



**european
sex workers
rights
alliance**

Feedback: Preventing and combating trafficking in human beings- review of EU rules

The European Sex Worker's Rights Alliance (ESWA)¹ – previously the International Committee on the Rights of Sex Workers in Europe (ICRSE) - is a sex worker-led network representing 111 organisations and member groups in 35 countries across Europe and Central Asia. Our aim is to ensure that all sex worker voices are heard, and that their human, health and labour rights are recognised and protected. With our actions and approach inspired by our membership community, we work to build a strong, vibrant and sustainable network that mobilises national, regional and international advocacy activity towards long-term, systemic change.

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ESWA understands and conceptualize trafficking in human beings as a broader migration, labour and social justice issue and advocates for addressing root causes of human trafficking as a priority. ESWA opposes a punitive anti-trafficking policy framework that addresses 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 intended and unintended effects, caused by misused anti-trafficking and prostitution policies. **ESWA calls for sex worker inclusive anti trafficking policies** and for inclusion of the fifth 'P' 'policies that do not harm and do not exacerbate vulnerabilities', that will complement prosecution, protection, prevention and partnership.

ESWA opposes the neo-abolitionist definition of prostitution/sex work as inherently violent and synonymous with sexual exploitation. This approach obscures the complex realities of sex workers' lives and work arrangements, and in consequence fails to address the diversity of exploitative working practices that do occur in the sex industry².

Sex workers face high levels of violence, abuse and exploitation. They are also one of the groups at risk of human trafficking. Beyond individualised violence, sex worker communities face significant levels of structural violence of which societal stigma, surveillance, marginalisation, over-policing and systematic exclusion are integral parts. Significant amounts of resources have been spent by sex workers and their organisations to address the structural violence exacerbated by harmful anti-trafficking and prostitution laws and policies. With limited or no access to public funding, sex workers and their organisations stand firmly against violence, exploitation and human trafficking.

¹ <https://www.eswalliance.org/>

² ICRSE: Exploitation- Unfair labour arrangements and precarious working conditions in the sex industry. Community report, 2016

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Similar to many other sectors, ESWA conceptualises work in the sex work sector as a continuum, with decent conditions in sex work at one end and severely exploitative conditions, such as forced prostitution or human trafficking, at the other end. In this view, any working conditions that deviate from the decent labour framework can be considered exploitation. Exploitation is a term firmly associated with the world of work and can occur in all sectors and services – regulated and unregulated, including sex work. Evidence indicates that exploitation and human trafficking flourish in sectors where workers are not able to organise and have limited labour protections or are not considered workers.

Furthermore, the isolation of the workers - either due to the nature of the work or policies introduced - is also a significant factor that exacerbates the individual vulnerability of persons. In the case of sex work, working together with colleague sex workers has been routinely interpreted by law enforcement authorities as illegal brothel-keeping; consequently, sex workers can be punished for a committing a criminal offence, despite the important role working together plays in keeping sex workers safe.

The most effective way to address exploitation is to improve the labour and social protections available to the workers involved and their ability to organise.

This is undermined by the widespread criminalisation and stigmatisation of sex work. Consequently, many sex workers are pushed to operate in the informal economy and in more isolated and dangerous environments. **According to sex workers, one of the key reasons for their victimisation is the lack of safe working places**, which is often the result of national sex work laws and municipal by-laws that criminalise or penalise sex work or certain aspects of it.

Migrant sex workers are estimated to comprise more than 65 percent of the sex worker population in Western Europe, and a significant segment of the community in Central-Eastern Europe. However, migrant sex work in itself is not exploitation or human trafficking. Evidence shows that police raids and rescue operations often result in migrant sex workers having to work clandestinely, rendering them particularly vulnerable to exploitation and abuse.³

The conflation of ‘prostitution’ with ‘sexual exploitation’ increasingly adopted by many countries and advocated by ‘neo-abolitionists’ who promote the criminalisation of sex work as a whole, obscures the complex realities of sex workers’ lives and working arrangements, and consequently fails to address the diversity of exploitative working practices that occur in the sex industry. Exploitation is understood by sex workers to include unjust labour relations between sex workers and those who in some way facilitate and profit from their work. This is contrary to the neo-abolitionists’ stance that all clients and third parties of sex workers are exploiters. Sex workers hardly ever define their relationship with their clients as exploitative.

One of the proposed options by the European Commission is to undertake legislative action and to amend the 2011 Anti-Trafficking Directive in a way to introduce mandatory criminal sanctions against the users of the services provided by victims of trafficking. The current provision in the 2011 EU Anti-trafficking Directive is not mandatory and states may decide whether or not to criminalize the **knowingly** use of services of victims and to which extent. The criminalization of use of services provided by sex workers became the way how several EU member states interpreted the non-binding provisions of the EU Anti-Trafficking Directive- to criminalize clients of sex workers- regardless of whether or not sex worker was a victim.

ESWA is confident that such laws that extend the scope of the above provision to criminalize clients of all sex workers violate Art. 2, Art.3 and Art. 8 of the European Convention of Human Rights. **In April 2021 the European Court of Human Rights registered the complaint of 261 migrant sex workers against France in**

³ International Committee on the Rights of Sex Workers in Europe (ICRSE) (2016). Exploitation. Unfair labour arrangements and precarious working conditions in the sex industry.

a case **M.A. and others vs. France (Request n. 63664/19)**⁴ to assess the French law ‘against the prostitution system’. The case establishes serious doubts about compliance of such a law with the European Convention of Human Rights.

ESWA is confident that in the context of trafficking for the purpose of sexual exploitation the **knowingly use of victim constitutes already an existing crime - RAPE**. Therefore we believe that any other new criminal offence would not serve the purpose, nor the victims of human trafficking.

We suggest that, instead of intensifying the criminal justice response, a human rights perspective should prioritise measures to address the **demand for cheap and exploitative, underpaid or even unpaid work and services, demand to easily control (sex) workers or keep** workers in isolation and abusive situations, and demand for unregulated/undeclared and unprotected labour or services, often performed in the context of (irregular) migration.

ESWA supports the suggestion on objectives and policy option 2: Non-legislative action at EU level.

Key recommendations:

- When assessing “end-demand” prostitution and anti-trafficking policies, policy-makers need to conduct a thorough inventory of all sex work-related regulations, assessing their de facto impact on the safety and rights of those selling sex. In this process, sex workers must be consulted.
- Include sex workers and sex worker led organisations into anti-trafficking policy development- including at the European policy level. Anti-trafficking policies would benefit from sex workers’ in-depth knowledge of the dynamics of the sex industry and encourage them to directly report on the intended and unintended effects of anti-trafficking (and related) policies on sex workers’ safety and rights.
- Recognise and involve sex worker collectives into national referral mechanisms. As recognised by UNAIDS in their Guidance Note on HIV and Sex Work, sex worker organisations are best positioned to refer women and children who are victims of trafficking to appropriate services.
- Include sex worker led collectives into designing and implementing preventive campaigns that aim to eliminate vulnerabilities, promote workplace safety and address risk factors that may lead to exploitation and human trafficking in the sex industry.
- Provide sufficient funding for sex worker led initiatives in order to support and recognise their role in prevention of exploitation and trafficking in human beings in the sex industry.
- Include sex worker led organisations into designing, implementing and evaluating social inclusion and rehabilitation programmes for victims of trafficking and for sex workers who want to exit the sex industry.
- Take action to reduce the stigma associated with involvement in the sex work sector. Measures to reduce stigma include improving public attitudes towards sex workers, providing agencies, authorities, NGOs and the general public with nuanced and non-stereotypical information about sex work.
- Recognise that immigration policies impede migrant (sex) workers’ access to justice. Therefore firewalls between immigration enforcement and service provision in the area of health care, social services and the justice system should be implemented.

⁴ 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)