REFRAMING PROSTITUTION

From Discourse to Description, from Moralisation to Normalisation?

Nina Peršak
Gert Vermeulen (Eds.)

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Chapter 12.
Client criminalisation for guilty knowledge of (trafficking for) sexual exploitation

GERT VERMEULEN & YASMIN VAN DAMME

1. INTRODUCTION

As the EU's *Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*[1] confirms, it is not clear-cut which sex work should today be considered a result of (trafficking in human beings for the purpose of)[2] sexual exploitation. People who travel abroad in search of a better life may well realise that they will be working as sex workers upon their arrival or they may deliberately choose to go and work in the sex industry abroad (Vermeulen, Van den Herrewegen & Van Puyenbroeck, 2007). Still, they may, unexpectedly, face exploitative or coercive working conditions. Sometimes, also, doubts can be casted on the freedom of choice to work in the sex industry, as sex workers may have no viable alternative. In other words, the distinction between voluntary and coerced commercial sex work remains quite blurred today (Brooks-Gordon, 2006; Davidson, 2010; Di Nicola, Cauduro, Lombardi & Ruspini, 2009; Munro, 2008; Phoenix, 2009; Sanders, O'Neill, & Pitcher, 2009; Vermeulen, 2005; WODC, 2011). Willing sex workers find themselves in a grey zone between a genuinely consensual choice to engage in commercial sex work or sexual services provision and the borderline coercive reliance on pimps, traffickers or the like. Logically, policy makers are seeking new ways to specifically address the problem of commercial sex work "gone bad." One of the trends in current anti-trafficking discourses is the focus on reducing demand, if necessary, by the criminalisation of prostitution clients. The generic acceptability of paying for sex and the criminalisation thereof has been abundantly discussed (Brooks-Gordon, 2006;

1 European Commission (2012). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*. COM(2012) 286, 19 June 2012.

2 For the purpose of this text, all forms of exploitation in the commercial sex market are considered equally relevant, even when they do not entail trafficking in human beings. The potential for client accountability, if any, is necessarily broader than for the prevention of trafficking in human beings only. From a client's perspective (as a direct consumer of sexual services), the essential issue will be whether the sexual services concerned are being voluntarily delivered, irrespective of whether actual trafficking has occurred or is occurring.

Brooks-Gordon, 2010; Coy, Horvath & Kelly, 2007; Davidson, 2003; Di Nicola et al., 2009; Earle & Sharp, 2007; Farley, Bindel & Golding, 2009; Keren-Paz & Levenkron, 2009; Kulick, 2003; Phoenix, 2009; Sanders, 2008a, 2008b; Soothill & Sanders, 2004; Svanstrom, 2004; Zaitch & Staring, 2009). This text aims to go beyond that discussion, its specific focus being on (the criminalisation of) clients who use the sexual services of a prostitute who is exposed to coercion or has no real alternative to prostituting her or himself. To set the context, it starts off with a brief, preliminary exploration of the role clients play (through their behaviour and attitudes) in sustaining the problematic, involuntary, so-called *mala fide* sex market (a key question being how demand-driven the latter is). Also, the difficulty clients may have in adequately distinguishing between voluntary and coerced prostitution is addressed as a preliminary issue. Thereafter, taking stock of the suggestion embedded in both the Council of Europe's (CoE) and EU's anti-trafficking instruments that demand reduction may require member states to criminalise the "knowing" use of (sexual) services provided by victims of human trafficking, it will critically assess the related domestic developments in two EU member states: the UK and The Netherlands. Both countries have recently introduced (or have considered introducing) client criminalisation, which is specifically aimed at reducing the demand for coercive, involuntary sexual services, and thus, adopts the suggestion of the CoE and EU. As will be discussed below, the UK, in doing so, has opted for the strict criminal liability of clients when exploitative sex work is detected. In The Netherlands, the debate in recent years has concentrated on criminalising clients who choose sexual services that are provided by a sex worker who has not registered with the government. Both legislative options are attempts to introduce client responsibility in the sexual services market, but pose considerable problems from the perspectives of legal theory and criminal policy and/or practice. Hence, this text concludes by exploring the potential of self-regulation in the sexual services market as a tool to deal with client criminalisation. Self-regulation certainly seems capable of overcoming various obstacles that were identified in the two country studies and likely offers a more reasonable and practicable solution. Re-thinking traditional visions regarding demand reduction – by shifting to a more liberal approach and leaving responsibility predominantly with private actors in the commercial sexual services market – may, in fact, benefit the quest for new responses and distinguish adequately between *mala fide* and *bona fide* sexual service providers.

2. GUILTY KNOWLEDGE OF CLIENTS?

Before exploring the (possible added value of) the criminalisation of clients who "knowingly" use the sexual services of victims of trafficking and/or exploitation, two essential preliminary questions must be considered: (1)

what do we know about clients' moral and ethical stands *vis-à-vis* involuntary, exploitative or coercive sexual services (in order to shed light on how demand-driven such services are) and (2) can clients really know (and how) whether sexual services are provided involuntarily, in an exploitative, coercive context?

2.1. Guilty clients?

Is involuntary or exploitative sex work demand-driven? To what extent do clients have moral and ethical restraints towards engaging in exploitative sexual servicing? Is there such a thing as an inherent moral restraint within the minds of sex consumers that offers a sufficient and proper counterbalance to the purely economic assessment of a purchase (see also Haynes, 2009)? Only if an inherent moral restraint toward becoming an actor in a criminal market is not present or is insufficiently present due to being overridden by the pursuit of "profit" in the form of the best sexual service for the least amount of money, may external pressure to refrain from contributing to these processes be in order. The increased risk of criminal liability could be such an external influence. Choosing the lawful option then becomes more attractive (Van Damme & Vermeulen, 2012). This reasoning obviously stems from the (deterring) function of criminal law and the rational choice theory. Also, proponents of the idea that all sex work is per se coercive in nature (which assumes that one can never freely choose to "sell sex") use the rational-choice perspective in their anti-prostitution discourse. This may result, as in Sweden (Ekberg, 2004; Leander, 2006; Sanders et al., 2009; Svanstrom, 2004), in the criminalisation of all clients of prostitution (Coy et al., 2007; Dworkin, 1981; Farley et al., 2009; Simmons, Lehmann, & Collier-Tenison, 2008). The reasoning in such discourse is that the criminalisation of all clients in the commercial sex market will reduce demand and that, consequently, the sex market in its entirety (including its exploitative segment), will disappear. Hence, the criminalisation of clients of prostitution in general solves the problem of (trafficking for) sexual exploitation. These policies fall beyond the scope of this text, which deliberately envisages a specific assessment of the policy option of differentiating between clients based on whether they knowingly choose sexual services in either the *bona fide* or the *mala fide* market segment. Little research has been conducted specifically regarding sex consumers who, knowingly or unknowingly, circulate in the *mala fide* segment of the market. An interesting exception is a 2009 study by Di Nicola et al.[3] The study reveals interesting points in rela-

3 A similar study was conducted by Anderson and Davidson (2003), who examined the relationship between the demand for trafficked prostitution and/or domestic labour and the extent of trafficking in human beings in six pilot countries (India, Thailand, Italy, Sweden, Denmark and Japan).

tion to the behaviour and attitudes of clients. The most relevant finding is that a specific demand for involuntary sex work actually seems to be non-existent. No evidence could be found of sex consumers who specifically search for sex workers that are clearly being coerced. On the contrary, most, if not all, consumers reported a preference for prostitutes who showed some enthusiasm for their service, who seemed to be in good shape and did not appear to be controlled by someone else (see also Anderson & Davidson, 2003). However, the study also found that clients were very likely to deny any form of responsibility in cases in which exploitation had indeed occurred by stating that it is very difficult to recognise abusive circumstances. Also, the study revealed that many clients reported that they did not think about the possibility of exploitation, and that sometimes, indicators of exploitation may have been present, but were nonetheless ignored by clients. In sum, the outcome is somewhat ambiguous. On the one hand, there is no demand whatsoever for exploitative sex work; on the contrary, clients prefer free, willing sex workers. On the other hand, clients are not very concerned with exploitation and deny responsibility when it occurs; they are not diligent in their behaviour. Two policy-relevant conclusions can be drawn. First, the key question regarding client criminalisation becomes whether it can be a meaningful tool to counteract the inherent lack of a sense of responsibility among clients (instead of a tool to counter the specific demand for exploitative or involuntary sex). Second, tools need to be (made) available to meet consumers' principal desire for willing sex workers.

2.2. Guilty knowledge?

A second preliminary issue is the difficult boundary between voluntariness and coercion. Models like the Swedish one (and recently, also the French), in which all clients of sex work (which is assumed to be inherently coercive in nature, generically, or at least from a gender perspective) are criminalised, bluntly avoid the issue. That is why they are uninteresting in addressing this subject matter. The fundamental questions are whether, and if so, how, clients can ascertain whether sex work is voluntary. More than a decade after the Palermo Protocol,[4] we have learned a great deal about the actual face of trafficking in human beings for sexual exploitation. We have gained insights about foreign sex workers who travel to another country in search of a better life, well aware of the line of work they will take up, but surprised by the conditions of their work, the level of control by their pimps, and the small

4 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Palermo, 15 November 2000. United Nations. *General Assembly* Res. 55/25.

share of their earnings that they get to keep (Vermeulen, 2005). Even if no actual force or threat has been used, the fact that sex workers have no viable alternative but to work in the sex industry under harsh conditions may be enough to conclude that there is (psychological) coercion. Also, ambiguous cases are being treated as trafficking cases, including those in which (mostly) women are working in the sex sector to please those whom they believe to be their partners in a romantic relationship (NRM, 2009; WODC, 2011). A question that already has been raised in a vast amount of research (Smit & Boot, 2007; Brooks-Gordon, 2010; CoE, 2007; Davidson, 2010; Munro, 2008; Skrivankova, 2010; Vermeulen, 2005) is where voluntariness ends and coercion begins? It is important to contextualise a free choice for sex work in the face of broader social, economic, political and ideological conditions that sex workers have not chosen (Phoenix, 2009). Aside from some vague "indicators of likely exploitation" such as a lower price for the sexual services offered, the direct presence of a pimp near the establishment, some external signs of abuse or the lack of knowledge of the language (Di Nicola et al., 2009), neither academia nor policymakers seem to have a waterproof approach for making a clear-cut distinction between voluntary and coerced sex work. How then would clients be able to discern a difference between good and bad? It seems rather unfair and even unacceptable that a client would be criminalised for making use of the services of a victim of (trafficking for) sexual exploitation, if for example, the sex worker does not even consider herself or himself to be a victim or if the situation is unclear even to authorities. When examining client accountability, it seems, therefore, that it must first be determined that a case actually or likely entails an element of coercion or involuntariness, or, alternatively, that it is not a case in which there is manifest voluntariness. After this is established, a second step is to demonstrate guilty knowledge at the client level. Such a two-step procedure seems to be the only manner in which criminalisation of clients can pass the tests of proportionality, legality and the presumption of innocence. The practicability of such a policy option will hereafter be discussed, along with the lines of the legal initiatives adopted by the CoE/EU and two of its member states, the UK and The Netherlands.

3. CLIENT CRIMINALISATION IN POLICY AND PRACTICE

3.1. CoE/EU support for "knowing" client criminalisation

At the EU level, the general legal basis for criminalising clients can be found in current anti-trafficking instruments prescribing that countries must adopt provisions aimed at "discouraging demand" for trafficking in human

beings.[5] Such a measure criminalises clients who knowingly make use of the services of victims of trafficking in human beings, a step that was first recommended in the 2005 CoE Trafficking Convention[6] (Gallagher, 2006) and was later reiterated in EU anti-trafficking instruments. The 2011 EU Trafficking Directive states in Article 18.4 that "*in order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2* [added by author: which contains the definition of trafficking], *with the knowledge that the person is a victim of an offence referred to in Article 2*." The explanatory report (points 229-236) of the CoE Trafficking Convention offers a basis for a better understanding of the idea and the current motivation behind the adoption of this provision. The report emphasises that the main consideration for the adoption of such a provision was the desire to discourage the demand for exploitable people that drives trafficking in human beings (point 230). It further explains who should be perceived as a "user" and gives the theoretical example of a client of a prostitute who knew full well that the prostitute had been trafficked. The report underlines that, in such a case, the client could not be treated as criminally liable as a trafficker because he or she has not him/herself recruited the victims of the trafficking nor has he or she used any of the means referred to in the definition of trafficking. The client would, however, be guilty of a separate criminal offence (Van Damme & Vermeulen, 2012). The practical problems for member states in adopting the "knowing" client criminalisation of the CoE/EU are manifold. First, as mentioned above, how will they operationalise "knowingly," and how will their authorities prove "knowledge"? Second, prostitution policies among member states are so varied that there is no one-size-fits-all answer to the call for the targeted criminalisation of "knowing" clients. These challenges have been faced and addressed both in the UK and The Netherlands, each in their own way, and each departs from a different prostitution policy *acquis.*

5 The most recent EU anti-trafficking instrument, the 2011 Trafficking Directive, states in Article 18 that "*Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings."* Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and replacing Council Framework Decision 2002/629/JHA, 2011 O.J. (L 101) 1.

6 Council of Europe, *Council of Europe Convention on Action against Trafficking in Human Beings*, 16 May 2005, CETS 197.

3.2. The UK

3.2.1. Policy background

In the UK, trafficking for sexual exploitation offences are contained in the Sexual Offences Act of 2003. A further offence, which criminalises holding another person in slavery or servitude or requiring them to perform forced or compulsory labour without the need to prove trafficking, was introduced more recently under the Coroners and Justice Act 2009. After the UK government published the document, *Human Trafficking: The Government's Strategy*, in June 2011, one of its commitments in the fight to eradicate trafficking in human beings was to review trafficking legislation in England and Wales. Furthermore, in July 2011, the UK opted in to the 2011 EU Directive on trafficking in human beings. Despite these trafficking-specific efforts, it is in the context of its prostitution policy, rather than its anti-trafficking policy, that recent measures targeting demand must be situated. Although the suggestion for criminalisation in the CoE/EU legislation is mentioned in the UK's anti-trafficking efforts, its initiatives to tackle demand by the criminalisation of clients stem from its long-standing prostitution policy. Prostitution is not *per se* illegal in the UK; however, most activities surrounding it are.[7] The present-day UK prostitution policy is the result of a lengthy legal process that has attempted to better regulate the sector. Following continued criticism regarding the lack of a coherent prostitution policy, in July 2004, the UK government published *Paying the Price* (Home Office, 2004), a public consultation paper on prostitution that was criticised by many as being a poorly conducted research report that lacked complexity or reality and contained misinformation (Brooks-Gordon 2006; Cusick & Berney, 2005; Phoenix, 2009; Sanders, 2012; Soothill & Sanders, 2004). Responses from a wide range of actors who were in some way involved in the debate on prostitution were used as a basis for the development of a *Coordinated Strategy for Prostitution,* which was published in 2006 (Home Office, 2006). The *Strategy*

7 Section 51A of the Sexual Offences Act criminalises the solicitation of another in a public place or on the street for the purpose of obtaining his or her sexual services as a prostitute. Section 51A was inserted on 1 April 2010 in the Policing and Crime Act 2009. Before 2010, it was only illegal for customers to solicit sexual services if it was done "persistently" or "in a manner likely to cause annoyance." Today, all forms of public solicitation by a customer are illegal, regardless of the manner in which the prostitute was solicited. Other prostitution-related offences are: brothel-keeping and associated offences (Sexual Offences Act 1956, sections 33 to 36), causing or inciting prostitution for gain (Sexual Offences Act 2003, section 52), controlling prostitution for gain (Sexual Offences Act 2003, section 53), kerb crawling (when a person in a motor vehicle attempts to solicit someone for the purpose of prostitution) (Sexual Offences Act 1985, section 1), placing of advertisements relating to prostitution in or near phone boxes (UK Criminal Justice and Police Act 2001, sections 46 and 47).

provides a framework for communities to tackle street prostitution and all forms of commercial sexual exploitation through preventative measures, with one of the most emphasised measures aimed at tackling demand (House of Commons, 2009d; Phoenix, 2009; Sanders et al., 2009d). This focus on tackling demand became more apparent in 2008 when the Government announced a six month "Tackling Demand for Prostitution Review" that began with a visit to Sweden, where it hoped to learn valuable lessons from the latter's policy of criminalising sex buyers in general.

3.2.2. Client criminalisation based on strict liability

Following this review, a proposal to prosecute men who pay for sex with a woman who is being exploited was first raised during the Labour Party Conference of September 2008 (House of Commons, 2009a; Reid, 2009).[8] A recommendation in favour of a strict liability offence was first incorporated into the 2008 Policing and Crime Bill. After consultation, some changes were made to the terms of strict liability and the provision is now found in Section 53A of the Sexual Offences Act 2003, which creates the offence of "paying for sexual services of a prostitute subjected to force, threats or any other form of coercion or deception".[9] The provision is a "strict liability offence"[10] (House of Commons, 2009a) due to its wording that whether or not the client was aware of the fact that the prostitute was forced into prostitution is irrelevant. This section was inserted on 1 April 2010 in section 14 of the Policing and Crime Act 2009. Already, during the negotiation phase, this provision has attracted much criticism, not in the least from NGOs that work with and for prostitutes in the UK. They have stated that the evidence used by the government in support of the provisions was one-sided and false (House of Commons, 2009b, 2009c). Section 53A could be perceived to be a result of the flawed assertion that prostitution is *per se* an instigator of sexual exploitation, ignoring the evidence that supports the existence of consensual prostitution (Sanders, 2012). Indeed, this provision was introduced after the escalation of the 2008 focus on tackling demand (Sanders et al., 2009). Home Secretary Jacqui Smith, during debates on the Policing and

8 Following Sweden's example of criminalising all sex buyers (even those without the exploitation element) was met with heavy criticism and thus not adopted as such (Sanders, 2012).

9 The wording of the provision was changed in that "controlled for another person's gain" was replaced with "force, threats or any other form of coercion or deception," which was still criticised as being too broad and vague.

10 I.e., liability for a crime that is imposed without the necessity of proving *mens rea*, most commonly understood as "intention." Strict liability is a legislative technique to make criminal law applicable and enforceable by avoiding heavy demands of proof (Blomsma, 2012, pp. 209-234).

Crime Act, made several statements regarding the undisputed link between the demand for prostitution and trafficking for sexual exploitation (House of Commons, 2009a). While the provision supposedly has been adopted for the protection of those who have been trafficked or forced into prostitution, from the wording of section 53A, it seems that exploitation is defined very broadly and vaguely, in that it encompasses "any form of deception" (House of Commons, 2009b, 2009c). The fact that it is difficult for clients to recognise such a broad spectrum of exploitation is circumvented by the fact that, according to the newly inserted provision, knowledge of exploitation is irrelevant. Strict liability offences require no proof of fault. Rather, strict liability offences are constituted by at least one material conduct element (*actus reus*), but do not require a corresponding mental element (*mens rea* or state of mind) (Reid, 2009). If an offence involves strict liability, and no specific defence is made available to the charge, the perpetrator can be acquitted only if he proves that he acted with due diligence, meaning that he did everything in his power to avoid being involved in the offence. The defendant thus bears a burden of proof, which distinguishes strict liability from a mere reversal of the burden of proof (Blomsma, 2012, p. 222), but it is almost impossible for him to negate proof of the offence. In the case law of the European Court of Justice, strict liability has not, in itself, been deemed incompatible with EU Law: As long as penalties are proportionate, effective and dissuasive, the Court sees no problem.[11] From a European human rights perspective, a number of relevant minimum requirements can be deduced from the ECtHR case law on Article 6 ECHR, in which the second paragraph requires that, at a minimum, a defence should be able to be raised against a criminal charge.[12] Although the presumption of innocence demands that the prosecution must prove all offence elements beyond a reasonable doubt, and that the defendant does not have to prove his innocence, this principle is not absolute. The ECtHR has allowed exceptions within reasonable limits if they are nonetheless compatible with the rights of defence.[13] There has been no decision made by the ECtHR that directly challenges strict liability. In the English legal system, a similar test exists regarding whether strict liability provisions meet the requirements of a legitimate aim and propor-

11 E.g. C-326/88, Anklagemyndigheden v. Hansen & Son, 1990 E.C.R. I-2911, C-177/95, Ebony Maritime and Loten Navigation v. Prefetto della Provincia di Brindisi and Others, 1997 E.C.R. I-1131.

12 E.g. Salabiaku v. France, 1988-X Eur. Ct. H.R. 27, in which the Court (Chamber) stated: "In principle, the Contracting States may, under certain conditions, penalise a simple or objective fact as such, irrespective of whether it results from criminal intent or from negligence".

13 E.g. Salabiaku v. France, 1988-X Eur. Ct. H.R., Västberga Tax Aktiebolag and Vulic v. Sweden, 2002-VII Eur. Ct. H.R., Khelili v. Switserland, 2011-X Eur. Ct. H.R.

tionality, pp. 226-228). Strict liability is generally repudiated in academic literature (Blomsma, 2012; Salako, 2006; Simester, 2003, 2005; Stanton-Ife, 2007) due to the challenges it poses to the principle of guilt, the presumption of innocence and the lack of evidence that strict liability offences have a greater deterrent effect than offences that require proof of fault (Blomsma, 2012). The only sphere in which strict liability seems to be more or less accepted without much debate is in less serious regulatory offences, such as certain traffic violations, though questions accompany the main argument of procedural convenience. Strict liability offences are quite common in the English legal system.[14] The strict-liability character of the client criminalisation provision was defended during debates regarding the Policing and Crime Act as being necessary to change the current dynamic, in which a man who purchases sex does not think about the possibility that the prostitute is being forced or exploited. The rationale behind the choice of a strict liability offence was said to be the belief that, rather than introducing "something cosmetic that made everyone feel good but did not drive down to that particular interaction, something far stronger was needed" (House of Commons, 2009c). Some opponents of strict liability advocated that, at the very least, there should be an element of intentional knowledge or belief on the part of the person subject to prosecution under this clause, as difficult as such intent may be to prove, with alternatives such as "recklessness" or "negligence" being mentioned as available tools in the creation of new offences (House of Commons, 2009b). The introduction of strict liability understandably raises suspicions that the provision is intended to be an anti-prostitution tool instead of an anti-exploitation tool. Another critique was that the provision would not lead to any prosecutions because information will not come to light due to a lack of cooperation by the prostitutes themselves in offering testimony about exploitation (Sanders, 2012). Committing a sexual offence without the need to prove *mens rea* goes against the very nature of sexual offences; as a result, strict liability seems inappropriate in this context. Aside from the procedural rights challenges the provision poses, serious questions need to be raised as to the enforceability of the new rule as well. Considering the novelty of the offence, no meaningful evaluation of the prosecutions under this article has been undertaken. The Crown Prosecution stated that "the offence is most likely to arise in police brothel raids where there is enforcement against suspects controlling or exploiting prostitution for gain and where clients are apprehended in the operation".[15]

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14 Most of the approximately 8000 offences in England are strict liability offences with relatively low penalties and almost half of the more serious offences contain an element of strict liability (Blomsma, 2012).

15 Prostitution and Exploitation of Prostitution. Retrieved on 7 December 2012 from http://www.cps.gov.uk/legal/p_to_r/prostitution_and_exploitation_of_prostitution. Though the extent to which this provision will be used to obtain actual convictions

Considering the lack of evidence supporting the insertion of this section into the criminal law in the first place[16] (Sanders, 2012), its actual practical usefulness or value remains dubious.

3.3. The Netherlands

3.3.1. Policy background: Lifting of ban no undisputed success

To properly contextualise the recent debate in The Netherlands regarding client responsibility for exploitative sex work, it is helpful to briefly recall and sketch the evolution of Dutch prostitution policy. After a period of thorough societal and political debate, the ban on brothels was lifted on 1 October 2000, meaning that the "exploitation" of prostitution was legalised, in as far as it involves adult and voluntary prostitutes who legally reside in The Netherlands (Daalder, 2007b). At the same time, Dutch legislators sharpened legislation regarding the unacceptable exploitation of prostitution and trafficking in human beings, for instance, by increasing the criminal penalties. The lifting of the ban, however, did not happen without any flanking measures for authorities that were aimed at enabling them to maintain proper control of the (lawful character of the) industry. The licensing system that accompanied the lifting of the ban is most relevant. While the national penal code criminalises and severely punishes coerced prostitution, the municipalities are primarily responsible for regulating prostitution within their territory and 95% of them are doing so via a licensing system (NRM, 2002, p. 20). The municipalities are unrestricted regarding how to organise and control their licensing policy, which has led to a diversity of policies throughout different segments of the Dutch territory. Forms of commercial sex exploitation other than brothels, such as the escort service or home prostitution, remained unlicensed. "Lawful" prostitutes are those

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remains to be seen, some numbers have been made public. In 2011, 43 convictions in the full first year of operation were reported. Few convictions under law for using prostitutes. 28 July 2011. http://ww.bbc.co.uk/news/uk-14333370. Retrieved on 8 January 2013.

16 The lack of evidence was one of the main concerns of the Joint Committee on Human Rights in the debates on the Police and Crime Act. It stated: "We are disappointed that the Government has failed to provide the evidence which, in its view, demonstrates the necessity for the new strict liability offence. We recommend that the evidence be published without further delay so that Parliament can be properly informed when debating the need for this new strict liability offence" (Joint Committee on Human Rights, 2009). The government replied that the Demand Review was the result of thorough research on demand, but admitted that it had not really focused on the benefits of strict liability, as "this was not the aim of the research" (UK Government, 2009).

who are over 18, native to the EU and are voluntarily working in a licensed sex venue as a self-employed person or pursuant to a labour contract. The intention of the legalisation movement was to grant the same rights as any other employed person to lawful sex workers. A 2007 study concluded that all Dutch municipalities had practically completed the licensing process and were carrying out inspections on the basis thereof, though some have been more thorough than others (Daalder, 2007b). This has created significant differences in policies within the Dutch territory and has led *mala fide* market players to move across municipalities to carry out their activities in the most lenient ones. Another important conclusion was that the police mainly carried out monitoring and enforcement inspections in the newly licensed sector. Brothels that failed to comply with the licensing requirement were liable to administrative punishment or, depending on the violation, could be prosecuted for the offences covered by Article 273a of the Criminal Code (the Dutch trafficking in human beings criminal law provision, which has been deemed complicated and broad in scope (Zaitch & Staring, 2009)). It also has been documented that the police lack the capacity to monitor and investigate the *mala fide* market segment, which continued to conduct punishable forms of sexual service operations outside of the licensed sector (Daalder, 2007b). It is safe to say that this situation seems quite paradoxical. Without taking a stance on the possible abuses of the licensing system by *mala fide* actors, the fact that the available law enforcement capacity has so far been directed towards those who are licensed, and thus, apparently constitute the *bona fide* segment of the market, has understandably caused frustration. Those who are making the effort to abide by the licensing conditions feel that the new system, in fact, has created a stricter regime than the one that existed before the ban on brothels was lifted (CoE, 2007). Moreover, the fact that only EU citizens can be "lawfully" (self) employed and that only brothels are covered by the lifting of the ban was heavily criticised as pushing non-EU citizens and other commercial sex ventures such as escort businesses further into illegality. Among others, a 2011 study (WODC) that documented several trafficking in human beings cases in the Amsterdam red-light district has shown that the licensing system was anything but waterproof and that it left a lot of opportunity for the circumvention of the rules by *mala fide* market players. Overall, the main problems of the licensing system were the lack of control and supervision of the *mala fide* market segment and the limited prostitution activity covered by it. In a study involving the clients of Dutch brothels, the clients reported their observations of some of the police control actions. They felt that owners were well-informed of these visits and had instructed prostitutes, as well as clients, beforehand to behave in certain ways. Therefore, Zaitch and Staring (2009) conclude that these controls did not represent any meaningful contribution against illegal prostitution, let alone trafficking. In general, no evidence of a decline in coerced prostitution has been scientifically documented (Daalder,

2007b), which, for some, was enough to conclude that the lifting of the ban was a failure (van de Bunt, 2007). In evaluation reports on the lifting of the ban, it has been stated that the sex sector continued to be a source of illegal employment, trafficking in women and other forms of illegality and criminality (Daalder, 2007a; Dekker, Homburg, & Tap, 2006; KLPD, 2008). France used the so-called failure of the Dutch system as an argument in favour of its new law of December 2013, in which it has chosen (apparently inspired by the Swedish system as well) to criminalise all clients of prostitution. With the new law, France claims to answer the victim-centred call in the 2011 EU Directive, by stating – without proper empirical underpinning – that about 90% of prostitutes in the French sex market are victims of trafficking and sexual exploitation.[17] Despite the many challenges and loopholes that the Dutch licensing system was and is facing, simply dismissing it is a step too far for The Netherlands, which has chosen to keep it in place, but reform it.

3.3.2. Bill regulating prostitution and tackling abuses in the sex sector

The ideas for the improvement[18] of the licensing system that have stemmed from the above critiques are particularly interesting with regard to the research topic of this text. For the past few years, a bill has been debated that aims to regulate prostitution and the fight against abusive situations in the sex sector, including all forms of sexual servicing, not solely the brothel

17 A client of prostitution will have to pay a 1500 euro fine for visiting a prostitute, irrespective of whether the prostitute works voluntarily or not. http://www.assemblee-nationale.fr/14/propositions/pion1437.asp. Retrieved on 1 December 2013. The explanatory memorandum stated: *"Les dispositions de la directive 2011/36/UE du Parlement européen relative à la traite qui n'ont pas à ce jour été introduites dans notre droit et demandant de supprimer toute victimisation supplémentaire des victimes de la traite et de la prostitution. Il abroge donc le délit de racolage prévu par l'article 225-10-1 du code pénal qui sanctionne les personnes prostituées, qu'il convient de protéger plutôt que d'interpeller. Comme l'indique la directive signée par la France en 2011 et ratifiée en 2013, les victimes devraient être protégées contre les poursuites ou les sanctions concernant des infractions sur la prostitution, le but étant de garantir aux victimes les bénéfices des droits de l'homme, de leur éviter une nouvelle victimisation, un traumatisme supplémentaire, et de les inciter à intervenir comme témoins dans le cadre des procédures pénales engagées contre les auteurs des infractions."* In other words, France refers to the obligation of the EU Trafficking Directive to protect victims, which pursuant to France's reasoning, includes nearly all prostitutes. No reference is made, however, to the EU suggestion of specifically (and only) criminalising clients who knowingly make use of the services of a trafficking victim.

18 Originating in the Policy Program of the Cabinet of Prime Minister Balkenende IV, 2007–2011, 5.5 *Bestrijding van vormen van ernstige criminaliteit* (Fight Against Serious Crime), 68.

sector.[19] The goal of the bill is threefold: first, to reduce the differences in municipal licensing policies; second, to gain a better overview of the entire sector by the introduction of a national registration and licensing system; and third, to simplify supervision and control of the sector.[20] The bill was first presented in November 2009, and after a change in the proposal and subsequent discussion in 2011, its adoption currently is still being delayed due to a decision in October 2012 that re-contemplation is needed as a result of the numerous critiques and questions that it had generated. In July 2013, it was partially dismissed. The original proposal entailed a national obligation for all commercial sex establishments to obtain a license, with the licensing conditions being uniform throughout the country. Escort companies had to register in a national register. Furthermore, all individual prostitutes were required to register in a national register to avoid criminal liability and clients were required to check to see whether a prostitute was effectively registered before actually visiting her or him. Making use, as a client, of the services of a non-registered prostitute, was criminalised. This part of the proposal, however, was dismissed in July 2013. Nonetheless, given its relevance to the discussion about the criminalisation of "knowing" users, it is further analysed hereafter. The proponents stressed that, by introducing the new rules as outlined, the difference between voluntary and coerced prostitution would become clearer, especially to the client. The bill was intended to specifically implement the targeted client criminalisation suggestion embedded in the 2005 CoE Trafficking Convention.[21] An important critique raised, among others, by the Dutch *Raad van State* (from which the government must mandatorily seek a written advisory opinion regarding every bill it intends to introduce in Parliament) is that the envisaged new law would not change anything with regard to one of the biggest challenges of the existing policy, in that it would mainly further regulate the already regulated *bona fide* segment of the market instead of focusing more on the illegal and *mala fide* segment. The *Raad van State* further commented that, considering the higher administrative obligations due to the new registra-

19 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 2. Wetsvoorstel van 10 november 2009*. Tweede Kamer, Handelingen 2009-2010.

20 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 3. Memorie van Toelichting*. Tweede Kamer, Handelingen 2009-2010, *Algemeen deel, Hoofdstuk 1 Inleiding, 1.2 Inhoud wetsvoorstel*.

21 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 3. Memorie van Toelichting*. Tweede Kamer, Handelingen 2009-2010, *Algemeen deel, Hoofdstuk 7 Strafbepalingen*, 7.2.

tion rules, more actors on the market would be driven into illegality, as it was said that avoiding administrative burdens was characteristic of the sector.[22] Also, the *Raad* noted that, according to the bill, the enforcement of the policy would remain in the hands of the municipalities, and would change nothing about the abovementioned differences across the nation, which have proven to facilitate abuse.[23] The bill will be discussed again in this regard,[24] as the only part of the proposal that remained after July 2013 was the introduction of a "uniform system of licensing", which would be nationwide instead of by municipality. This is not the place for a full evaluation of the bill, so the analysis hereafter is limited to the proposed measure to criminalise clients who choose sexual services by unregistered sex work-

22 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211) No. 4. Advies Raad van State en Nader Rapport*. Tweede Kamer, Handelingen 2009-2010. See also: *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). Notitie van Vereniging Vrouw en Recht Clara Wichmann ten behoeve van expertmeeting,* Eerste Kamer. Handelingen 2011-2012, 12 June 2012. In the discussion document of 12 November 2012 on the proposed bill (*Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche) (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 5. Wetsvoorstel.* Eerste Kamer, Handelingen 2012-2013, October 2012) it has also been raised that registration is likely to affect the privacy of prostitutes who want to work legally, but anonymously, so that they will not register. Also, the effectiveness of registration as a tool in the fight against exploitative sex work was challenged, for it would only occur once every three years. Registration was also said to bear the risk of legitimising trafficking and exploitation, since traffickers or other exploiters may well encourage or force their victims to register and/or only start exploiting them upon or after registration. The arguments were also recalled that registration was only open to sex workers over 21 and that EU citizens would further endanger the most vulnerable prostitutes, who operate in the illegal segment of the market. The proposal was said to be equally detrimental to the efforts that have been made in the past to encourage the self-employment of sex workers. With the bill, self-employed sex workers would not only need to register, but also would require a license as a sex establishment. That would erode anonymity and privacy even further, which would direct sex workers into employment relationships and would render them more prone to exploitation than if they were self-employed.

23 Another factor reinforcing this problem is that municipalities would still (as under the current licensing regime) be allowed a so-called zero option, meaning that, for reasons of general interest or for the protection of prostitutes and clients, they may choose to refuse licenses to any sex establishment desiring to establish a business in their territory.

24 http://www.eerstekamer.nl/motie/motie_strik_groenlinks_c_s_over_9. Retrieved on 29 November 2013.

ers, although that measure has been dismissed. The first challenge to the proposed client criminalisation is that registration does not *per se* mean that a given sex worker is working voluntarily. The moment of administrative contact with a prostitute who wants to register is obviously not sufficient to make a decision regarding her or his free will. Also, it is very likely that, for obvious privacy reasons, voluntary sex workers will be unwilling to register, for example, because they have a family, another job, etc. Moreover, no significant flanking measures, such as training for those responsible for the registration, were proposed.[25] Briefly put, the rationale behind the obligation to register, namely, distinguishing between voluntary and involuntary sex work, seems somewhat superseded. In the proposal, the criminalisation of clients of unregistered prostitutes as a tool to tackle the demand side of exploitative sex work was flawed. The proposed system could only work within a waterproof system of registration in which it is 100% certain that 100% of voluntary sex workers are registered, which obviously can never be guaranteed. Also, the question arose as to how clients were expected to be aware of whether or not a prostitute is registered. To that end, the bill entailed a duty for clients to ascertain for themselves the fact that a prostitute was effectively registered. It was suggested that clients check this by calling, sending a text message or emailing a national system that would check if the registration number of a self-employed prostitute corresponded with her or his personal service number.[26] In a licensed sex establishment, clients could logically assume that only registered prostitutes were employed, as this was a precondition for obtaining a license. However, there was no hard guarantee for clients that the numbers provided by either a self-employed sex worker or a sex establishment were genuine. How the system would then be enforced and how clients would need to prove that they had observed their "ascertaining duty" remained unclear in the bill. From the debates, it seems that, according to the proponents, the practical problems would have been solved by the submission of proof that an inquiry had been sent by mail or message or by a telephone call, which could be derived from the client's email or telephone traffic data. That, however, would be a challenge from the perspective of the clients' privacy and the conditions that are required for such invasive investigative measures. Also, it was unclear in the proposal for which cases traffic data would actually be checked: The obligation to allow for a control of traffic data would seem-

25 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). No. 5. Wetsvoorstel, item 7.* Eerste Kamer, Handelingen 2012-2013, October 2012.

26 This so-called "*burgerservicenummer*" (BSN) is a unique number provided to every citizen that is registered with a municipality, for example, at birth. The number is marked on identity cards.

ingly only have been enforceable upon clients if they were caught red-handed when visiting an unregistered prostitute; moreover, if it was not clear whether the intention to engage in a sexual act was sufficient to trigger criminal liability or if the sexual service actually had to have taken place. The minister of justice admitted that the concrete rules for the implementation of the new law on this particular aspect were yet to be determined in a so-called "amvb,"[27] i.e., an executive government order.[28] Its legitimacy was – rightly – challenged in light of the principle of legality by opponents of the proposal, who asserted that, since their criminal liability was at stake, the manner by which clients would have to inform themselves should be included in the law itself. Considering the flaws in the principles of legality as well as from a procedural rights perspective, and given the doubts that the proposed new system would genuinely contribute to the fight against sexual exploitation, the proposal was disregarded on this aspect.[29]

27 *Algemene maatregel van bestuur.*

28 *Regels betreffende de regulering van prostitutie en betreffende het bestrijden van misstanden in de seksbranche (Wet regulering prostitutie en bestrijding misstanden seksbranche) (32211). Nadere memorie van antwoord door Minister van Veiligheid en Justitie, I.W. Opstelten.* Eerste Kamer. Handelingen 2011-2012, E, 16 March 2012.

29 A case that is relevant with regard to the registration obligation is the *Khelili* case before the ECtHR (Khelili v. Switzerland, 2011-X Eur. Ct. H.R.). The Court held that the classification of a woman as a "prostitute" for five years in a Geneva police database violated her right to respect for private life. The Court recognised that the data were retained for the purpose of the prevention of disorder or crime and the protection of the rights of others. The Court, however, reiterated that the word "prostitute" could damage Ms Khelili's reputation and make her day-to-day life problematic, given that the data contained in the police records might be transferred to the authorities. The Court considered that the retention of the word "prostitute" for years was neither justified nor necessary in a democratic society. From the authors' point of view, the registration obligation would not *per se* be contradictory to this judgement. First, the proposal entailed a three-year and three-months limit on data retention in the register. Moreover, the registration was to be initiated by the sex worker, while in *Khelili*, the police labelled Ms Khelili as a prostitute, though it was not even certain that she, in fact, was one (at least, Ms Khelili persistently denied this, which was deemed problematic by the Court). Also, the fact that the Geneva police database was automatically linked to other authorities was considered problematic by the Court, while the Dutch registration system was not supposed to be linked to any other authority and the data stored would only be used for the purpose of the prostitution law (see also the opinion letter of the Dutch Minister of Security and Justice of 26 April 2012, which responded to concerns raised during debates in this regard).

4. SELF-REGULATION AND QUALITY LABELLING OF THE SEXUAL SERVICES MARKET AS AN ALTERNATIVE BASIS FOR CLIENT CRIMINALISATION?

Given the considerable problems from the perspectives of legal theory and criminal policy and/or practice that were encountered in the assessment of the attempts in the UK and The Netherlands to successfully introduce targeted client responsibility in the sexual services market, the quest for an alternative, more reasonable and practicable solution is ongoing. It is explored below whether self-regulation and quality labelling in the sexual services market, i.e., leaving responsibility predominantly with private market actors, may constitute such an alternative solution, in that it would allow the relevant actors to distinguish more adequately between *mala fide* and *bona fide* sexual service providers and, at the same time, to provide an acceptable and workable basis for "knowing" client criminalisation.

Self-regulation and quality labelling, in brief, would imply that entrepreneurs in the sexual services market should commit and organise themselves to abide by certain sector-specific *bona fide* standards, and for doing so, they would obtain a certificate thereof, which they could then portray or publicise in order for anyone to be able to know that they abide by certain standards, for example, of voluntariness, quality, safety and reliability (Vermeulen, 2007, 2008). A 2007 EU research project by Vermeulen et al. addressed the possibility of self-regulation and the use of quality labels in certain market sectors that are vulnerable to sexual exploitation and/or trafficking in human beings. The window and brothel prostitution, escort and pornography sectors were among those for which the option for market operators to self-impose quality standards to establish themselves as rule-abiding and non-exploitative sex establishments and to portray quality labels as proof thereof, was examined. Self-imposed quality standards for the sexual services market may, for example, include the provision of safe and sanitary venues, the guarantee that the operator of the establishment has not been convicted for trafficking in human beings or sexual offences, refunds for STD/HIV and other medical check-ups, the provision of protection, the guarantee of the right to refuse certain clients or sexual acts, the guarantee of reasonable pay and working hours, but also – most importantly – the guarantee that the offered sexual services are provided voluntarily, by genuinely and freely consenting adult prostitutes (Vermeulen, 2007).

A first, distinct potential asset of self-regulation in the context of assessing the feasibility of client criminalisation, is that it can be applied to both the legal (as in the case of brothel-keeping in The Netherlands when it involves adult and lawfully residing EU citizens) and the illegal sexual service market segments (as in the case of brothel-keeping in The Netherlands that involves illegal third country nationals) or markets (as in the case of brothel-keeping

in the UK altogether). In many European/EU countries, the exploitation of prostitution, in the sense, for example, of managing a brothel or an escort service, is a criminal offence, much like in the UK, but it is often tolerated in practice, which creates an unclear and ambiguous context for a sector that is already prone to rule-circumvention. The self-regulatory approach that is proposed is theoretically eligible for introduction throughout the commercial sexual service market in European/EU countries, irrespective of whether the exploitation of voluntary prostitution is (under certain conditions) lawful, fully illegal and prosecuted or in-between, i.e., illegal but (most) often not prosecuted. Especially in countries where the sector is officially illegal, the government (be it national or local) is handicapped in its attempts to regulate (or license) the sector, as this will ultimately constitute a contradiction in terms. At best, government action is then necessarily limited to the geographical implantation of sex establishments (based on competencies in the sphere of urban planning) or to the avoidance or channelling of prostitution-related nuisances (relying on competencies in the sphere of public order and safety) (Vermeulen, 2008).

Whether a self-regulatory approach as outlined is theoretically capable of providing further solutions for the series of the problems encountered in both country studies is systematically assessed below.

The criminalisation of clients for being involved in what is "believed" to be an exploitative situation, without sufficient clarity regarding how they could have been aware of it, is both unfair and problematic from a procedural rights viewpoint. At least some sort of "publicity" that manifestly establishes *bona fide* sex work will be required as a minimum tool for clients to act in a duly diligent fashion, i.e., by not choosing sexual servicing that has not been quality-labelled as *bona fide.* Taking the risk of being serviced in the non-*bona fide*-labelled market segment could then be taken into account in the establishment of "guilty knowledge."

The main concern with strict liability (as in the UK country study) was that no *mens rea* was required before concluding the criminal liability of clients, which challenges the principle of the presumption of innocence. First, in the proposed self-regulatory system, a *mens rea* element would be required. It would lie exactly in the choice of a non-*bona fide*-labelled service. Second, the problem that, in the UK, there is virtually no chance for clients to prove that they were unaware of exploitation and that their liability thus is "strict," as in definitive, would be solved by the fact that certification would be merely a tool in the determination of "guilty knowledge." In the proposed self-regulatory system, it is not being suggested that a client's choice of an uncertified service should *per se* trigger criminal liability. What is suggested is that if, after an investigation, exploitation or involuntariness is effectively proven, when deciding on a client's "guilty knowledge," it can be taken into account whether he or she could have known that the service might have

been problematic (which will be the case if a non-certified or non-quality-labelled service has been chosen).

In the abovementioned sense, the proposal that has now been rejected in The Netherlands, whereby clients would commit a criminal offence by using the services of an unregistered self-employed prostitute or a prostitute working in or for an unlicensed sex establishment, surely was a step in the right direction. Government licensing, though, is only eligible for use in systems in which the exploitation of prostitution is, under certain conditions, legal. Moreover, the licensing and registration system in The Netherlands is largely unattractive, mainly because it has not been accompanied by subsequent monitoring of and law enforcement attention towards the unlicensed sector (controls having been primarily or essentially focused on the licensed sector). Moreover, the Dutch system (including the newly proposed targeted client criminalisation) has ignored the specific sensitivities of the sector, such as privacy issues or its reluctance *vis-à-vis* administrative burdens. As a result, the Dutch system cannot guarantee that the distinction between registered and unregistered prostitutes or licensed and unlicensed sex establishments effectively corresponds with the distinction between voluntary and involuntary (or coerced) prostitution. The replacement of the government-organised registration and licensing system with a system of self-regulation and *bona fide* quality labelling seems to have the potential to resolve the main obstacles that have been identified in The Netherlands.

First, a self-regulatory approach could more adequately address sensitive issues such as privacy, since the personal data of sex workers would not (need to) be stored in official, government-held registers or databases. The amount of "red tape" would be similarly limited. Even self-employed home-prostitutes or escorts could simply quality-label themselves in their advertisements, without having to sacrifice their privacy.

Moreover, self-regulation could also work for illegal (migrant) sex workers, in contrast with the Dutch government-imposed system, which obviously could not "regulate" illegal sex work.

The proposed self-regulatory system would likely also solve the issue of the need for intrusive investigative measures such as checking a client's ICT traffic data. The presence of the quality label *an sich* would be a sufficient tool to investigate a client's potential "guilty knowledge."

Although more extensive research regarding how to practically organise an effective system of self-regulation and quality labelling would be required, it is clear that it will not work unless it is adequately "picked up" by official (law enforcement and prosecuting) authorities, including those in countries where the exploitation of prostitution is illegal. First, a diversion of attention in the prosecutorial priorities of law enforcement toward the market actors that do not hold quality labels will be a necessary incentive to promote self-

regulation and the adherence to *bona fide* quality standards. The latter must become the most lucrative and competitive option for market players. Also, official authorities will have to endorse the self-regulatory system by properly taking account of the certified *bona fide* sexual service provision in their examination of client accountability.

Most probably, the so-called third-party certification (by a private but nonetheless independent certification service provider) would constitute the most promising form of self-regulation, as opposed to first-party certification (mere certification by the entrepreneur or prostitute him/herself) and second-party certification (certification by an sector-based umbrella organisation).[30] First-party certification lacks independence. Second-party certification has a higher independence degree already, but excludes certification of e.g. individual, self-employed prostitutes who either do not wish to register with an umbrella organisation or are excluded from doing so because they have no legal personality, whilst third-party certification is available to them.

By way of final note, it must be underlined that self-regulation and quality labelling or certification will never constitute a fully waterproof system. Abuses will remain possible, as is the case in all government-regulated and private sector-certified services. However, the dedication of *bona fide* entrepreneurs, who obviously would economically (read: financially) and competitively benefit from delivering certified services (clients will logically be oriented towards them, eliminating other, *mala fide* or non-*bona fide* entrepreneurs from the market), must not be underestimated, because their market "advantage" will be at stake. It may be assumed that they will take a strong – economic – interest in keeping *bona fide* services genuinely *bona fide*: private power for public good.

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30 An interesting example of a second-party certifier is the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB), active in thirty-nine US states and the District of Columbia, which recently has included anti-trafficking in its certification work. See Williams, M. (2014).

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