Council of Europe Convention and the 2011 EU Anti-Trafficking Directive. In its monitoring of the State Parties to the Council of Europe Convention, GRETA<sup>3</sup> has repeatedly commented that criminalizing the purchase of sexual services is not required by any provision of the convention targeting demand (Mullally 2020).

### 3. Recent EU Developments Have Excluded Sex Workers and Their Allies

To describe the developments at the European policy level up to 2021, it is necessary to briefly summarize the dynamics after the 2011 EU Anti-Trafficking Directive was adopted. In 2011, in line with Article 20 of the Directive, the European Commission established the post of an EU Anti-Trafficking Coordinator (hereinafter ATC) to work within the Directorate General for Migration and Home Affairs (DG HOME). Ms. Myria Vassiliadou was the first ATC appointed. She assumed office in March 2011 and remained in the position until February 2020. As former Secretary General of the European Women’s Lobby (EWL), Ms. Vassiliadou steered the anti-trafficking work of the European Commission towards the neo-abolitionist approach throughout her term. In 2013, the EU Civil Society Platform against Trafficking was launched by the EU ATC. Nearly 100 civil society members were selected (partly also in the following years) to emphasize the role and inclusion of civil society organizations in anti-trafficking work and policymaking. Anti-prostitution networks like the aforementioned CATW, which calls itself the world’s leading abolitionist organization; the European Women’s Lobby and the Lobby’s member organization, the European Network of Migrant Women, have all been accepted to the platform. However, several civil society networks and organizations that do not take an abolitionist stance and instead call for decriminalization of sex work and improved sex workers’ rights, including La Strada International (LSI), the ESWA (then ICRSE), and Pro-Tukipiste (Finland), were repeatedly rejected, without much clarification; all organizations fulfilled the selection criteria set. Some of LSI’s members were accepted. In 2018, the Platform for International Cooperation on Undocumented Migrants (PICUM), which was a member, resigned from the EU Civil Society Platform due to issues with representation. The cause of the disagreement between PICUM and the ATC that precipitated the former’s resignation from the platform regarded the issue of prostitution/sex work. While ACT and the European Commission have privileged one discourse—the carceral neo-abolitionist discourse—it consequently silenced and eliminated any opposition. This meant that the only voices heard were those supporting neo-abolitionist ‘end demand’ approaches, allowing for the European Commission to emphasize this route while denying a more nuanced approach to women’s

‘lived experience’ and the very complex context of the human trafficking crime. The new ATC was appointed in July 2021. Their vision is not yet clear; however, the EU Strategy against Trafficking in Human Beings (2021–2025) continues to emphasize the neo-abolitionist approach and associated criminal justice measures, while the human rights dimension is less articulated (EU THB Strategy 2021).

In February 2021, the European Parliament called on the Commission in its resolution on the implementation of the Anti-Trafficking Directive “to amend the Anti-Trafficking Directive with a view to ensuring that Member States explicitly criminalise the knowing use of all services provided by victims of trafficking which involve exploitation” (EP THB Resolution 2021, para 56 and 68). Several civil society networks including the ESWA, PICUM and La Strada International tried to influence the vote of the Members of European Parliament (MEPs) arguing that broadening criminal liability to criminalize all those that knowingly use services that involve exploitation is very dangerous and impractical, especially if—as is recommended by the European Parliament resolution—“the user should demonstrate that all reasonable steps were taken to avoid the use of services provided by a victim” (EP THB Resolution 2021, para 68). This would create a positive obligation on all citizens to examine the working conditions under which goods were produced or services offered. Such a provision may create legal uncertainty where anyone can be held criminally liable for buying goods, products or services for everyday use that were produced within the global supply chain by workers in extremely precarious and exploitative conditions.<sup>4</sup> Despite this risk, the paragraphs in the resolution passed, and the Commission has announced in the new EU Anti-Trafficking Strategy for 2021–2025 that it will “carry out an assessment on the possibility of having minimum EU rules that criminalise the use of exploited services of trafficking victims as part of the evaluation of the Anti-Trafficking Directive” (EU THB Strategy 2021). The initial round of the evaluation procedure of the 2011 EU Anti-Trafficking Directive was launched in August 2021 and closed in September 2021. The review of the feedback submissions<sup>5</sup> provided in the first round indicates very clearly what is at stake at this evaluation.

Led by the European Women’s Lobby (EWL), several submissions by EWL members make their top priority an amendment to the paragraph concerning criminalizing knowing use of victims of the Directive, as follows: “ensure as a minimum requirement that Member States actively criminalise the purchase of sexual acts from a victim of trafficking. The removal of the need for the ‘buyer’ to know they are purchasing the services of a victim of trafficking would make it more likely that cases can be prosecuted and will help to increase social understanding of the levels of unseen exploitation and violence in the wider system of sexual exploitation”.<sup>6</sup>

‘End demand’ became a favored topic for the Organization for Security and Cooperation in Europe (OSCE) under its Swedish presidency in 2021. With the support of the OSCE Special Representative on Combatting Trafficking in Human Beings (OSCE OSR CTHB), nominated by the conservative Republican administration of US President Donald Trump, the OSCE recommended that the European Commission should revise the 2011 EU Anti-Trafficking Directive with regard to trafficking for sexual exploitation, in order to require states to adopt criminal liability for a person who avails of the services of a trafficking victim, regardless of whether that person had knowledge of the victim’s status or not.<sup>7</sup> Earlier in 2021, the OSCE Office of the Special Representative for Combating Trafficking in Human Beings (OSCE OSR CTHB) published the Occasional Paper No.11 titled *Discouraging demand that fosters trafficking for the purpose of sexual exploitation* (OSCE 2021). This paper fails to provide critical analyses of the strategies and approaches throughout the OSCE region, which would be useful to the OSCE member states. Instead, it uncritically celebrates and promotes the Swedish model of criminalizing the purchase of sex as the best strategy to discourage the demand that fosters exploitation that, in turn, leads to trafficking, despite lack of evidence for this claim. The document represents the views of proponents of the Swedish neo-abolitionist model, ignoring the body of research and analysis of its harmful impact. All experts, consultants and representatives of civil society organizations

that were approached for the purpose of this document were carefully selected while others—including the members of the OSCE Alliance Against Trafficking in Persons (Alliance)<sup>8</sup> with pro-sex workers' rights approaches—were intentionally excluded from the consultation. Among the Alliance members that were purposefully not approached are Human Rights Watch, La Strada International, PICUM and Amnesty International, all of which have introduced policies recognizing the harmful impact of the Swedish model and called for the decriminalization of sex work.

Public consultations for evaluation of the EU legislation and strategies provide the opportunity for civil society and the general public to express their opinion or expertise. However, in the case of submissions to the evaluation of the 2011 EU Anti-Trafficking Directive, state bodies that usually use other channels to express their opinion provided feedback. Both submissions of the governments of the Netherlands and Belgium strongly disagree with mandatory criminalization of “knowing use” of victims of trafficking. Myria, the Belgian federal migration and asylum agency, which responded for Belgium, states the following:

Myria is not in favour of adopting a mandatory provision, in particular for sexual exploitation. We believe that there are other means of prevention. Educating clients about human trafficking and encouraging them to report possible abuses can also reduce the demand for human trafficking for the purpose of sexual exploitation. According to the police, they themselves are not feared by customers, who fear more negative reactions from their social environment. Police receive many anonymous reports from clients, but clients often give up when asked for their identities. The introduction of a provision on the sanction against customers, even if it includes the expression ‘knowingly’ and therefore exonerates customers who were not aware, could have a negative effect on the reporting behaviour of sex clients, who would not want to risk being known in their social environment as ‘using prostitutes’. This could be counterproductive in the fight against human trafficking.

The same has been confirmed in New Zealand where sex work is fully decriminalized. The New Zealand Prostitutes' Collective receives calls from clients who are concerned about particular sex workers and the possibility that they may be forced (GAATW 2018). In the UK, conversations on customers' forums show customers warning each other off using a particular adult services website because they believe some women on there to be trafficked (Kenway 2021). Also, the English Collective of Prostitutes confirms that clients do sometimes help women, but they do not involve the police for fear of repercussions against themselves (Kenway 2021).

In its feedback, the government of the Netherlands emphasized the need for a clear distinction between trafficking in human beings and prostitution:

*Prostitution is a legal profession in the Netherlands and also in several other EU Member States. There is a difference between human trafficking for sexual exploitation and sex work/working as a prostitute. Human trafficking for sexual exploitation is a very serious violation of human rights and should be prevented and fought in every way possible. But a person who chooses to be a prostitute should also be able to do this work in safe, healthy, and well-regulated circumstances. This is why prostitution is both legal and regulated in the Netherlands. We find it important to avoid that the exercise of this profession or responsible clients of prostitution will be criminalised. If sex work is taking place more and more on a hidden basis, there will be more risks of violence, exploitation, and other abuses. The Netherlands therefore stresses the importance of maintaining this distinction in the Netherlands and making this distinction at EU level.*

#### 4. Intersectional Support for Decriminalization from Civil Society Networks

The increasing number of European civil society networks, thinktanks and recognized human rights organizations are joining efforts to articulate the harms of the ‘end demand’

approach and reject the conflation described above. Like the ESWA, they recognize that trafficking in human beings is a broader migration, labor and social justice issue and advocate for addressing the root causes of human trafficking, exploitative third parties<sup>9</sup> and traffickers, instead of targeting sex workers' clients. Evidence indicates that trafficking flourishes in sectors where workers are not able to organize and have limited labor protections or are not considered workers (OHCHR 2010). It is therefore unsurprising that trafficking occurs within the sex sector while those issues remain. Furthermore, isolation of the workers—either due to the nature of the work or policies introduced—is also a significant factor that exacerbates the vulnerability of individuals. Therefore, sex workers see the lack of safe working environments, which is often the result of national sex work laws and municipal by-laws, as one of the key reasons for the victimization and exploitation in the sex industry. The ESWA opposes punitive anti-trafficking policy frameworks that target sex workers' workplaces and their clients, rather than traffickers. Sex workers fight exploitation and human trafficking in the sex industry whilst having to deal with the harm of the intended and unintended effects of misinformed anti-trafficking and prostitution policies. In this context, the ESWA calls for meaningful inclusion of sex workers in anti-trafficking and anti-violence policies and their development at local, national and European/international levels.

The ESWA is far from alone. Based on comprehensive research, Amnesty International released its 'Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers' in 2016, acknowledging that the "conflation of human trafficking with sex work can result in broad and over-reaching initiatives that seek to eradicate all commercial sex as a means to end trafficking. Such approaches work in practice to violate sex workers' human rights, and in general can make sex workers and people who have been trafficked more vulnerable to violence and harm" (Amnesty International 2016b).

The recent increase in migration flux and a punitive approach to migration, including the exclusion of undocumented migrants from the labor market, has led and will continue to lead to an increase in undocumented migrants, asylum seekers, refugees (and people falling in and out of documentation) selling sexual services in order to generate income. This lived reality of migrants led to PICUM developing its first policy, Safeguarding the human rights and dignity of undocumented migrant sex workers (PICUM 2019), where it joins the calls for the removal of all criminal and administrative prohibitions and penalties on sex work related to sex workers, clients and non-exploitative third parties (including laws targeting brothel owners) (PICUM 2019, 2020).

Another pan-European network, ILGA-Europe, has recognized that sex work is a multigendered phenomenon: sex workers of all gender identities, sexual orientations and sex characteristics face serious human rights violations and violence. As an LGBTI organization, ILGA-Europe gives visibility and speaks about the high number of LGBTI people in sex work and their specific vulnerability and needs. It notes that 88% of murdered trans people in Europe are sex workers and that racism, sexism, homophobia, transphobia and xenophobia exacerbate LGBTI sex workers' vulnerability to violence (ILGA-Europe 2018). Despite these facts, sex workers are considerably less likely to report abuse where sex work is criminalized. They are also likely to have no engagement or solely negative encounters with police forces. This has led ILGA-Europe to introduce clear policy that supports sex workers' rights and calls for decriminalization of sex work (ILGA-Europe 2018).

In line with ILGA-Europe's reasoning, Transgender Europe (TGEU) has recognized that sex work is a trans rights issue. Trans people engage in sex work for a variety of reasons, most commonly because they live in a transphobic environment and face structural barriers to education and employment, and thus have limited economic and employment opportunities. Trans sex workers are burdened by laws that are both transphobic and anti-sex worker, and being under extreme economic pressure they are unable to escape persecution. At the same time, non-sex worker trans people are still oftentimes perceived as sex workers and their social inclusion and acceptance are undermined by 'whorephobia'. TGEU calls for the full decriminalization of sex work, including the decriminalization of sex workers, clients, third parties, families, partners, and friends and all operational aspects,

such as soliciting, advertising, selling, and purchasing sexual services (indoors and/or outdoors) or working collectively with other sex workers (TGEU 2016).

As one of the leading European organizations advocating for the rights of people living with or at risk of contracting HIV, the European AIDS Treatment Group (EATG) has expressed profound concern that the current criminalization and legal oppression of sex work undermines, rather than supports, the reach and impact of health programs for sex workers. Consequently, it supports the decriminalization of sex work (EATG 2018).

There are many other European NGO platforms that advocate for sex workers' rights and full decriminalization of sex work, including the anti-trafficking organization [La Strada International](#) (2013); the [Equinox Initiative for Racial Justice](#) (2021); the European Network Against Racism; Trans United Europe; International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex Youth and Student Organisation (IGLYO); the International Planned Parenthood Federation—European Network and Correlation—European Harm Reduction Network, to name but a few.<sup>10</sup>

### 5. Health and HIV Support (Only) from International Governmental Bodies

Among the international governmental organizations that consistently support and promote these calls are those with health or HIV/AIDS remits. UNAIDS has repeatedly called on states not to conflate sex work and trafficking in legislation because it leads to the implementation of inappropriate responses that fail to assist either sex workers or victims of trafficking in realizing their rights and, at worst, lead to violence and oppression and increased AIDS prevalence (UNAIDS 2021a, 2021b). While many proponents of the neo-abolitionist approach argue that the deleterious health consequences of prostitution for 'prostituted women' necessitate a carceral approach, the World Health Organization (WHO) is among those international bodies that call for decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers. It also recognizes that in the context of sex work, criminal laws cause harm (WHO 2016). And most importantly, UNAIDS, the UN Population Fund (UNFPA), the UN Development Program (UNDP) and the WHO unequivocally call for meaningful inclusion of sex workers in policymaking. Meaningful inclusion of sex workers in anti-trafficking policy would facilitate more nuanced understanding of different layers of exploitation and would lead to more targeted interventions with regard to prevention, detection and referral of victims of trafficking.

### 6. The Attempts to Include a New Crime of 'Sexual Exploitation' in the New EU Instrument on Gender-Based Violence (GBV)

While the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the [Istanbul Convention](#) (2011), sets minimum standards to prevent violence against women, protect its victims and prosecute the perpetrators, it has not been ratified by all Council of Europe and EU member states. The EU signed the Istanbul Convention in 2017, concluding that the EU's accession of the Istanbul Convention<sup>11</sup> is a key priority for the European Commission. The EU's Gender Equality Strategy (2020–2025) included strong references to the Istanbul Convention and announced that the European Commission intends to propose measures to achieve the same objectives as the Istanbul Convention by including categories of gender-based violence among so-called Euro-crimes,<sup>12</sup> should the EU's accession to the Istanbul Convention remain blocked (EU Gender Strategy 2021). Article 36 of the Istanbul Convention provides a comprehensive definition of sexual assault, including rape that is ultimately defined as absence of consent. Consent is a central concept for sex workers that means agreed upon terms and conditions under which sexual services are provided. If these consented terms and conditions are violated, the incident should be defined as rape or sexual assault. In this view, the Istanbul Convention is a strong instrument to protect sex workers from sexual assault and rape and does not conflate sex work with sexual assault and violence. This was confirmed at the GREVIO (Group of Experts on Action against Violence against Women and

Domestic Violence)’s<sup>13</sup> 19th meeting, where the experts engaged in a thematic discussion on the topic of women in prostitution. In delineating the scope of application of the Istanbul Convention in relation to women in prostitution, it noted that the Convention as such does not define prostitution as a form of violence against women. Instead, it focuses on the support and protection of women and girls who engage in prostitution for any instances of gender-based violence they may experience (Council of Europe 2021). This is in contrast to unsubstantiated and untrue claims of the most vocal, ideology-based, abolitionist EWL that states in its policy briefs and papers that the Istanbul Convention recognizes prostitution as a form of violence against women and girls.<sup>14</sup>

In line with the Treaty on the Function of the European Union (TFEU) Article 83(1), the European Parliament’s Committee on Women’s Rights and Gender Equality (FEMM Committee), jointly with European Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee), prepared the draft of the European Parliament Resolution identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU (EP GBV Resolution 2021). During preparation of the resolution, the attempts to deny sex workers’ agency to consent emerged through the amendments—but were rejected. The amendments suggested that “that consent cannot be bought, therefore considers all forms of sex purchase to be sexual exploitation” and “called on Member States to recognise sex purchase as a form of violence against women.”<sup>15</sup> The joint letter of 12 European NGO platforms and thinktanks to the MEPs’ FEMM and LIBE committee members argued as follows:

*Article 36 of the Istanbul Convention clearly defines sexual violence and rape as absence of consent. The proposed amendments suggest invalidating the key concept of consent by making consenting adult sexual intercourse a criminal act, if it is the subject to financial transaction. This exemption may create situation of legal uncertainty, as it will deviate significantly the debate about sexual violence.*<sup>16</sup>

The resolution that went to the vote on 16th September 2021 does not include any of the harmful paragraph that would outlaw the right of sex workers to consent. However, it includes three mentions of the term ‘sexual exploitation’ that are neither results of human trafficking nor in the context of child sexual exploitation (EP GBV Resolution 2021, para 29, 30, 68).

## 7. Dangerous and Flawed Arguments for Prohibition Threaten Sex Workers’ Rights and Respect for All Women

In late 2020, the European Commission launched an open public consultation on “Combating gender-based violence—protecting victims and punishing offenders.” Brief scrutiny of the submissions<sup>17</sup> indicates that one of the main subjects of the consultation was the call to introduce a new crime of ‘sexual exploitation’ that will cover all prostitution within the Commission’s emerging instrument on GBV. Out of 48 feedbacks provided by NGOs, half of them were calling to include sexual exploitation in the scope of this legislative action “to ensure the full continuum of VAW [violence against women] is tackled, and to allow for sexual exploitation against women as a Eurocrime to be tackled consistently throughout the EU.”<sup>18</sup> The arguments of the 24 abolitionist NGOs were nearly identical to one another and appear to have been copy-pasted from an original template. According to these organizations, prostitution, defined as sexual exploitation, is clearly in contradiction with EU Charter of Fundamental Rights Article 3 (2.c), which states: “In the fields of medicine and biology, the following must be respected in particular [...] the prohibition on making the human body and its parts as such a source of financial gain.”<sup>19</sup> The phrase “the prohibition on making the human body and its parts as such a source of financial gain” is part of the Council of Europe Convention on Human Rights and Biomedicine (ETS No 164) from 1997 and the EU Charter of Fundamental Rights references the convention in its explanatory report. The Council of Europe provides guidance to facilitate the implementation of the principle that “the human body and its parts must not, as such, give rise to financial gain” (Council of Europe 2018). This guidance, however,



does not cover sex work, prostitution or sexual exploitation, as it is solely in the context of biomedicine. The transposition of a biomedical concept that specifically relates to the sale of body parts to the field of sex work has no legal basis and represents a substantial, concerning and flawed epistemological jump that should be disregarded.

A second dangerous and flawed argument has been proposed that sex work (when misunderstood to be the sexual exploitation of women) should be defined in accordance with the existing definition of child sexual exploitation,<sup>20</sup> reinforcing harmful gender stereotypes. This is also the official recommendation of the so-called Brussels Call<sup>21</sup>—the EWL’s initiative to abolish prostitution. This recommendation equates women with children, denies and disrespects sex workers’ agency and capacity to engage in consensual sex (work). Associating women with children (or girls) obscures the diversity and difference in women’s experiences, infantilizes women and stereotypes women and children. Women are also often portrayed as unable to understand their situation, are denied the agency to give or withhold consent to sex (work), and therefore need to be ‘found’ and ‘rescued’. For example, a study (Hu 2022) analyzing anti-trafficking education texts aimed at stereotyping and infantilizing people in the sex work sector (including those trafficked for commercial sex) points to the failure to address intersectionality in the representational dimension, legitimizing many current anti-trafficking practices and policies with an ‘end-demand’ orientation. This overtly paternalistic and infantilizing policy not only exposes already marginalized sex workers to greater structural marginalization and oppression in their everyday lives, but also severely limits the involvement of sex workers and sex worker rights activists in social and political advocacy against trafficking, violence and harassment (Hu 2022).

The need to make the entire sex work sector illicit by criminalizing ‘buyers’ and ‘third parties’ as those actors on the ‘demand side’ ignores the structural and systemic discrimination against women permeating all aspects of their life, including in the context of migration. ‘End demand’ laws highlight the protectionist underpinnings that seek to restrict or repress the already limited options undocumented, racialized, marginalized and discriminated against groups of people have. It also seeks to outlaw the right to consent, the freedoms and bodily autonomy with the rationale that the aim is to ‘protect’ women from harm or wrongdoing. This approach does not challenge gender discrimination, but instead reproduces it in the guise of protecting women. The protectionist approach exacerbates the vulnerabilities of sex workers to violence, exploitation and human trafficking, rather than eliminating the ‘demand that fosters exploitation’. These laws are disproportionately enforced in the spaces occupied by sex workers—their homes, neighborhoods, working establishments and other workspaces. As a result, sex workers, not clients, incur the majority of profiling, surveillance and policing under these measures, not only while working but also in their day-to-day lives.

## 8. Attempts by French Sex Workers to Challenge the Legality of the French Law

While the abolitionist organizations are trying to find a legal bases to enact ‘end demand’ in EU law, sex workers in countries where ‘end demand’ laws were introduced suffer increased violence, stigma, discrimination and multiple layers of institutional violence (Le Bail et al. 2019; DoJ NI 2019; Holmström and Skilbrei 2017; Amnesty International 2016a). In France, where the law against the prostitution system was introduced in 2016, the union of sex workers (STRASS), Doctors of the World, the Red Umbrella Federation, Friends of the Women’s Bus, Cabiroa, Griselidis, Paloma, AIDES and Acceptes-t, and also five individuals, submitted a complaint questioning the constitutional court on compliance of the law with the rights and freedoms guaranteed by the Constitution. The Constitutional Council rejected the complaint on 1st February 2019, arguing that the court did not find a lack of balance between the constitutional objective of public order and crime prevention and the safeguarding of the dignity of the human person and, on the other hand, personal freedom. “The legislator has cracked down on any recourse to prostitution, including when the sexual acts are presented as being carried out freely between consenting adults in a

private space. He considered that, in their great majority, people who engage in prostitution are victims of pimping and trafficking and that these offences are made possible by the existence of a demand for paid sex"<sup>22</sup>. A second complaint alleging disregard of the right to protection of health was also rejected by the Constitutional Council.

After the Constitutional Council rejected the complaints, in April 2021, 261 sex workers in France, mostly migrants, registered a complaint against France at the European Court of Human Rights in the case titled *M.A. and others vs. France* (Request n. 63664/19)<sup>23</sup>, asking the Court to assess the French law 'against the prostitution system'. Relying on Articles 2 and 3 of the European Convention on Human Rights (the Convention), the applicants argue that the French law criminalizing the purchase of sexual services threatens the physical and mental integrity and health of those who, like them, practice prostitution activities. They argue that through the criminalization of buyers of sexual services, France has pushed prostitutes underground and into isolation. That has made them more vulnerable to violence from their clients or unsafe practices, more exposed to theft, assault, stigma and increased risks of contracting diseases, and has restricted their access to prevention services, health care and to integration. Relying on Article 8 of the Convention, the applicants argue that criminalizing the use of a sex act between consenting adults in private spaces radically violates the right to respect for private life insofar as it includes the right to personal autonomy and sexual freedom.

It will take several years before the European Court of Human Rights issues a verdict in this case. However, the fact that the court accepted the case establishes serious doubts about compliance of 'end demand' law with the European Convention on Human Rights.

## 9. Conclusions

The issue of sex work/prostitution has been dividing policymakers for decades. While international organizations dealing with health issues, such as UNAIDS, and intersectional feminist movements call for full decriminalization of sex work and meaningful inclusion of sex workers and their organizations in policymaking, the international 'anti-trafficking' scene remains silent about sex workers' rights, unless the agenda is imposed through 'end demand' policies with the support of carceral feminists or states that have embarked on crusades against prostitution. This article attempts to point out how views of the proponents of so-called carceral and neo-abolitionist approaches are being prioritized in European policymaking and how sex workers, sex workers' rights organizations and intersectional feminists are being systematically silenced and excluded. These strategies are often based on infantilization and stereotyping of people in sex work, their conflation with victims of trafficking or even women's association with children. While the 'end demand' policy aims to protect women from harm and wrongdoing, it tends to oversimplify and ignore the very complex realities of people selling sexual services. As a result, such a policy fails to be intersectional and instead contributes to further marginalizing and stigmatizing of sex workers as people who lack agency due to their victimization. In such a context, meaningful engagement and participation of affected communities is neither possible nor desirable. Such an approach is utterly paternalistic and problematic from a human rights perspective. While it is likely that we will see continued international interest in adopting the Nordic model, not least because of the key role that feminist groups continue to play in international policy debates on prostitution (Kingston and Thomas 2019), the ESWA will continue calling for meaningful inclusion of sex workers in policymaking. The ESWA will call for more nuanced discussions on how to govern sex work while including different experiences of women of color, migrant women, women with low socioeconomic status, women of various gender expressions and trans women, women with mental health needs or with disabilities. There is a growing body of research and evidence that any criminalization of sex work, including of clients and third parties (except where they are exploitative), negatively impacts the safety, health and rights of sex workers (Platt et al. 2018; Vanwesenbeeck 2017; Deering et al. 2014; GAATW 2007). In the context of violence against sex workers and human trafficking, the ESWA calls for the promotion of

gender-sensitive and inclusive crime prevention strategies that are based on community empowerment and that involve populations facing intersectional discrimination such as sex workers, migrants, LGBTI persons, Roma and others at national and local levels. The ESWA calls on the European Commission and governments to roll out regional and local policies and protocols that allow for marginalized communities facing a higher prevalence of crime, such as sex workers and their organizations, to participate in designing specific anti-violence programs that benefit their communities (ESWA 2021). Only such an approach can increase crime reporting among members of marginalized communities and raise trust towards the public authorities.

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## Notes

- <sup>1</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.
- <sup>2</sup> Joint statement from the Ministry for Foreign Affairs in France and from the Ministry for Foreign Affairs in Sweden published 8 March 2019. Accessible: <https://www.government.se/statements/2019/03/joint-statement-from-the-ministry-for-foreign-affairs-in-france-and-from-the-ministry-for-foreign-affairs-in-sweden/> (accessed on 15 October 2021).
- <sup>3</sup> The Group of Experts on Action against Trafficking in Human Beings (GRETA) is responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings.
- <sup>4</sup> Joint correspondence of PICUM, La Strada International and ICRSE to the MEPs', February 2021.
- <sup>5</sup> See the feedback here: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules/feedback\\_en?p\\_id=26038392](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules/feedback_en?p_id=26038392) (accessed on 25 October 2021).
- <sup>6</sup> See EWL's full feedback: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules/F2670828\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules/F2670828_en) (accessed on 25 October 2021).
- <sup>7</sup> See OSCE full feedback: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules/F2671000\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules/F2671000_en) (accessed on 25 October 2021).
- <sup>8</sup> The OSCE Alliance against Trafficking in Persons is a broad international forum that includes international, non-governmental and inter-governmental organizations in joining forces to prevent and combat human trafficking. It helps develop effective joint strategies, combines individual efforts and provides OSCE-participating states and partners for co-operation with innovative and coordinated approaches to strengthen the prevention of trafficking in human beings and the fight against it. Every year, the Special Representative holds a high-level Alliance conference and two meetings of the Alliance Expert Co-ordination Team.
- <sup>9</sup> In the context of sex work, third parties include managers, brothel keepers, receptionists, maids, drivers, landlords, hotels that rent rooms to sex workers and anyone else who is seen as facilitating sex work.
- <sup>10</sup> The organizations joined the European Coalition on Sex Workers Rights and Inclusion, launched in October 2022. See: [https://www.eswalliance.org/launching\\_european\\_coalition\\_sex\\_workers\\_rights\\_inclusion](https://www.eswalliance.org/launching_european_coalition_sex_workers_rights_inclusion) (accessed on 5 December 2022).
- <sup>11</sup> See EU's accession of the Istanbul Convention—<https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-eu-accession-to-the-istanbul-convention> (accessed on 5 January 2022).
- <sup>12</sup> Euro-crimes are offences which, by definition in the treaty, deserve to be dealt with at the EU level because of their particularly serious nature and their cross-border dimension—<https://eucrim.eu/articles/10-years-after-lisbon-how-lisbonised-is-the-substantive-criminal-law-in-the-eu/> (accessed on 15 November 2021).
- <sup>13</sup> GREVIO is an independent expert body responsible for monitoring the implementation of the Istanbul Convention by the parties.
- <sup>14</sup> See, e.g., Brussels Call: Europe is ready for a future free from sexual exploitation, European Women's Lobby.
- <sup>15</sup> See the letter of NGO Networks: [https://www.eswalliance.org/european\\_parliament\\_members\\_reject\\_amendments\\_that\\_would\\_outlaw\\_sex\\_workers\\_ability\\_to\\_consent](https://www.eswalliance.org/european_parliament_members_reject_amendments_that_would_outlaw_sex_workers_ability_to_consent) (accessed on 15 November 2021).

- <sup>16</sup> See joint letter: [https://www.eswalliance.org/european\\_parliament\\_members\\_reject\\_amendments\\_that\\_would\\_outlaw\\_sex\\_workers\\_ability\\_to\\_consent](https://www.eswalliance.org/european_parliament_members_reject_amendments_that_would_outlaw_sex_workers_ability_to_consent) (accessed on 15 November 2021).
- <sup>17</sup> See initiative Combating gender-based violence—protecting victims and punishing offenders (europa.eu) available at: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12682-Combating-gender-based-violence-protecting-victims-and-punishing-offenders\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12682-Combating-gender-based-violence-protecting-victims-and-punishing-offenders_en) (accessed on 5 July 2022).
- <sup>18</sup> See the feedbacks: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12682-Combating-gender-based-violence-protecting-victims-and-punishing-offenders\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12682-Combating-gender-based-violence-protecting-victims-and-punishing-offenders_en) (accessed on 5 July 2022).
- <sup>19</sup> See feedbacks from EOS—Association for Studies, Cooperation and Development; Asociación La Sur—feminicidio.net; Fondation Scelles; Feminist Resistance; Iroko Foundation; Terre Des Femmes; Swedish Women’s Lobby; Herzwirk; Hungarian Women’s Lobby; Achieving Gender Equality; Women to say Women to Act; CAP International; Women Lobby Slovenia; Swedish women of the Left in [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12682-Combating-gender-based-violence-protecting-victims-and-punishing-offenders\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12682-Combating-gender-based-violence-protecting-victims-and-punishing-offenders_en) (accessed on 5 July 2022).
- <sup>20</sup> See Feedback from: Portuguese Platform for Women’s Rights (europa.eu); Feedback from: EOS—Association for Studies, Cooperation and Development (europa.eu); Feminist Resistance (IT); Iroko Foundation (IT); Terre des Femmes (DE); Swedish Women’s Lobby; Herzwirk (AT); Hungarian Women’s Lobby; Achieving Gender Equality (FR); Women to say Women to Act (FR); Women Lobby Slovenia; Swedish women of the Left.
- <sup>21</sup> See note 14 above.
- <sup>22</sup> See Request no 63664/19 MA and 256 other against France and four other requests introduced 6 December 2019, communicated 23 March 2021, published 12 April 2021.
- <sup>23</sup> See [https://hudoc.echr.coe.int/fre?i=001-209407#%7B%22itemid%22:\[%22001-209407%22\]%7D](https://hudoc.echr.coe.int/fre?i=001-209407#%7B%22itemid%22:[%22001-209407%22]%7D) (accessed on 29 November 2021).

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