

# The Problem of Trafficking in Women in the EU

A constructive policy proposal

# Abstract

Trafficking for sexual exploitation is the most common form of trafficking in the European Union (EU). The problem is long lasting and mostly affects women and children. During the two latest decades, the EU has developed an extensive anti-trafficking policy framework. Europol, together with a variety of sources, nevertheless stresses that the problem do not show any tendency of decreasing. This thesis examines what the EU can do to combat trafficking effectively. It is proposed that trafficking has to be connected with prostitution. A constructive methodology is used, in combination with a theoretical feminist perspective. The study consists of a normative part that develops the norm “trafficking is oppression”, which establishes that the EU has to combat trafficking because of the union’s condemnation of oppressive practices. The empirical part illustrates the gendered nature of the trafficking problem in the EU and how it is interconnected with prostitution. Finally, the constructive analysis shows why the European reality is disconnected from the normative condition. A constructive proposal is developed based on neglected factors in contemporary EU policies. Three new measures are suggested for a new effective policy; a reframing of the problem, clearer objectives and incorporation of new research on prostitution.

*Keywords:* trafficking, prostitution, EU, policy, constructive method

*Words:* 19943

# Abbreviations

CATW	Coalition against Trafficking in Women
CFREU	Charter of Fundamental Rights of the European Union
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
GAATW	Global Alliance against Trafficking in Women
UDHR	Universal Declaration of Human Rights and Fundamental Freedoms

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# 1 Introduction

Millions of people are trafficked throughout the world each year (UNODC 2012, ILO 2008, 3). The United Nations (UN) as well as the European Union (EU) classifies the problem of trafficking as a form of transnational organised crime and a gross violation of the victims' human rights. Today, trafficking in women is an issue of especially serious concern, both globally as well as in the EU (UN Trafficking Protocol 2000; the EU Directive 2011).

In 2005 the European Council made an estimate that over 100 000 women are trafficked into the EU each year (European Parliament Resolution 2006, B). Trafficking for sexual exploitation is the type of trafficking which mainly affects young women and girls (SOU 2010:49, 31), hence;

“[...] sexual exploitation appears to be what trafficking in women is typically about” (Askola 2007, 17).

What this type of trafficking in other words means is that women are forced into different types of prostitution. In the EU context trafficking for sexual exploitation is the most common form of trafficking, and in turn most victims of trafficking in the EU are women and children (Europol 2011, 4, 7). Resolutions from the European Parliament, as well as governmental reports and research from scholars from different backgrounds (example legal and feminist), have raised the awareness that trafficking for sexual exploitation can be connected to prostitution (European Parliament Resolution 2011; European Parliament Resolution 2006; SOU 2010:49, 31; Askola 2007; Di Nicola et al 2005). This can be illustrated through the fact that; the majority of prostitutes in the EU today are non-EU nationals, and concerns are raised that a large part of those prostitutes can be victims of trafficking (Hubbard et al 2008, 139, Askola 2007, 28, 64). The moral and legal view on prostitution differs to a great extent between the EU member states, prostitution being legal in most of them (Di Nicola et al 2005, 44; Eriksson, 2004, 28-30). This can to some extent explain why the union has chosen not to focus its fight against trafficking through dealing with the issue in relation to prostitution. Instead the EU addresses the whole problem of trafficking as mainly a criminal justice issue of organised crime.

Already in 1998 legal scholar Laurie Hauber highlighted the concern about the growing problem of trafficking in women for sexual exploitation in the EU and the need for more effective measures (Hauber 1998). After her, many have followed (for example Askola 2007; Wijers 2000; Goodey 2003) as well as the union itself. Since the beginning of the 21<sup>st</sup> century the EU has developed a major policy framework of anti-trafficking measures. The first legally binding instrument came into force in 2002 in form of *the Council Framework Decision*

*on Combating Trafficking in Human Beings* (Council Framework Decision, 2002). This was followed by joint conferences and programs as well as several policy initiatives. In 2011 the Council Framework Decision was replaced by the *Directive on preventing and combating trafficking in human beings and protecting its victims*. This Directive did, in contrast to the Framework Decision, recognize the gender specific phenomenon of trafficking. However, it still addresses that the main aim of the fight against trafficking is to combat organised crime (Directive 2011/36/EU). Compared to the legally binding EU Directive, the *EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings* from 2005 is another current policy. This common initiative highlights the importance of an *effective* approach towards trafficking; an integrated approach as well as joint efforts, together with a collective understanding of trafficking, is demanded for effective anti-trafficking actions.

Through the Lisbon Treaty's Charter of Fundamental Rights, the EU prohibited trafficking in 2010, in line with the prohibition of slavery and forced labour. This was followed by the joint legally binding EU Directive in 2011, that emphasizes that preventing and combating trafficking is a priority for the EU and its member states (CFREU 2010, article 5; Directive 2011/36/EU). Still the latest report from Europol states that:

“[...] based on current reporting, intelligence, trends and patterns, it is unlikely that there will be any immediate reduction in the levels of trafficking of human beings in Europe. This crime will continue to have a major impact upon the EU.” (Europol 2011, 14)

It is against this background, of the unresolved problem of trafficking in the EU, that this thesis takes its point of departure.

## 1.1 Aim and Research Question

Against the background of the major policy developments within the EU's anti-trafficking policies in the last decade, and so far no signs of a decrease of the problem of trafficking in the union (Askola 2007 article, 208-10; Europol 2011, 14), this thesis aspires to examine how the EU can fight the phenomenon effectively. The overarching objective is to suggest an alternative way to develop more seriously on long term anti-trafficking methods; hence, the methodological aim is constructive. Practically this will be done in three steps. First, a general norm will be constructed which states that “trafficking is oppression”. This norm will justify why trafficking has to be combated. Secondly, the existing and long-lasting problem of trafficking in women for sexual exploitation in the EU will be examined theoretically and empirically. The focus will be on the current situation in the EU and the EU's fight against trafficking on the supranational policy level. Thirdly, the constructive analysis will scrutinize how the European reality of trafficking in women for sexual exploitation possibly can reach closer to the

normative dimension, which in turn states that the EU is obligated to combat trafficking because “trafficking is oppression” and the union actively condemns oppressive practices (ECHR 1950; CFREU 2010, article 5). My research question is:

- What can the EU do to combat trafficking effectively?

This thesis will apply a theoretical gender- and feminist perspective to the European fight against trafficking. Against this background this thesis promotes that: *Within trafficking policy, the problem of trafficking should be connected to prostitution, for the policy to be effective.* The empirical examination of the problem aims to illustrate why this is the case and the constructive analysis intends to show if and how this possibly can be done.

## 1.2 Definitions and Delimitations

Trafficking in this thesis will be understood and defined as *trafficking in women for sexual exploitation*. This choice is based on the theoretical direction of this thesis, which consists of a gender- and feminist perspective. To study trafficking from this perspective is in accordance with other scholars in the field (Askola 2007, Wijers 2000; Goodey 2003; Andrijasevic 2003), but in contrast to the union’s organised crime profile described above (Askola 2007, 99). What specifically defines *trafficking* is that it involves an element of force or coercion, this identifies all forms of trafficking (Askola 2007, 17). *Sexual exploitation* is here understood as different types of *exploitation of prostitution*. An important distinction to be aware of is between forced and free prostitution. In both EU as well as in UN anti-trafficking documents exploitation of prostitution is interpreted as forced prostitution (UN Trafficking Protocol 2000; Directive 2011/36/EU). This thesis however, will not make such a distinction between exploitation of prostitution (forced) and other types of prostitution (free and legal/illegal), when it aspires to show how all types of prostitution can be connected to trafficking for sexual exploitation.

Furthermore, the understanding of trafficking from a gender point of view is also a choice made based on delimitation reasons; while the problem of trafficking is both an extensive and complex global phenomenon (UNODC 2012; Askola 2007, 5; Goodey 2003, 419), the focus on women will delimit the research well while trafficking in women for sexual exploitation is believed to stand for a specific type of *gendered trafficking* (Askola 2007, 15; Goodey 2003, 19; Andrijasevic 2003, 251). There is an awareness of that the problem of trafficking also concerns men. Trafficking in men is however much more common in the area of labour exploitation (Europol 2011, 4), hence the need and appropriateness of delimitation. Trafficking in women for sexual exploitation is however often

discussed through also including children (UN Trafficking Protocol 2000). This is not the case here.

The focus on women and gender in the European context can be supported by the fact, mentioned above, that most victims of trafficking in the EU are women and children, and that the most common form of trafficking is trafficking for sexual exploitation. Last but not least, the gender perspective is in addition considered much interesting in the context of the EU because of (1) the union's human rights profile and (2) the gender unbalance within the market for sexual services within the EU's Internal Market, where most prostitutes as well as trafficking victims are non-EU national underprivileged women, and most sex buyers are wealthy EU citizen men (Europol 2011, 4; Hubbard et al 2008, 139; Askola 2007, 55, 64-65).

Finally, in relation to the research question, the term *effectively* has to be defined. A standard dictionary interprets effective as *something that gives a (good) result*. This is the type of broad understanding used here as well. To connect it to the EU; the union's anti-trafficking policy dimension is in the context of this thesis understood to be ineffective (it does not give good results at all). This is based on the fact that the problem of trafficking in the union is unlikely to reduce in scale any time soon (Europol 2011, 14), despite several policy developments in the last decade (Askola 2007 article, 208-210). Hence, in the research question the word effectively aims at what the EU can do to fight trafficking with a good and rewarding result, i.e., actually combat it. It should however be clarified that this thesis does not strive to study the effectiveness of the implementation of anti-trafficking policies, the focus is instead on a broader perspective.

## 2 Methodology – A Constructive Contribution

### 2.1 Methodological Aim

This thesis will have *a constructive methodological approach*; hence, the entire aim of the research will be constructive. This can be exemplified through the nature of the research question. Constructive research focuses on questions of *the possible and feasible* (Fernández 2005, 18). This is the case within this particular thesis, which asks: *What can the EU do to combat trafficking effectively?* What will be examined is, in other words, what can be achieved (within the problem of trafficking) under the circumstances that exists (in the context of the EU). Important in this context is that for the constructive research possibility to be valid, it has to be based on its own method (Lundquist 1998, 213). What is unique for the constructive method is that it implies that; for the possibility to contribute with feasible suggestions of the desirable, both empirical as well as normative standpoints within the question at hand have to be considered. This combination is necessary, because the researcher has to take both contemporary guiding norms, as well as existing conditions, into consideration (Fernández 2005, 21, 40-41).

“[...] in the sphere of tension between visions and limitations, the space for constructivism appears, and it is here that constructive analysis can be pursued.” [*My translation*] (Fernández 2005, 41)

How to connect those two separate parts (reality with the norm), or at least how to be able to move them closer together, will then be elaborated on in the constructive analysis. The constructive analysis's goal is in turn *the constructive proposal*. As the quote implies; to be able to contribute constructively, the analysis has to balance between idealism (norm) and realism (empirical reality), to be able to, for some extent, construct a possible suggestion for how the existing can reach closer to the desirable (Fernández 2005, 41, 44).

In this thesis the constructive contribution will be closely connected to the *method* and not so much to the theory, which in turn will focus on gender and feminist perspectives. The constructive link between theory and method is, however, that feminist theory in itself can be seen as constructive. The theoretical overview aspires to illustrate this, through the way feminism focus on critique of

existing unequal structures in society and *how those can be changed* (focus on the possible/feasible to some extent).

Before going in to more practical details of the research design, an illustration of the background of the constructive method's place within political science will be presented. This is considered necessary for the possibility to be able to motivate the choice of research method for this particular study.

## 2.2 The Constructive Method – Background

It is quite rare to use constructive research methods and analysis in the area of political science, where the field is much dominated by empirical studies (Lundquist 1998, 213-14; Fernández 2005, 11, 18). This can explain why there are no classic methodological guidelines in this area, which describes the scientific methodological way to design a constructive proposal (Fernández 2005, 11-12, 44). Therefore it should be mentioned that the constructive method of this thesis is my interpretation and development of previous researcher's constructive approaches. Against this point of departure, a review of the background and development of the constructive method will shortly be presented.

The constructive part of political science is not something totally new. The history of political ideas has, as far back as the ancient Greeks, search for methods to improve and develop considerable political societies. However, for a long time and still to some extent, the political science focuses mostly on empirical theory and research. In turn both empirical and normative researchers within political science still make suggestions of constructive measures, without using an extensive constructive methodological framework. This is problematic when scientific recommendations for political action should not be done without using a constructive research method (Lundquist 1998, 213-14).

It should be noted that the constructive analysis and its constructive proposal, has often been something seen as a deterrent within political science. This can be explained through a scholarly resistance towards speculations and analysis of the future. Those types of assignments are instead believed to be the mission of the politicians (Fernández 2005, 44). It is not surprising, however, that sources of inspiration for constructive analysis can be found in normative political philosophy and empirical policy analysis (Lundquist 1998, 214).

A strong argumentation and critique, worth mentioning in this context, can be found in the American political science scholar David Ricci's book, *The Tragedy of Political Science*, from 1984. The book emphasis's that political science centre around exceptionally normative subjects as justice, rights and society. However, much research methods and attempts have developed to focus to a great extent on technical and generalizing aims. Ricci's main point is that this has led to a loss of the true societal value of political science. Ricci's argument, excessively or not, can and has been useful for scholars to emphasize and illustrate why there is an extensive problem in the way political science often separates normative and empirical research (Rothstein 1994, 12). Based on this and the above, some

specific arguments can be distinguished for the need of constructive analysis. As has already been mentioned, if one wants to make a scientifically valuable constructive research contribution, the research has to be based on a constructive method (Lundquist 1998, 213). Furthermore the combination of empirical and normative research is believed to have a potential of producing science of greater advantage to society. The meeting between those two different areas of science, both opens up for a true constructive aim, as well as it enriches both respective areas. Examples being that normative questions can be answered in a more reliable way when they are connected with empirical facts, as well as empirical research can be more credible when it is also considered on moral grounds (Fernández 2005, 19; Rothstein 1994, 12-13). One last argument of special importance for the context of this thesis is that:

“During circumstances that are characterized by apparent changes in society and thereof changed conditions for political institutions and processes, [...] the need for constructive analysis is especially important [...]” (Fernández 2005, 19) [*My translation*]

With this in mind it is time to move on to the motivation for the choice of a constructive method for this particular thesis.

## 2.3 Motivation of Methodological Choice

In connection to the arguments presented above the problem of trafficking in the EU is believed to be in need of being considered from a constructive angle. To begin with, the quote above is believed to be much relevant in the context of this thesis, while trafficking in women for sexual exploitation is a phenomenon much effected by broader changes in society, as for example globalization and the aftermath of the Cold War. Those broader changes can be exemplified through the geopolitical and geoeconomic changes which have affected migration flows, development of the market economy in Eastern Europe, as well as the expansion of existing sex industries (Adrijasevic 2003; Askola 2007 article, 207; Askola 2007, 35). Against this background it can be argued to be of much importance to combine different scientific perspectives when answering the question at hand. Furthermore the existing problem of trafficking in the EU, the fact that it exists in such a broad and abusive way, clash with some of the union’s core values and legal norms. The problem of *trafficking in women for sexual exploitation* touches upon classic sensitive and value based questions of sex, money and migration (Wijers 2000, 210). This highlights the importance of why it is important to consider the problem from a normative perspective. Theoretical feminist- and gender perspectives, focuses to some extent on the normative dimensions, in framing what is wrong and unjust with the trafficking situation in the union (see for example Askola 2007; Wijers 2000). Some scholars even argue for, and to some extent give, policy-like suggestions for a solution (see Askola 2007),

however, when doing so the deeper normative analysis (which critically discusses which values that are violated; see description of the normative part below) is not present.

This thesis aspires to ask about an empirical condition – effectiveness: *What can the EU do to combat trafficking effectively?* At the same time the overall aim is constructive; the goal is to be able to come up with a constructive contribution to the field. To be able to do this; *the empirical ineffective reality will be considered in the light of a parallel normative discussion.*

## 2.4 Research Design

One way of describing the procedure of the method is; *to formulate, to study and to create the desirable* (Fernández 2005, 21, 30, 40). Even though this thesis to some extent will study the desirable, the constructive analysis will not consist of a discussion of non-existent scenarios for the future. Instead, it will discuss some of the existing anti-trafficking policies in the light of the European reality and the constructed norm. The main interest lies in bridging the gap, or at least to suggest how to reduce the gap, between the European reality and the normative scenario. The policies analysed will be considered as a possible existing instruments or means to examine, to in turn be able to discover what factors that are neglected or missing within the EU's current anti-trafficking policy spectrum. The procedure of this particular thesis's method can therefore be described as; *to formulate (the normative part), to study (the empirical part) and to contribute to (the constructive analysis) the desirable.* An attempt to explain this more practically will be done in the presentation of the research design below, where every separate part shortly will be described.

### 2.4.1 The normative part

The overall aim with the normative element is to formulate and construct a norm that will guide the analysis. The norm will be of a general nature, to be able to function in the yet undiscovered context, but still be on an adequate abstraction level compared to the empirical conditions (Fernández 2005, 21, 30). In this case one norm, of a negative character, will be considered and developed on, namely: *“Trafficking is oppression”*. This norm is, in the context of the EU, considered to be general enough, as well as justifiable, in all the union's member state. The next step will be to discuss and develop on values connected to the norm; the normative analysis uses values as the empirical analysis uses facts (Fernández 2005, 22). The main value considered will be *the value of freedom*, which will work as a point of departure. To be able to illustrate why trafficking is oppression

three “freedom-values” will be discussed: (1) *the right to life*, (2) *prohibition of torture* and (3) *prohibition of slavery*. These values are all considered vital rights of a person’s freedom and they are represented in, among others, both the Universal Declaration of Human Rights (UDHR) as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (UDHR 1948, article 3, 4, 5; ECHR 1950, article 2, 3, 4). Two questions will guide the normative argumentation; *what is trafficking in normative terms? and, why is trafficking a form of oppression?* Through establishing that “trafficking is oppression”, because it violates fundamental human rights, this part of the thesis aspires to justify that the EU is obligated to combat trafficking effectively, because of the union’s condemnation of oppressive practices.

## 2.4.2 The empirical part

The aim and task for the empirical part is to examine what the conditions are for the norm to be realized (Fernández 2005, 21, 30). In other words the assignment is to illustrate and structure the existing problem of trafficking in women for sexual exploitation in the EU, to in turn be able to distinguish problems and possibilities in relation to the developed normative requirement. The empirical element will consist of *two components*. The first one will be theoretical in form of a research overview, where the debate about the definition of trafficking is discussed, as well as previous research and theoretical correspondence with reality. The possible contribution to the research field will be considered. The second component will be truly empirical. The current situation of the problem of trafficking in women for sexual exploitation within the EU will be considered, as well as the history and development of EU’s many anti-trafficking responses on the supranational policy level.

## 2.4.3 The constructive analysis

In the constructive analysis the norm is discussed in relation to the empirical reality. It should be noted that all three parts (the normative, the empirical and the constructive) have analytical tendencies and should be thought of as connected, even though they are separated in different parts for legibility reasons. Furthermore the discussion in the analysis is done under the premises of two important components: Critique and construction (Fernández 2005, 40-41). Two of the EU’s common anti-trafficking policies will be considered:

- The EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings (2005)
- The Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (2011)

The critical analysis of those policies will be considered in the light of the norm “trafficking is oppression”. As has been mentioned earlier, the constructive analysis’s balance between visions (idealism) and limitations (realism), to be able to, to some extent, construct a possible suggestion for the two parts to reach closer together (Fernández 2005, 41). This means that the policies will be considered and discussed separately, as well as in relation to each other, and furthermore in relation to the norm. Do any of the policies have a better possibility, than the other one, to connect reality closer to the norm? What is missing for the policies to be more effective? The goal is to, against the background of the neglected factors discovered in the policies, be able to come up with a constructive proposal for a new anti-trafficking policy. This policy should, in contrast to existing anti-trafficking policies, be effective but still possible to realize.

The constructive contribution will naturally be some sort of compromise between norm and reality, and the analysis in turn can consist of some type of speculation. The speculative feature could still be scientific to some extent if it is combined with structure and discipline. Other factors important here is the context (which in this case is the EU), which makes the analysis practically bound to a specific reality. Finally to be cautious and open, are also important factors for a trustworthy contribution (Fernández 2005, 41, 45-46).

Possible critique could be the fact that the constructive method, as mentioned before, does not really have any recognised guidelines like other scientific methods have, within political science. While it consists of much influence from the normative methodological field, this could in itself be a point of critique, because of the somewhat resistant attitude against the validity of the normative type of method (Badersten 2006, 5). An important instrument for the validity of the normative analysis is the methodological demand for intersubjectivity. This generally means that the analysis should be transparent and the scientific process should be open for observation. In other words; the research should be as clear and open that other scholars should be able to reconstruct the research for evaluation (ibid, 189). The constructive analysis has a very intersubjective character in itself (Fernández 2005, 43); to be able to criticize the reality of the chosen context, the constructive analysis has to be well aware of, and open with, the deficiencies in the description of reality and within the normative reasoning. This leads this methodological overview to the question of material and how well it represents the subject studied.

## 2.5 Material

This thesis intends to present a wide range of literature on trafficking, without being too broad. The delimitation to trafficking in women for sexual exploitation will be apparent through the theoretical material. This will foremost consist of research from legal and feminist scholars. This will be complemented by several reports on the current situation, from actors that represents different perspectives in the debates, examples being: Europol, the International Labour Organization,

the European Women's Lobby, and the Swedish Government's Official Investigations. Furthermore, a large part of the material will consist of several legal documents from the UN and the EU. European policy documents, of joint efforts as well as political initiatives from different EU institutions, will also be considered as very important.

The combination of secondary material, through literature with a gendered focus, with the primary material of different reports, existing international agreements, and European policy documents on trafficking, is believed to give the thesis the validity that is needed from its point of departure. Validity meaning that; what is aimed to be measured or examined in this thesis actually becomes possible to measure, because of the relevant sources used (Eriksson, Wiedersheim-Paul 2006, 60, 167).

### 3 The Normative Dimension – “Trafficking is Oppression”

In normative analyses the question of justification is central (Badersten 2006, 134). In this context a general norm will be constructed, which state that *“trafficking is oppression”*. By illustrating that this norm is valid, the norm will justify why the phenomenon of trafficking has to be combated. The construction of the norm will consist of consideration and analysis of values of relevance. *The aim of this normative part will foremost be to demonstrate the normative dimension of, and its implications for, the problem of trafficking.*

The analysis attempts to illustrate which values and normative principles that are especially fundamental and present within the concept of trafficking. *The main value considered here will be the value of freedom.*

#### 3.1 The EU Context

The fact that the EU and its member states is against oppression is probably not a controversial normative starting point. However, a short motivation for the norm’s “contextual-fit” is considered to be of importance. All of the union’s member states can be seen to have taken a stand against oppression through their ratification of ECHR (Protocol No. 11 to ECHR, 2008). Today, through the Lisbon Treaty, the union even has its own Charter of Fundamental Rights (CFREU). It is in this charter one can find the article where the union actually prohibits trafficking, under the heading of prohibition of slavery and forced labour (CFREU 2010, article 5(3)). Within EU’s anti-trafficking policies as well as through the EU’s human rights profile, the fight against trafficking has a position of political priority. Even though the “fight” in later years often is connected to fighting organised crime, it is in the human rights context however, sometimes lifted as a fight against discrimination (Directive 2011/36/EU; europa.eu, 2012). All of the documents above emphasize the EU’s active stand against *oppressive practices*, such as slavery and discrimination. The union’s prohibition of trafficking is here understood as an ultimate example of the unions stand against oppression. This will be developed on in both this normative part, and in the empirical part in the following chapter. The above is hoped to illustrate that the norm, “trafficking is oppression”, will be a valid and legitimate norm to apply to the European context. Through establishing that “trafficking is oppression” this thesis aspires to justify that the EU is obligated to combat trafficking effectively,

because of the union's active stand against, and condemnation of, oppressive practices.

## 3.2 Normative Points of Departure

The construction of the norm will constitute of a normative analysis, which in this context will be an argumentation of ways to reason and understand the problem. The reasoning will be based on *the normative principle of common sense and pragmatism*. This means that values are considered in the light of what is generally or normally understood as good, hence the choice of a general norm and values. In addition this type of normative principle interprets some values as almost obvious in certain contexts (Badersten 2006, 149-50). This focus on *context* fits well with this thesis methodological constructive points of departure, where the context has an important meaning for the analysis. This could furthermore be connected to *the normative logic of appropriateness*, where the normative valuation consists of both consideration of basic norms and principles, together with a concrete context (Badersten 2006, 152).

## 3.3 “Trafficking is Oppression”

This construction of the general norm “trafficking is oppression” will be based on two main questions: *What is trafficking in normative terms? Why is trafficking a form of oppression?*

As has been mentioned above, the normative discussion will take *the value of freedom* as its point of departure. This can be motivated based on the following reasons: When it comes to oppression of the value of freedom, trafficking is in itself a key example of something of the opposite to freedom. Hence, trafficking has been referred to as *a slavery-like practice* in both UN conventions from the early 20<sup>th</sup> century, as well as in international and EU policy documents of today (UN Convention 1949; UN Trafficking Protocol; Council of Europe Convention 2005; Directive 2011/36/EU). The concept of trafficking always involves some sort of illegal restraint of a person's essential freedom:

“The fundamental difference between smuggling and trafficking is that smuggled people are free at the end of the smuggling process whereas trafficking victims experience conditions akin to what has been variously described as ‘virtual slavery’.” (Goodey 2003, 419)

Furthermore all forms of trafficking involve an element of force or coercion (Askola 2007, 17). This brings up the question of *what trafficking actually is*:

Trafficking is an illegal movement of people for profit, often across borders, but it can also happen and exists within a nation (Goodey 2003, 419; Askola 2007, 17). It can to some extent be signified as an international trade with people. Hence, trafficking is sometimes referred to as today's slave trade (Cacho 2011, 17, 324-25). As emphasized in the quote above human trafficking and human smuggling differs to some extent, however both phenomenon are part of the global irregular migration movement. What characterizes trafficking is that when the person arrives to his or her destination (taken there by either coercion or free will) he or she is coerced with violence or debt bondage, or threatened, into forced labour as for example prostitution or in sweatshop work (Askola 2007, 35). It is important in the case of trafficking to emphasise this very abusive and slavery like conditions that exists at the end of the trading of people. Examples of this are that trafficking victims passports are often taken away and victims are locked in or threatened from leaving. It is for example not uncommon for women in forced prostitution to be subject to much abuse, as for example rape and assault. Lack of knowledge of the destination country and its language also makes victims extremely bounded to their traffickers. In the light of the above, it is no doubt that *trafficking, in normative terms, is a violation of basic human freedoms*. To be able to illustrate why trafficking is oppression, the value of freedom will be scrutinized.

The concept of freedom is a central concept within ethics and political philosophy and circulates around consequences of what happens if people are not free i.e., cannot do what they want (NE.se 2012). *Freedom is in this context defined as the right to 'do what one wants'*. Freedom can however be divided into more negative as well as more positive notions of freedom. This conceptualization is one of the most famous ones of freedom, through Isaiah Berlin's discussion of negative and positive liberty. Negative liberty can be interpreted as freedom from obstacles or barriers to choice, for example actual physical barriers as well as legal obstacles. Positive liberty on the other hand, circulates around freedom to social and individual rights, and obstacles to freedom are in this sense understood in a more social interpretation, for example as poverty and lack of education (Askola 2007, 44-45). Depending on how freedom is interpreted can have effect on how trafficking in turn is handled. The European context will work as an example of how this division of freedom is relevant in relation to trafficking.

The EU's integration process, as well as the Internal Market, has since the union's foundation circled around liberal ideas through its origin from the four fundamental freedoms (the free movement of goods, capital, services and workers) (Askola 2007, 43-44). In this context one thing should be noted:

“It is of course well known that the European Community has from its inception lacked a grand social vision, its primary motivation being economic.” (Askola 2007, 53)

What is important in the discussion of freedom in the EU context is the fact that the EU's priority of negative freedom has consequences for the conceptualization of the problem of trafficking, as well as possible limitations on anti-trafficking policy (Askola 2007, 53, 64). This can be exemplified through the

EU's negative understanding of freedom in the exclusionary character of the EU's migration regime (Askola 2007, 44). However criticized, the term *Fortress Europe* is well known by now. The concept derives from the Schengen Treaty, signed in 1985, which marked the beginning of a period of increased regulatory agreements. Those developments were followed by the intensified Eastern Enlargement, which created new external EU borders (Andrijasevic 2003, 254-55). The EU's fight against trafficking mainly focuses on repressive measures through for example restrictive immigration policies (Askola article 2007, 213-14). There is one argument that stresses that this actually works in favour of third parties arranging trafficking. This can be explained through the fact that the organised trafficking networks become the only alternative way in to the EU for many women from Eastern Europe. Informal and unsecure labour migration becomes one of few, or even the only, ways out from example poverty, lack of employment and violence at home (Andrijasevic 2003, 262, 265). This repressive approach to trafficking illustrates a priority of negative freedom in the EU, which is of importance to be aware of to be able to understand the complexity and difficulty surrounding anti-trafficking actions in the union. Now however, it is time to turn to the human rights and freedoms, connected to the value of freedom and to trafficking, which will be elaborated on next.

To be able to further exemplify why trafficking is oppression three "freedom-values" will be discussed; the right to life, prohibition of torture, and prohibition of slavery. These values are all represented in, among others, the UDHR and the ECHR (UDHR 1948, article 3, 4, 5; ECHR 1950, article 2, 3, 4).

### 3.3.1 The right to life

Trafficking is here argued to be violating the fundamental human right of a right to life. The different notions that signify trafficking exemplified above, like the element of force, abuse and imprisonment, that is the reality for trafficking victims in their destination country, all denies the trafficking victim of a human and decent life. Even though all trafficking victims are not locked up and physically imprisoned, many still experience a life in captivity in the hands of their traffickers. For example it is not uncommon that trafficking victims are bound to their traffickers by blackmail and debt-bondage. The choice to escape is furthermore surrounded by threats as for example expulsion, or for some the threat of returning home to a situation they tried to escape from in the first place (Askola 2007, 46).

“[...] Many trafficking victims also perceive their situation (correctly) as their having ‘no other choice’.” (Askola 2007, 47)

This is a clear example of the oppression of trafficking victims' freedom; while freedom in this context is understood as the right to 'do what one wants', trafficking victims lack the freedom of choice to leave and are therefore captured in an extremely oppressive situation where they do not have control and power

over their own lives. Hence, the phenomenon of trafficking oppresses trafficking victims' right to life.

### 3.3.2 Prohibition of torture

Trafficking has by some legal scholars been described as a form of torture, and in this context article 3 of the ECHR can and maybe should be used in the fight against trafficking (Askola 2007 article, 212; Hauber 1998, 187). The article states that:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”  
(ECHR 1950, article 3)

Hauber emphasizes this in the context of women's opportunity to seek legal remedies against trafficking of women (Hauber 1998, 187). In the spirit of Hauber's concern, a connection can be made between acts of torture and trafficking in women for sexual exploitation, i.e. for forced prostitution. Prostitution has been described by feminist scholars as in itself a type of violence against women, and sometimes involving acts similar to torture (Farley 2004, 1093-1094). Askola on the other hand, highlight the need of realizing the particular human rights article concerning torture in relation to irregular migrants. Many victims of trafficking in the EU can stay for the criminal proceedings, but the question of asylum for trafficking victims is sensitive. Askola points to that trafficking victims' right to asylum can be justified and even necessary in cases where trafficking victims are seriously threatened and cannot be guaranteed security when returning home to their country of origin (Askola 2007 article, 212-13). The discussion above exemplifies how trafficking can constitute a possible threat of torture, which is here understood as one of the most horrific forms of oppression of a person's individual freedom and human rights.

### 3.3.3 Prohibition of slavery

“Trafficking for sexual exploitation is described as the slavery of our times” (SOU 2010:49, 58)

Trafficking is very often mentioned and described as, exemplified in the quote above, in terms of slavery or as a slavery-like practise. This accounts in both academic research, as well as in reports and within anti-trafficking policy (Goodey 2003; SOU 2010:49, 58; EU Directive 2011; UN Trafficking Protocol 2000). As has been described earlier (in the description of trafficking) the phenomenon of trafficking involves the element of slavery; the objective of traffickers is after all to force or fool people in to unfree labour where the victims are treated under horrific conditions. Once again it should be emphasised that those horrific and slavery like conditions of forced labour are a unique part of

trafficking. Compared to other forms of human smuggling, the actual slavery that trafficking often consists of, is what makes it trafficking (Goodey 2003, 419). This illustrates why trafficking is oppression in relation to slavery, which is a practice that both violates trafficking victims' fundamental human freedoms and human rights.

In the context of this thesis, the slavery-like oppression that trafficking consists of, is here believed to be the clearest illustration of why trafficking in women for sexual exploitation is oppression.

To summarise and answer the two main questions, put forward in the beginning of this normative construction: *What is trafficking in normative terms?* Trafficking is, in normative terms, a crucial oppression of a person's most fundamental freedom and her rights connected to this value. This can be exemplified through the other question asked: *Why is trafficking a form of oppression?* Trafficking is oppression because it violates some of the most vital human rights of a person's freedom, through the coercive, abusive and slavery-like practice that trafficking is. The UDHR and the ECHR both address that among the basic human rights and freedoms a person has are; the right to life, prohibition of torture, and prohibition of slavery. All the above exemplifies and establishes the norm "trafficking is oppression", which make trafficking morally intolerable. This in turn justifies that trafficking has to be combated in the EU, where oppressive practices are prohibited legally and condemned politically.

## 4 The Empirical Dimension – The Phenomenon of Trafficking in the EU

This chapter will present and examine the phenomenon of trafficking in the EU. It will have a two-folded content; a theoretical (4.1) and an empirical (4.2 and 4.3). The theoretical part's main aim is to work as a research overview and a presentation of the theoretical direction of this study. The empirical parts will describe and exemplify the current situation within the problem of trafficking in women for sexual exploitation in the EU, as well as map out the developments of the EU's anti-trafficking policies. The theoretical and empirical parts will be interconnected through the literature.

### 4.1 Research Overview – Theoretical Perspectives and Debates on Trafficking

“Too often there is little debate on broader measures which might be targeted to address the “root causes” of trafficking, such as poverty, under-development, general lack of economic and migration opportunities and, above all, gender inequality” (Askola 2007, foreword)

#### 4.1.1 Defining trafficking – old and new debates

To some extent the focus on *trafficking in women for sexual exploitation* is in itself implying a gender-specific approach, which can be and sometimes is applied to research on trafficking in human beings (Askola 2007, 21; Goodey 2003, 419; Wijers 2000; Andrijasevic 2003, 251). However, also a gender specific approach can imply very different understandings of trafficking, as can be illustrated by the heterogeneity of feminist theory on the subject (Askola 2007, 22, 33-34). More generally, which many scholars from different fields can agree on, one of the trafficking debates central concerns are the ongoing struggle of actually defining trafficking (Wijers 2000, 211). Legal scholar Jo Goodey emphasizes the confusion that exists between various definitions of *human smuggling* and *human trafficking* and what consequences this has had in the fight against trafficking. She stresses that unclear definitions of the problem has slowed down and damaged different parts of anti-trafficking actions, as criminal justice actions against traffickers as well as supportive work for victims (Goodey 2003, 419).

A central concern within the feminist debate has been how to, in legal terms, define *the exploitation of the migrant woman* in a way that, both separates

trafficking from other forms of human smuggling, but at the same time recognizes how this type of trafficking still is attached with problems of irregular migration as well as human smuggling (Askola 2007, 32). Marjan Wijers, who works for the Foundation against Trafficking in Women (and is engaged in GAATW), and legal scholar Heli Askola emphasize the importance of a common legal definition of trafficking within the EU. They both also stress that the problem of defining what trafficking in fact means, is far from just an academic question; the actual construction of anti-trafficking actions, in other words which measures that will be used to tackle and combat trafficking, are depending on how trafficking is defined. One common explanation to why the definition aspect is a complex issue in the EU is the connection trafficking has to extremely sensitive areas, as for example migration and prostitution.

Apart from being a controversial area, broad trends in the national immigration policies in the EU member states have had an impact on the harmonization of a definition of trafficking (Askola 2007, 32; Wijers 2000, 210). This focus on migration is however fairly new; during the 20<sup>th</sup> century trafficking was rather connected to prostitution. In the 1990s however a shift in the debate, especially in the EU, became apparent; from seeing trafficking as forced prostitution, the definition shifted to understand trafficking more as illegal immigration (Wijers 2000, 212-214). This is a good illustration of the move in the international discourse on trafficking, from defining the phenomenon in terms of violence against women and the problem of state control over prostitution, to the change of focus towards seeing trafficking as an organised crime (Wijers 2000, 214, Askola 2007, 123-24). This discourse is at the heart of the European anti-trafficking policy (Andrijasevic 2003, 251).

In the EU today there is a development towards a harmonised definition of trafficking, through the UN *Trafficking Protocol*, which is a supplementing protocol to the adopted UN *Convention against Transnational Organized Crime* (Askola 2007, 123). This illustrates how the union foremost approach anti-trafficking efforts as a criminal justice issue. As the previous discussion shows, there are many *tensions* within the problem of trafficking in the EU. In the development towards a harmonised definition a visible *nexus* can be observed between migration and prostitution, which can explain why trafficking is one of the most secretive and controversial crimes. This nexus has in turn, a special effect on the victims of trafficking, making them even more silent than other victims of crime in general (Askola 2007, 99, 108). The observation of the vulnerability of trafficking victims is at the heart of the scholarly critique of the EU's categorisation of trafficking as an organised crime (Goodey 2003; Askola 2007; Wijers 2000).

#### 4.1.2 Contemporary research debate on anti-trafficking policies in the EU

Within the current research on anti-trafficking policies and instruments within the EU many scholars, from several fields, agree on that better or other methods, to

counteract and combat the issue, are required (Hauber 1998; Goodey 2003; Askola 2007; Andrijasevic 2003; Wijers 2000). Critical voices have been raised since the last decade about the concern regarding the developments and the existing wide-spread problem of trafficking in women for sexual exploitation in the union.

Laurie Hauber highlighted the issue already in 1998 in the Boston College International and Comparative Law Review in her article “*The Trafficking of Women for Prostitution: a Growing Problem within the European Union*”. Her concern focused both on the one hand on the increasing number of migrant women working in prostitution compared to local prostitutes, and on the other hand on the large number of women working illegally in prostitution in the EU. In relation to *reasons* for these developments she emphasizes that, concerning women trafficked to Western Europe, a shift has taken place from developing countries, to Eastern Europe. Explanations for this can be found in the combination of poverty and unemployment in Eastern Europe after the Cold war, together with strict limits on legal migration for employment in most of the EU’s member states. This has had the consequence of forcing women to traffickers if they want to get illegal employments in the EU, and in turn has also boosted organised crime (Hauber 1998, 184-85). Within the policy field Hauber calls for supplementary measures (both legal and non-legal) to the ones already existing. The new measures should include better coordination within the union and more effective enforcement mechanisms, involving preventive, deterrent and penal measures, and finally also greater support to victims (ibid, 184,199).

Since Hauber several have followed in her footsteps, however tackling the problem from different types of research fields has broadened the debate even more. Jo Goodey, a research fellow at the Office of Drugs and Crime at the UN, highlights the same reasons for the problem as Hauber does, as well as a very similar focus on supplementary measures in her criminal justice response (Goodey 2003, 415). However Goodey develops specifically on the area of victims. She stresses that, for policy recommendations to constitute a more comprehensive response to sex trafficking in women in the EU, a victim-centred approach in trafficking issues is especially important. One example being the victims’ different position compared to for example organised crime informants; sex trafficking victims are one of the most marginalized victims in the EU, and they have to be recognized as foremost victims (ibid, 425, 428). Goodey’s practical policy suggestion is that the EU’s Justice and Home Affairs policy, which focus on the migration-crime-security spectrum, should have a fourth element in the form of victimization. This is for the union to be able to give some of the most vulnerable people a fair acknowledgment within EU’s criminal justice system (ibid, 429). Finally Goodey also develops on Hauber’s reasons for trafficking in women for sexual exploitation in the EU, emphasizing on a central concept in the debate, namely, *feminization of poverty*:

“[...] legislative reform against traffickers does not address the central problem that lies at the heart of trafficking; namely, situations of poverty that drive women to accept offers of employment in the EU.” (Goodey 2003, 422)

Goodey means that the debate on migration and crime has to recognize trafficking in women for sexual exploitation as a crime of a gendered nature. However she connects this understanding to feminization of poverty through emphasizing that the concept is one of the main reasons for the trafficking of women for sex to Western Europe (Goodey 2003, 428). What she fail to notice, that some other scholars highlight concerning this concept, is the *European demand for sexual services* as one of the most prominent reasons for the existence of this type of trafficking, of poor women from the Eastern part of Europe. Legal scholar Heli Askola illustrates both a deeper analysis of the concept, as well as a deep understanding for the EU in itself, discussing trafficking in connection the European project and European integration (Askola 2007, 44). This is also reflected throughout her gender understanding of trafficking in the EU – which discusses *the lack of balance between economic and social focus within the union* (Askola 2007, 187). In this context she also catches the *multidimensional* problem that trafficking is which becomes very visible in the EU through the union's different legal dimensions:

“The internal market is where domestic prostitution policies meet EC rules and also where, important in the trafficking context, crucial gaps emerge in the treatment of non-EU citizens.”

(Askola 2007, 44)

Askola illustrates the problem of trafficking in women for sexual exploitation in a very explicit way. In her analysis of the concept of *feminization of poverty* she describes and emphasizes *prostitution as a foremost economic institution*, and the sale of sexual services' connection to complex economic and structural gender inequalities (Askola 2007, 28):

“The increasing involvement of women in prostitution outside their own countries – due to both choice and coercion – reflects the broader structural improvements in the position of the relatively privileged women in the West who, due to socio-economic improvements, no longer enter prostitution.”(Askola 2007, 28)

The migration oriented scholar Rutvica Andrijasevic describes the problem in a similar way as the scholars already presented (Andrijasevic 2003). Andrijasevic's research can, however, be distinguished on some specific points. In contrast to Goodey she stresses the problem that the construction of victimhood can create in the trafficking debate. She means that those discussions overlook the effect borders and visa regimes have on trafficked women's lives, and in turn fails to address the problematic role of the EU's immigration regulations in the trafficking context (ibid, 257-58, 266). Even though their research have much different departures and focuses, Andrijasevic and Askola both manage to emphasize the need to reallocate the responsibility for the persistence of the trafficking problem to the EU member states (Andrijasevic 2003, 266; Askola 2007, 187).

In this context one additional scholar brings a further complementary angle to the field. Marjan Wijers emphasizes what the current European measures on, and

interpretations of, the trafficking problem imply in terms of *rights*. She stresses that the union's current anti-trafficking measures focus on serving the rights of the (EU) states instead of the trafficked women. Wijers point to the importance of strengthening the rights (legal, social and human rights) for *all* women, to be able to protect them from violence and abuse. This, she emphasizes, is the essential method for the attainment of some real strategic change (Wijers 2000, 209, 227). It should be mentioned, however, that the discussion of rights within the trafficking debate is a complex one, which will be developed on more below (in 4.1.4).

#### 4.1.3 Theories correspondence with the European reality

As been demonstrated above, most of the scholars discussed have some sort of gender perspective, even though they approach the subject from different angles. The empirical developments and recent findings in the field correspond with the concerns raised in the theoretical debate presented above – the problem of trafficking in women in the union is long-lasting, despite extensive policy developments (Europol 2011, 14; Askola 2007 article, 208-10). Noticeably, the EU's policies do not seem to be effective enough, if at all, in this area.

Moreover, two separate and fairly new studies (financially supported by the European Parliament and the European Commission respectively) both points to that legalized prostitution seem to increase trafficking (Di Nicola et al 2005; Cho et al 2011). Those studies (which will be discussed more in detail in 4.2.3) compensate the debate especially well, with quantitative findings that can support the many qualitative studies in the field. For a long time several scholars within the feminist debate, as well as non-governmental organisations (NGOs) and governmental actors, have pointed to the connection between legalized prostitution and the increase of trafficking (see for example Jeffreys and Sullivan 2002; O'Connor and Healy 2006 (European Women's Lobby/CATW); SOU 2010:49) and the problem of opposing trafficking but supporting prostitution as a legitimate work for poor women (Farley 2004).

The developments within the EU's institutions of more serious support for studies in this area, point to that the perspective on *the demand side* of trafficking, has been given some sort of space in the EU's policy debate in recent years. In actual policies, this can for example be seen in the *EU Plan on Trafficking* from 2005, where the very controversial question of how to reduce the demand side of trafficking, got its own heading (Askola 2007 article, 216; EU Plan on trafficking 2005). At the same time, as mentioned several times above, the actual situation within the problem of trafficking in women for sexual exploitation in the EU does not seem to be tackled effectively in any noticeable way.

#### 4.1.4 A note on feminism and the prostitution debate

Feminist theory can be of great value when trying to understand the complex phenomenon of trafficking in women for sexual exploitation, and it gives a nuanced picture of the problem on the aspect of gender (Askola 2007, 22, 33). In terms of the concept of trafficking, feminist scholars have shown that, human trafficking and trafficking in women, are not interchangeable. The gender perspective on trafficking acknowledges the dissymmetry of gender relations that surrounds trafficking (Andrijasevic 2003, 251). To be able to fully understand the problem of trafficking from a gender perspective (as the definition in this thesis implies and aims to do), the feminist scholarship and debate surrounding prostitution is a useful tool for the illustration of the problem.

The probably most famous feminist debate on prostitution concerns the issue of *oppression*. To describe the debate at its extreme ends; one side see *prostitution as exploitation* of women where prostitution enforces their subordinated position, and the other side see *prostitution as work* where prostitutes make independent free choices about their lives and bodies. Although this debate can tend to circulate around dichotomies, feminist analyses on either side contribute with nuanced illustrations of why prostitution is very problematic for gender equality (Askola 2007, 27). The feminist debate on prostitution can to some extent be described in parallel with the feminist debate on trafficking, through the juxtapositions of the two feminist coalitions of NGOs deeply involved in working with anti-trafficking efforts. The Coalition against Trafficking in Women (CATW) and the Global alliance Against Trafficking in Women (GAATW) have different understandings of prostitution and take different standpoints in the debate. CATW see the connection between prostitution and trafficking as very important, as well as the need to tackle the demand more seriously. The organisation acknowledges prostitution as always exploitative, hence does not make a distinction between free and forced prostitution (Catwinternational 2012). GAATW, on the other hand, has a different focus, concentrating on improving and working for women's human rights. The organisation stresses safer migration and better safety in the work place as vital in its anti-trafficking efforts (GAATW 2012). Concerning prostitution, GAATW do not see it as in itself exploitative, rather as a form of work as any other. Instead, GAATW makes a distinction between chosen and coerced prostitution, condemning any form of forced prostitution. One motivation for this standpoint is to empower women instead of treating all women in prostitution and trafficking as victims (Askola 2007, 42).

Askola stresses that the different tensions in the feminist debate, described above, to some degree are illusionary. This in the sense that the issues surrounding trafficking and prostitution are on many levels complex and not obvious. Importantly, what the feminist scholarship on prostitution and trafficking successes to acknowledge, compared to many other actors, are the contemporary *conceptualization of trafficking* (discussed earlier) as well as the need for *broader analyses*. Many factors within the area have to be explored much more extensively as, among other things, the globalization of sex industries and the growing demand for sexual services (Askola 2007, 34-35).

#### 4.1.5 Final remarks and possible contribution to the research field

With her book, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*, legal scholar Heli Askola stands out to some extent in the research field. As presented above she addresses the problem of trafficking in the EU from a broad but still focused perspective; looking at *the EU policy level*, from an intervening legal and gender perspective. She acknowledges the many trends in the research debate, but still does not take a clear stand on prostitution, as often common in the parallel feminist debate on the subject (Askola 2007, 33-34). This thesis aspires to, for some extent, build on Askola's work. This is considered to be much suitable in regard to the thesis constructive methodological aim. As the quote in the beginning of this chapter demonstrated; Askola stipulates broader measures. Moreover she also actually addresses the possibility for the union to be more *constructive* within its contributions to the policy debate on trafficking, in the spirit of long-term, sustainable, solutions (Askola 2007, 132; Askola 2007 article 213, 216-217). Askola is also understood here as one of the scholars that most to the point present the challenge for the EU within the trafficking dilemma:

“[...] we have to recognize the multiple ways in which the European Union is part of the problem in order to conceive of ways of making it a part of the solution as well.” (Askola 2007, 187)

In relation to strengths' in the research field, this thesis will use the contemporary theoretical framework presented above, by mostly legal and feminist scholars. This will be used to map out the weaknesses of the existing anti-trafficking efforts on the EU policy level. The concept of *feminization of poverty* will be used as a conceptual tool in the analysis to describe the connection between trafficking and prostitution in the union. Finally this will open up for the discussion of prostitution's place on the EU's international crime agenda, and put focus on gender approaches ability to touch upon the EU's (supranational) policy level.

The theoretical critique and aspired contribution in this context, that differs from Askola's standpoint, is in this thesis the discussion on if it is desirable (on EU policy level) to actually take some sort of stand point in the prostitution debate and if the EU and its member states maybe have to address the question more seriously if a better and effective method towards combating trafficking will be possible. In this context the latest research on legalized prostitution's possible connection to increases in human trafficking, is taken into consideration in relation to other, more critical research, on the issue (example Hubbard et al 2008; Wijers 2000). Askola points out that this can be too ideological (Askola 2007, 162). This paper, however, intends to discuss if the prostitution legislation area still could be a way of more possibilities, compared to dealing with trafficking on the migration legislation level. This is why the focus for this research will be more on the connection between trafficking and prostitution, then on migration. However the two different nexus's are closely connected, which is why migration

naturally also will be discussed. Another reason and motivation for the prostitution focus is both the European Parliaments stand (same as CATW, see prostitution discussion above) in this debate, which is a current development of interest, together with a questioned need to go back to this focus after recent years of debate focusing on the migration-crime-security spectrum. Some self-criticism at this point could be that this view is too delimited. Hence, Askola pointing to the fact that the question at hand should be tackled from multiple angles (Askola 207, 187). There is an awareness of this, but this type of delimitation is believed to be necessary for the format of this thesis.

Finally regarding the application of theories: *The throughout feminist theoretical perspective is of much importance, in the sense that it will be used as a tool to understand the complex contemporary debate around trafficking and prostitution.* It is of interest for methodological reasons to have this type of critical perspective in a constructive research approach, where the critique is an instrument to be used to be able to reach the constructive goal (Fernández 2005, 41-42). In this context the application of the theories to the phenomenon of trafficking in the EU, is hoped to be able to present a critical contribution to the existing discourse and debate about anti-trafficking policies in the EU.

## 4.2 Trafficking in the EU – the Current Situation

### 4.2.1 Numbers and the scale of the problem

In 2005 the President-in-Offices of the Council stated that around 600 000-800 000 people are trafficked throughout the world each year. Over 100 000 of those people are women trafficked into the EU (European Parliament Resolution 2006, B). The International Organization for Migration (IOM) estimated in 1998 that around 500 000 women were trafficked into Western Europe per year (Askola 2007, 16). Furthermore the UN's Office on Drugs and Crime (UNODC) states on their website that the overall estimate today of the numbers of trafficked people is 2,5 million (that however, according to them, includes all types of forced labour) (UNODC 2012). The International Labour Organization (ILO) state that 12,3 million people worldwide are held in forced labour, and around 2,4 million out of those people are trafficking victims (ILO 2008, 3). Those diverse figures illustrate the difficulty with statistics on trafficking. Trafficking statistics, as well as the results of studies on trafficking, primary depend on what one sets out to measure or research. A crucial factor is also the dependence on how one defines trafficking (Askola 2007, 16) compared to other forms of forced labour e.g., human smuggling (as has been discussed in the previous theoretical part).

However, what different sources have in common, is that they all emphasize the major scale of the problem (Europol 2011, Askola 2007; Di Nicola et al 2005, vii; European Parliament Resolution 2006). As been highlighted in the

introduction of this thesis, Europol's report on trafficking in the EU from 2011 stresses that many factors seem to point to that there will not be any direct or extensive reduction of trafficking in Europe, in the near future (Europol 2011, 14). Furthermore, the European Parliament state that trafficking is the fastest growing area within organised crime (European Parliament Resolution 2006, I). One of the parliaments more practical suggestions in relation to the scale of the problem has been suggested as follows:

“[...] in order to achieve zero tolerance of trafficking, the Union should set some visible and credible targets, such as halving the number of victims of trafficking over the next 10 years; whereas, however, the overriding objective should of course be to fully eliminate this form of very serious crime and gross violation of human rights as quickly as possible,” (European Parliament Resolution 2006, 3)

The fact still is that; despite over a decade of anti-trafficking actions within the EU, through legal measures, the treaties and political declarations – there are no real improvements of the situation (European Parliament Resolution 2006, I; Askola 2007 article, 208-10; Europol 2011). To be able to scrutinize this fact in the analysis, a deeper look into the European reality of the problem of trafficking, and the conditions that exists there, will now be presented.

#### 4.2.2 Supply and demand – victims and offenders

The situation within trafficking for sexual exploitation in the EU clearly shows that this type of trafficking often consists of a gendered unbalance concerning the victims, i.e., the supply side of trafficking. In the EU today, as well as globally, most victims of trafficking for sexual exploitation are young women and girls (SOU 2010:49, 31; Europol 2011, 4). This type of trafficking, trafficking for sexual exploitation, is the most common form of trafficking in the EU. What it means is that women and girls are forced into different types of prostitution (Europol 2011, 7). In contrast to the supply side of trafficking, the demand side, i.e. the sex-buying offenders, consists mainly of men:

“[...] the primary factor that perpetuates both human trafficking and prostitution is demand, i.e. that people, mainly men, purchase sex.” (SOU 2010:49, 30-31)

The quote connects the male demand for trafficking with the male demand for prostitution. Within this context, when trafficking is connected to prostitution, another unbalance concerning the supply side of trafficking, specific for the EU context, can be observed. The majority, or at least an increasing number, of the prostitutes in the EU today seems to be non-EU nationals (Askola 2007, 31; Hubbard et al 2008, 139). This could entail that many of those prostitutes, maybe even a majority, are trafficking victims (Hubbard et al 2008, 139).

The question of the supply and the demand sides of trafficking can be viewed in the light of the ‘root causes’ of trafficking. When it comes to indicators for the

‘root causes’ of trafficking, so called “push factors” seem to be, among other things, gender, sexual and ethnic discrimination. Examples of “pull factors” on the other hand, are the demand for both sexual services as well as cheap labour for the sex industry (Europol 2011, 4).

Europol, which is the European organisation that assists the law enforcement authorities in the EU in their fight against trafficking (Europol 2011, 3), stresses that recognizing the root causes of trafficking is far more important than other anti-trafficking methods. When identifying indicators for the root causes of trafficking both push and pull factors (i.e. the supply as well as the demand side of trafficking) have to be considered (Europol, 2011, 4-5). In line with this, Askola emphasises that for the possibility to fight the root causes of trafficking, broader anti-trafficking measures are needed (Askola 2007 article, 216), which is here understood as crucial for anti-trafficking actions to be effective.

So far most of the EU’s anti-trafficking efforts have focused to a large extent on the supply side of the problem (Askola 2007 article, 214-215), through the union’s organised crime approach. One example is that the EU is preventing migrants of coming into the union in the first place, ‘for their own good’ (Askola 2007, 99, 65). The interesting issue, in terms of effectiveness, is that tackling the supply side of trafficking has turned out to be almost impossible because this side (as well as irregular migration) is extremely hard to control (Askola 2007 article, 214-15). The demand side on the other hand, could be easier for the EU and its member states to influence effectively (Askola 2007 article, 214).

To summarize; concerning supply and demand, in the context of the market for sexual services within the EU’s Internal Market, it is no secret or doubt that the common pattern consists of wealthy European men, buying non EU-national, often underprivileged, women (Askola 2007, 55, 64-65). The sensitive question, within the issue and debate surrounding trafficking for sexual exploitation, is if the demand for trafficking (forced prostitution) and the demand for prostitution (forced and illegal<sup>1</sup>, as well as free and legal/illegal prostitution) can be connected. As been highlighted earlier, a growing number of studies within this area have found that legalized prostitution possibly increases trafficking (Cho et al 2011; Di Nicola et al 2005; Jeffreys and Sullivan 2002; O’Connor and Healy 2006). In the light of this, something should be said about prostitution legislation within the EU and the research surrounding it.

### 4.2.3 Prostitution legislation

Prostitution is legal in most of the member states in the EU (Di Nicola et al 2005, 44). The legislation differs however between different countries and four major

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<sup>1</sup> Not all forced/illegal prostitution can be recognised as trafficking. For example, many member states in the EU recognise prostitution in brothels, where a third party can profit from the prostitution of others, as forced and illegal prostitution. This is a complex matter however, when forced prostitution still is interpreted differently in different EU member states. Sweden for example, recognises all types of prostitution as exploitation and as an illegal practise (Di Nicola et al 2005, 15, 39, 44).

types of prostitution legislation can be recognised. *Abolitionism* and *new abolitionism* are similar types of legislation, which both recognise prostitution as legal. Abolitionist policies do not allow persons to profit from prostitution, this activity is criminalised. New abolitionist policies go one step further and criminalise brothels i.e. indoor prostitution. The *prohibitionist* type of legislation prohibits all types of prostitution. Different countries that use prohibitionist policies have, however, different ways of penalising those involved; prohibitionist countries often punish for example brothel owners and some countries (for example Sweden) are also punishing the clients. Legislation of a *regulationist* type allows all types of prostitution, as long it is exercised in accordance with regulations put up by the state (Di Nicola et al 2005, 15-16, 29, 44).

The arguments are many for either of the above described prostitution-legislation approaches (see for example Wijers 2000 (regulationism), SOU 2010:49 and Jeffreys and Sullivan 2002 (prohibitionism)). One example is the classic argument for legalised prostitution, which stresses that it has to be recognized as work as any other in the EU, for the possibility to guarantee women within the sex industry their rights' as workers. This is considered to give migrant women, even in the informal sector, better working rights (Wijers 2000, 225-27). Legal scholar Hubbard and others argue that prostitutes in different countries, that have different prostitution legislation, all seem to be isolated from the rest of society. Hence, according to this argument prostitution still seems to be "allowed" to exist to some extent in the EU, no matter which legislation is being used. In relation to trafficking however, the question of interest for this thesis is if some type of prostitution legislation possibly can decrease trafficking. Hubbard and others highlight one very interesting example in this context: Each year 200-500 women are trafficked into Sweden (which is a prohibitionist country), compared to Finland (which is a new abolitionist country) where 17,000 are trafficked each year (Hubbard et al 2008, 147). Hubbard and others do not reflect much on those numbers (ibid), and as has been discussed earlier, estimates of trafficking statistics is a highly complex matter. Nevertheless, this thesis stresses that it is hard to ignore the extreme difference that the numbers imply.

The arguments above should be kept in mind when looking at some of the latest research on legalized prostitution's possible connection to increases in human trafficking. In a study from 2006, Di Nicola and others show that; the prohibitionist type of prostitution legislation seems to generate less trafficking victims, compared to regulationist and new abolitionist types of prostitution legislation, which in turn seem to produce more trafficking victims. The scholars of the article however point to the fact that this area is very complex to examine, and therefore ask for research of more reliable and comparable empirical statistics to support the finding (Di Nicola 2006, 132-133). In 2011, Cho and others contributed with this in their research article: "*Does Legalized Prostitution Increase Human Trafficking?*". The article conclude that, against the background of economic theory there are two effects of interest in relation to the impact of legalised prostitution on inflows of human trafficking, *the scale effect* and *the substitution effect*. The argument behind the scale effect is that if prostitution is legalised the entire prostitution market expands, hence trafficking increases. The

substitution effect represents a counterargument; if prostitution is legalised the demand for trafficked prostitutes decrease in favour of prostitutes who have legal residence in the country. The scientists behind the study found that, through a quantitative empirical analysis of 150 countries, the scale effect dominated the substitution effect (i.e. in countries where prostitution is legal there is an extensive amount of trafficking inflows). To support their findings Cho and others used the case of Sweden, as an example of a prohibitionist policy's affect on decreasing the numbers of trafficking (Cho et al 2011, 17-18, 20). It should be noted that Swedish feminists have made this case for quite some time (see for example Ekberg, 2004). The authors do, however, also ask for even more research to support their findings (as many scholars do within this field) (Cho et al 2011, 21). This thesis will, in this context, once again emphasizes the importance of not ignoring the extensive amount of qualitative research already existing in this field, which is a good complement to this new quantitative research.

*In the light of this; prostitution can be seen as an engine for trafficking.* This stresses the need to address the demand for all types of prostitution within anti-trafficking policy, if the objective is to combat trafficking in its entirety. This will be specifically addressed in the constructive analysis. To be able to do this, an overview will now be presented of the unions anti-trafficking efforts during (foremost) the latest decade.

## 4.3 Anti-trafficking Responses in the EU

### 4.3.1 Background

Trafficking in women for sexual exploitation has been a subject on the international political agenda for a long time. Going back a century, the debate concerned the so called *white slavery* and several international treaties tried to address and counteract the complex matter (Wijers 2000, 209). Two international agreements from the last century, that most of the EU's member states have ratified, specifically address trafficking in *women* for sexual exploitation. These are; the 1949 UN *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, and the UN *Convention on the Elimination of All Forms of Discrimination Against Women*, from 1979 (Hauber 1998, 191-92; UN Treaty Collection 2012). In terms of time it seems to have been a quieter debate between those conventions, but after the introduction of the 1979 Convention the trafficking debate reappeared on the political agenda. Concerning policy suggestions within the EU this became especially visible in the 1990s and onwards (Wijers 2000, 209, 211). What is special with the two Conventions presented above, compared to other international documents, is that they address the elimination of trafficking in women through dealing explicitly with the question of prostitution (Hauber 1998, 191-92). The 1949 UN Convention was,

until the millennium, the only instrument that addressed trafficking under international law.

In the year 2000 a new document was introduced, the UN *Trafficking Protocol* (under the UN Convention against Transnational Organized Crime) also called the Palermo Protocol, as the new key international legal instrument. At a first glance the Convention and the Protocol can be understood as rather similar, both address trafficking as foremost a criminal matter (O'Connor and Healy 2006, 33; Askola 2007, 123-124). The Protocol also to some extent includes the same understanding of trafficking as in the Convention; it cannot be separated from exploitation of prostitution, and the understanding of the victim's consent to be irrelevant (O'Connor and Healy 2006, 33). However, the Protocol defines what it actually means by trafficking, which the 1949 Convention did not. The focus of the two documents is probably what differs most between them. The Convention aimed both at abolishing state control over prostitution and prostitutes, and at making states obligated to work against prostitution through different types of social measures. It even encouraged states to work to try to prevent women and children from entering prostitution through employment agencies. Finally, it addressed states' responsibility for the rehabilitation of victims of prostitution. The UN Protocol on the other hand, works against trafficking through exclusively combating it as a substantial transnational organised crime. It only mentions prostitution once, in the definition of exploitation, and in this way disconnects it to some extent from trafficking (UN Convention 1949; UN Trafficking Protocol 2000; Askola 2007, 123-124).

The above is of importance for two reasons in this context. First, not mentioning prostitution as an, at least alternative, way to tackle trafficking, ignores an extensive amount of research that stress that the essential connection between the two (SOU 2010:49; Farley 2004; O'Connor and Healy 2006; Askola 2007; Jeffreys and Sullivan 2002; European Parliament Resolution 2006). Second, not focusing on prostitution as part of the problem of trafficking could be a way for the UN to ensure that member states ratifies the Protocol; considering that for example many EU countries legally allow prostitution, while trafficking is prohibited through EU Law (Di Nicola et al 2005, viii, CFREU, Art: 5(3)). The current situation in the EU portrays a somewhat sceptic picture for the Protocol; many member states have taken some time to ratify it. However, the union itself has developed an (still emergent) extensive, and to some extent legally binding, policy framework in this area which on some aspects build much upon the Protocol (Askola 2007, 124-125, 132).

Before going further something should be mentioned concerning the question of *responsibility* of the EU and the member states respectively, concerning law enforcements of anti-trafficking action. It is of much importance to be aware of that action's against trafficking in the EU, is much dependent on national concerns and frameworks, which in the end often is the arena for dealing with the criminal proceedings of trafficking. Prostitution and migration plays certain roles in this context (Askola 2007, 131):

“Responses to trafficking to a high degree stem from national framework for dealing with prostitution-related problems, even if the element of migration has acted as the catalyst in emphasising the importance of taking common action.” (Askola 2007, 131)

In this context, some specific concerns are apparent in relation to *the effectiveness* of common EU anti-trafficking actions. The trafficking problem in the EU is an example of an area where the EU’s capacity is limited; the union’s role is restricted within practical law enforcement actions. Reasons for this are for example the member states’ central role as well as some member states’ suspicious attitudes towards European initiatives within this field. Furthermore there is a challenge implied in dealing with gender equality issues within the area of justice and home affairs (Askola 2007 article, 211, 217). The developments and tensions highlighted above are essential to have in mind when turning to the more specific policy developments on the EU level.

#### 4.3.2 A review of EU policy on trafficking in the latest decade

During the 1990’s the union’s broad policy spectrum on trafficking began to develop. The European Parliament was the original initiator, with the adoption of four resolutions (1989, -93, -96 and -97). Both the Commission and the Council followed, together with the Council of Europe (Wijers 2000, 211). Since then the EU has developed legally binding instruments, together with a series of other documents (Askola 2007 article, 208). To understand the massive actions taken in this area it is appropriate with a short presentation of the policy developments of the last decade, before looking deeper at two of the most extensive common policies in the analysis.

In 2002 the EU adopted its first legally binding policy instrument against trafficking, the *Council Framework Decision on Combating Trafficking in Human Beings*. What is special with this particular EU policy, except that it is legally binding, is its connection to the Charter of Fundamental Rights (Askola 2007, article 208-209). The Charter, which explicitly prohibits trafficking (CFREU 2010, article 5(3)), was proclaimed by the EU institutions around the same time as the Commission proposed the Framework Decision to the Council and Parliament. When the Framework Decision was adopted it became an instrument for putting the Charter’s prohibition of trafficking into practice. This was done through establishing a common framework of provisions on the criminalisation of trafficking, on for example effective penalties (Askola 2007 article, 209). Following the Council Framework Decision, the so called Brussels Declaration (Council Declaration) was introduced in the same year. This policy developed on more concrete measures, standards and best practices to prevent trafficking. In the following year of 2003, the Commission appointed an Expert Group on trafficking in human beings. Then, in 2004 the second legally binding policy instrument was adopted, the Directive on the short-term residence permit for victims of trafficking. The hope was to, among other things, help and encourages third-country national victims to cooperate with authorities during criminal

proceedings. However, the residence permits were to be granted only for the temporary time that the proceedings lasted, and did not include more permanent rights for victims to stay (Askola 2007 article, 208-10).

The already mentioned Commission Expert Group's report came in 2004, which in turn contained a large amount of recommendations for a new Communication. This led to the Commission's proposal for an Action Plan (in parallel with the UK's presidency goal on EU-wide cooperation on trafficking actions), which was adopted as the *EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings*, in 2005 (EU Plan on Trafficking 2005; Askola 2007 article, 208-209, 215). In the same year another EU institution presented its contribution to this policy field; the *Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe Convention 2005). The EU Plan and the Council of Europe's Convention, together with the two legally binding instruments (presented above), would be the major EU joint-efforts on trafficking in the years to come. In 2011 however, the Council Framework Decision was replaced by the *Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims* (Directive 2011/36/EU). Except common policies it shall also be mentioned that both conferences, as well as several programs<sup>2</sup>, have further been a part of the intense EU anti-trafficking response during the first decade of the 21<sup>st</sup> century. On the complex EU policy level of anti-trafficking efforts, another thing of importance for the dynamic of this development is certain actor's and their roles. Compared to the other institutions, the European Parliament can be seen as to some extent radical, in terms of the trafficking debate. Therefore the Parliament's role will shortly be considered. This will be done in relation to the European Court of Justice (ECJ), which takes an opposite position in the debate.

#### 4.3.3 The juxtapositions of the European Parliament and the ECJ

In addition to the EU's common efforts, the European Parliament has continued to play an active role within this policy debate. In both 2006 and also recently in 2011 it has produced two new resolutions on the subject. The Parliament's resolution from 2006 especially addressed the fight against trafficking of women and children (European Parliament Resolution 2006), while the latest resolution from 2011 mainly addresses violence against women. However the 2011 resolution is unique in a sense, because of the way violence is connected to prostitution and trafficking. In this resolution, the Parliament states that prostitution is a form of violence against women, while also highlighting its concern for the serious problem of prostitution in the EU. In parallel, attention is drawn to the increase in human trafficking, especially with women and children in the EU (European Parliament Resolution 2011, J, 19). In relation to the theoretical

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<sup>2</sup> One example is the Hague Programme on Freedom Security and Justice, which evaluates relevant EU legislation (Askola 2007 article, 209).

perspective, this illustrates that the European Parliament takes a clear stand in the interconnected feminist debate on prostitution and trafficking. The Parliament, in the light of those resolutions, takes a similar stand as two influential radical NGOs; *the European Women's Lobby* and CATW (O'Connor and Healy 2006; Catwinternational 2012). Hence, the European Parliament recognizes prostitution as exploitation rather than work. The Parliament's stand is interesting in the European context in relation to the two common policy responses (the EU Plan and the Directive) which will be discussed more in-depth in the analysis, which neither directly discuss the problem of prostitution in the EU (EU Plan on Trafficking 2005; Directive 2011/36/EU).

The European Parliament is, through the two resolutions described above, the only EU institution that has actively taken a stand in the prostitution debate. In this context, something could however be said about the ECJ's role. The ECJ claims not to take a stand in the debate on prostitution, but the court has however been involved in the question indirectly through several legal cases. EC law has had to engage in the question via cases which concern whether national prostitution legislation, that allows prostitution (to some extent), should account for prostitutes from other countries that move to the member state in question. In short the ECJ has, through those cases, recognized prostitution as both acceptable and as a type of work. This statement is based around the fact that most of the EU's member states do not prohibit selling sex, and therefore it must be tolerable within the EU's Internal Market. What is important to be aware of in this context is that the ECJ's action shows that the court (even though it denies it) has taken a stand in the feminist prostitution debate, which in turn affects domestic policies on prostitution (Askola 2007, 53-54, 57). When the court classifies prostitution as work it overlooks the gender inequality dimension of prostitution in the EU. The question of prostitutes' freedom of choice can for example depend, not just on actual physical force into prostitution, but on factors such as poverty and discrimination that delimit genuine choice. This evidently illustrates that the ECJ seems to prioritize economic freedom (in the market) over social rights (of the individual) in the EU, within questions of gender politics (Askola 2007, 55, 57-59).

Finally, concerning the trafficking problem in the EU those juxtapositions of, the European Parliament and the ECJ respectively, are of importance to be aware of in the light of the ineffective anti-trafficking policies. The major concern for anti-trafficking efforts is in this context the limits EU law necessary may have on anti-trafficking actions (Askola 2007, 64). The possible limitation is here understood to be the lack, in the legal context, of a true gender understanding of the problem of trafficking in the EU.

## 5 Constructive analysis

“As long as those that writes the laws in the world refuses to openly discuss the sex industry – in all its variety – the slave trade will continue to increase” [*my translation*] (Cacho 2011, 324-25)

### 5.1 The Norm and the European Reality

*The normative dimension* of this thesis constructed a norm, which states that “trafficking is oppression”. Because of the EU’s active stand against oppressive practices, both legally and politically, the norm justifies that trafficking has to be combated in the EU. When looking at *the empirical dimension* of this thesis, it becomes obvious that the norm and the European reality are far apart; the conditions on trafficking implied by the norm are not realized in the contemporary EU context, where trafficking is a major problem. The question is *why* the norm and the European reality are disconnected and *what* in the EU’s anti-trafficking policies that can explain the union’s ineffective fight against trafficking. An attempt to describe this current inconsistency, between norm and reality, will be done through analysing the problem of trafficking in women for sexual exploitation in the EU, in relation to the norm.

While the norm states that trafficking is oppression, the oppressive European reality, of trafficking in women for sexual exploitation, can be demonstrated through the concept of *feminization of poverty* (discussed in the theoretical section 4.1). This comprehensive concept should in this context be understood in relation to trafficking in the EU; the most common form of trafficking in the union being *trafficking in women* for sexual exploitation. Poverty is both a crucial factor that drives women into trafficking, but also what makes them extremely vulnerable as trafficking victims in the EU, where the sale of sexual services (prostitution as well as trafficking) are connected to complex economic as well as structural gender inequalities. To be able to understand the oppressive nature of trafficking in the EU the phenomenon can be structured through *the nexus of migration and prostitution*. Migration can under these circumstances be connected to illegal migration, which in turn can be related to the supply of underprivileged women, often from Eastern Europe, for the EU’s sex industry. Prostitution on the other hand, can in this context be connected to both forced prostitution (trafficking) and free and legal/illegal prostitution, which in turn can be related to the demand by EU citizen men for sexual services. The ultimate form of oppression in this context is understood as sexual slavery by poor women in the EU’s sex market, where most buyers are wealthy EU citizen men.

*The concept of feminization of poverty, in relation to trafficking in the EU, connects trafficking with prostitution; both within trafficking as well as prostitution the same gender unbalance is prevailing in terms of supply and demand as well as between victims and offenders.* This can be explained in the light of the union's negative understanding of freedom (analysed in the normative dimension). If looking close at the nexus of migration and prostitution and relating it to the EU's anti-trafficking policies, it becomes clear that the union has prioritized foremost one side of the nexus; the illegal migration and the connected supply side of trafficking. Migration has acted as the catalyst for harmonizing trafficking actions. This can be exemplified through the repressive character of the union's fight against trafficking, where repressive measures have dominated common actions. Examples are restricted immigration policies and the union's definition and understanding of trafficking, in line with the UN Trafficking Protocol's definition, as a form of transnational organised crime. Those types of actions and standpoints can clearly be connected to a negative freedom view, where freedom is understood to be foremost freedom from barriers to choice; hence, the customers on the EU's sex market, as well as the free movement of goods/services (prostitutes), have so far not been affected much by EU's anti-trafficking policies. Instead the union has chosen to tackle the problem through tackling the borders, which do not affect EU citizen's freedom from barriers to choice, but instead affect those who already are banned from entering the EU (i.e. immigrants' positive freedom, to escape poverty for the possibility of improved social and individual human rights, is threatened).

In terms of feminization of poverty the EU's contemporary trafficking profile has shown to be counterproductive in the sense that illegal immigration (the supply side of trafficking) in itself seems almost impossible to control. Furthermore organised crime networks do not seem to be too affected by restricted immigration policies, rather their position is strengthened when they become the only way for many poor women to flee from poverty and abuse outside of the EU. The lack of a positive understanding of freedom in the EU opens up for oppressive practices within the union. Non EU-national women in all types of prostitution in the EU, both those who have been forced there as well as those who came freely, are in a very vulnerable position because of their lack of rights as well protection.

In the context described above, two paradoxes can be observed. First, for the possibility of tackling the root causes of trafficking, several sources (Europol among others) point to the fact that both sides of trafficking, the supply as well as the demand side, have to be tackled. Furthermore many sources stress that the demand side of prostitution should be connected to the demand side of trafficking in this context. Secondly in line with this, even though common anti-trafficking actions are often handled through dealing with migration-related issues, the domestic fight against trafficking, in separate EU member states, seems to be tackling trafficking through dealing with prostitution-related issues.

The major gap described above, between the norm and the European reality within the phenomenon of trafficking in the EU, illustrates the ineffectiveness of the EU's anti-trafficking policies. To summarize, the ineffectiveness of the

policies can be explained through that only one side of the trafficking nexus is tackled, which is as described above not the way to be handling the root causes of the problem. In line with this, there is a biased framing of the problem in the union; the EU frames the whole phenomenon of trafficking as an organised crime, which has the consequence that the definition lacks a true picture of the nature of the problem of trafficking in the EU. Hence, trafficking in the EU context is to a large extent a gender specific problem. Last, but not least, there is an inconsistency between the EU's objective (combating trafficking in its entirety, hence it is prohibited) and its anti-trafficking actions. This can be illustrated through that the union only fight half the battle, the one at the borders, ignoring the other closer one at home, which is the fight against the European demand for trafficking.

Against this background, two of the EU's latest common policies on trafficking will be analysed next, with the aim to exemplify the ineffectiveness in more detail, i.e., the neglected factors in the policies.

## 5.2 Two Key EU Policies on Trafficking

A further focus will now be applied to the following two anti-trafficking policy responses, namely:

- The EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings (2005)
- The Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (2011)

Those two policy documents are considered especially relevant in this context, because of foremost three specific reasons. First, as demonstrated above, they both represents the latest, more heavily, policy-initiatives on the EU level. The Directive is considered especially important because of its actual legal weight, but in terms of discussion, the EU Plan is considered an appropriate policy for comparison. This is connected to the second reason; those specific policies are considered especially interesting to discuss in relation to each other, when they are two, out of only three, common EU anti-trafficking policies that in writing address the sensitive question of *demand* (the third is the *Council of Europe Convention on Action against Trafficking in Human Beings*). Thirdly, both policies interpret trafficking in line with the UN Trafficking Protocol, however, as will be illustrated, they still differ as policies to some extent.

### 5.2.1 The EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings

The EU Plan from 2005 is unique in the way it systematically connects the union's objectives in this area with proposed actions, timetable, responsible party and assessment tools. For the fight against trafficking to be effective the Plan states that an integrated approach is needed. This entails that the actions should pay attention to human rights and the global nature of the problem. A coordinated policy response is stipulated in, among others, the area of freedom, security and justice, as well as areas of gender equality and non-discrimination. Concerning gender equality, the EU Plan addresses, as has been mentioned, the need to eliminate *the demand for sexual exploitation*. In this context, gender specific prevention strategies are emphasized as a key element to combat trafficking in women and girls. However, when going into more details of how the union can prevent trafficking the suggested assessment tools and indicators are extremely thin and disconnected in relation to the grand objectives and suggested actions. Point 3 from the EU Plan, on preventing trafficking, will stand as an example. The objective is to address the root causes of trafficking. Suggested need of action is stressed as:

“Member States and EU institutions to support anti-trafficking initiatives as well as broader measures addressing root causes, especially poverty, insecurity and exclusion and gender inequalities.” (EU Plan on Trafficking 2005, 3.1. (a))

Proposed assessment tool and indication for this very broad objective is that the Commission will hold a seminar for the member states, with the aim to gather information and share best practice, as well as to develop on indicators in this area. The fact that the word prostitution is never mentioned, as well as is neither the gender unbalance within the market for sexual services on the EU's Internal Market, is worth noting. The theoretical background to this thesis, as well as the discussion above about the gap between the norm and the European reality, emphasized; (1) the European demand for sexual services as one of the most prominent reasons for the existence of this type of trafficking, (2) the lack of balance between economic and social focus within the union and (3) the crucial gaps that this seems to create in the treatment of non-EU citizens in prostitution (together with the fact that there seem to be an increasing number of migrant women compared to locals within prostitution in the EU). Against this theoretical background it is difficult to understand the absence, in the EU Plan, of the connection between feminization of poverty, demand for sexual services and the EU's free market. The Plan mentions that anti-poverty strategies should be an important part of anti-trafficking strategies. What it fails to do, both within the question of poverty and within the question of demand, is to make the necessary connections to gender and nationality. According to theoretical gender perspectives this is crucial, for a true gender understanding of the problem of trafficking for sexual exploitation. Similar concerns have been raised by legal scholar Heli Askola who stresses that:

“[...]in particular when contrasted against the Experts Group report, the [...] Action Plan look rather meagre in terms of concrete measures needed in order to tip the balance in favour of more a proactive and wideranging approach aimed at tackling the poor legal and social position of women as workers and as migrants.” (Askola article 2007, 216)

Askola emphasizes however, that the challenge for the union lies in making sure that the positive elements of the EU Plan, as for example the stated human rights commitment, do not remain window-dressing. This is of especially great importance in the context of the EU’s general anti-trafficking approach discussed above, which is dominated by an *organised crime* focus (clearly visible in the EU Plan as well). However, this is even more evident in the other key EU policy on trafficking, that will be scrutinized next.

### 5.2.2 The Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims

The first paragraph of the Directive, from 2011, states the high level of priority trafficking has today, for the union and its member states. Already from the beginning the focus on trafficking, as a foremost organised crime, is emphasised. This “crime-view” on the problem is highly visible throughout the document. Hence, much of the actions and following measures centre on the criminal proceedings surrounding trafficking, as for example, penalties and prosecution. The directive establishes that:

“[...] prevention, prosecution and protection of victims’ rights, are major objectives of this Directive. [...]” (Directive 2011/36/EU, (7))

From a theoretical point of view the emphasis on victims could be understood as a successful development. As been highlighted in the theoretical overview many scholars agree on that the observation of the vulnerability of trafficking victims is a both important and critical issue within anti-trafficking policy in the EU. As mentioned earlier, one of the more practical suggestions in the area presented by UN research fellow Jo Goodey in 2003 addressed the EU’s justice and home affairs policy, which centres on migration-crime-security. Goodey stressed that the policy should include a complementary element on victimization. The quote above implies this, at least in writing, to some extent. Two things are important to mention in this context. From a more negative point of view it should be emphasised that, concerning the protection of victims, the Directive foremost focus on the time from that the victims are rescued from trafficking and during the criminal proceedings. After the criminal proceedings many victims are sent home and the questions of trafficking victims’ rights to asylum is still very sensitive. A more positive development in the context is that there is now a reference to victims of *sexual violence* and that those, together with victims with other special needs, should be attended by the member states (Directive 2011/36/EU, article 11(7)). This was not addresses in the Council Framework Decision from 2002 that

this Directive replaced. While trafficking for sexual exploitation most often is connected to trafficking in women, this brings to mind the question of the place of gender in the Directive. Article one, of the Directive, clearly addresses that the common provisions that will be introduced will have a gender perspective in mind. What is remarkable in a sense is that the Council Framework Decision did not discuss gender at all. In this context it should be mentioned that the Framework Decision was presented as a document by the Council, while the replacing Directive is presented as a Directive by both the European Parliament and the Council (Council Framework Decision, 2002; Directive 2011/36/EU). It is here believed, against the background of the European Parliament's role and stand point in this debate, that the Parliament has had more influence on the Directive. The Directive's gender perspective is illustrated through the description of the understanding of trafficking:

“This Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. [...]” (Directive 2011/36/EU, (3))

What is missing from this picture, based on the theoretical context of this thesis, is the recognition of how this unbalance appears in reality. This is also one of the major factors that disconnect the constructed norm from the European reality. For a truthful gender understanding of the problem; it should be stated that it is a majority of women, often non EU-nationals, who are trafficked for the European market for sexual services. You can to some extent read this between the lines, but in relation to other paragraphs, which are much less clear concerning the gender perspective, it becomes important to be very explicit on this matter. One example is the paragraph concerning the fundamental rights that the Directive especially addresses to be respected; freedom and security as well as the prohibition of slavery and trafficking are all mentioned, in contrast to the absence of the right of gender equality (which is stated as a fundamental right in the Charter, see CFREU 2010, article 23). The shortcomings concerning the gender perspective is also visible concerning the way the Directive addresses the question of *demand*.

Paragraph 25 addresses the importance of anti-trafficking measures that tackle the demand for exploitative practices. In turn, paragraph six encourages Member state to work closely with NGOs, in particular in the field of policy-making initiatives. One example of an extensive initiative that could fit into this description is the Joint Swedish and United States Project by the European Women's Lobby (EWL) and CATW (mentioned in the theoretical overview) from 2006. The project is a joint governmental and NGO partnership with the aim to *Promoting Preventative Measures to Combat Trafficking in Human Beings for Sexual Exploitation*. It took the form of a briefing handbook on: *The Links between Prostitution and Sex Trafficking*. It is interesting to highlight coordinated NGO/governmental efforts of this kind that strongly emphasize the connection between demand for trafficking with demand for prostitution (O'Connor and Healy 2006, 10). In the Directive, prostitution is however not directly mentioned in relation to either demand or the sex buyer. Article 18(4) (with reference to

article 2) approach the issue very carefully; it gives a hint to member states that for them to be able to combat trafficking more effectively by discouraging the demand, they should consider making, among other things, the exploitation of the prostitution of others, a criminal offense. This is however a question of interpretation, depending on how states view the phenomenon of prostitution and the debate about choice and coercion that surrounds it (see A note on feminism and the prostitution debate). Despite this, it is worth noting that the Directive differs from the EU Plan, in the fact that it addresses prostitution (at all) in writing to some extent. Paragraph 14 establishes that trafficking victims should be protected from prosecution or punishment for participation in activities recognized as criminal ones in the member states, as for example prostitution or migration, which trafficked persons have been forced to participate in. Important in the context of prostitution is that it is just mentioned in relation to the victims. This is the case in paragraph 14, as well as in article 2(3) where the definition of exploitation of victims includes *the exploitation of the prostitution of others or other forms of sexual exploitation*. That the questions of the demand for sexual services, the sex industry and the European sex-buyer, are not directly discussed in relation to either prostitution, or the different member states' prostitution legislations' possible effect on anti-trafficking actions, is worth noting. Paragraph 25, which addresses the question of demand, emphasises that:

“Member States should establish and/or strengthen policies to prevent trafficking in human beings, including measures to discourage and reduce the demand that fosters all forms of exploitation [...], by means of research, including research into new forms of trafficking in human beings, information, awareness-raising, and education. In such initiatives, Member States should adopt a gender perspective [...].” (Directive 2011/36/EU, 25)

The reference to research in the quote, as a way of developing on measures that can tackle the question of the demand for trafficking, is interesting in relation to the two studies discussed in the empirical dimension (see for example page 29-30), that examine prostitution legislation's connection to trafficking. The fact that those studies were financed by EU institutions, and that they both confirm and support what feminist- and gender research and reports have emphasized for some time now (that legalized prostitution seems to increase trafficking), opens up for the question of when this type of research will be taken seriously on the EU policy level. Why is it even supported by EU institutions, if they do not seem to take the findings into consideration in common policies? This is particularly relevant in relation to the EU institutions with more power, as for example the European Commission, the European Council and the ECJ. As has been stressed, the European Parliament has taken those types of research findings into consideration in its latest resolutions, the Parliament does however not have much power to alone affect member states' positions through for example the Council. One argument, in relation to the Commission, the Council and the ECJ, could be that those EU institutions do not believe that they have the competence to say anything at all about prostitution legislation, which after all is legalized separately by each member state. The constructive proposal below will suggest how the EU still,

through the common EU policy level, can try to influence and affect prostitution attitudes in the member states.

### 5.3 A Constructive Proposal

This thesis stipulates to answer the question: *What can the EU do to combat trafficking effectively?* It has promoted that; within trafficking policy, the problem of trafficking should be connected to prostitution, for the policy to be effective. This constructive proposal aims to suggest how this can be done.

As has been stressed in the quote that introduced this analysis, trafficking, which can be understood as the slave trade of today, will continue to increase as long as policymakers persists in ignoring the discussion about the sex industry, i.e. all types of prostitution. It should be clear by now that the member states' attitudes towards prostitution, as well as the EU institutions' ability to discuss it, is a very sensitive issue. Looking at the history of the EU's anti-trafficking actions in the last twenty years, the European Parliament together with feminist actors have however gradually been able to incorporate the issue, through applying a gender perspective, into legally-binding EU policy. Even though the subject is still sensitive and probably always will be, there are small improvements in this area within the EU. As has been exemplified in the previous illustration of the two common EU policies, they at least touch upon the gender dimension that trafficking in the EU entails today, through cautiously discussing the European demand for sexual exploitation and the importance of applying a gender perspective to the phenomenon of trafficking.

Against this background, this thesis aims to build upon already existing policies. What is missing however is a realistic discussion of the demand for sexual exploitation i.e. a discussion of the entire European demand for sexual services, which includes the demand for both trafficking and prostitution. This is an outstanding neglected factor in both common policies described above; hence, the picture of the demand is simply not described properly.

Another neglected factor in existing policies is a realistic framing of the problem of trafficking in the EU context. An effective policy needs a constructive European definition of the complex phenomenon of trafficking, which in turn should recognise both sides of the nexus that trafficking implies. This would open up for the opportunity to realistically fight the economic and structural gender inequalities that is existent within the phenomenon, and within the whole market for sexual services, in the EU context. For a reframing to be possible, as well as a more realistic policy interpretation of the demand for trafficking, it is important to work for a change of the whole discourse within this question in the EU, in favour of a more gendered understanding of trafficking. A change of policy-direction could work as a tool to bridge the gap between the normative goal and the empirical reality. This will probably take a long time but could nevertheless be possible through the continued development of new anti-trafficking policies.

This thesis will propose three concrete measures to be incorporated in a new common anti-trafficking policy. First, to combat trafficking effectively a new European policy definition of trafficking has to be developed, which fits with the specific context of the problem in the union. This type of “frame change” have been indicated by several scholars and this thesis wants to emphasize the importance of this once again, as well as stressing that it is crucial for a possible change in policy focus (from mostly focusing on the crime-migration-supply view, to also focus on the slavery-prostitution-demand view). Secondly, in the spirit of the European Parliament and its demand for more concrete measures, the objectives in a new anti-trafficking policy have to be clearer and more practical. A suggestion is to put up concrete goals for the member states to reach, for example that each member state has to work to decrease trafficking within its own borders with 20 percent in the nearest 10 years. This would put pressure on countries with major trafficking inflows to address the problem effectively. A controversial suggestion, in line with this, could be to demand a fee from countries that do not reach those objectives. Even though countries could probably ignore this, it makes the policy area more demanding; it could help create a debate within the question and indicate which countries that carries the blame for not fighting trafficking effectively. Thirdly, the new research presenting that legalised prostitution seems to increase trafficking, has to be incorporated into a new policy. Even though it is not the union’s competence to decide about prostitution legislation, the union is not prohibited from discussing it. Furthermore it does not have to imply that actions have to be taken in line with the findings, but they should be recognised. This is important if the trafficking discourse in the union will ever be able to change. If this type of research is incorporated in a new common EU anti-trafficking policy it also, at least, opens up for an alternative way for future anti-trafficking actions.

A new policy, which includes the measures presented above, is here argued to be needed for the EU’s possibility to be able to combat trafficking effectively. This thesis is carefully positive that a new policy direction like this could be able to address the problem of trafficking in the EU from a new constructive angle. For realistic reasons a new policy, with measures like the ones described above, could benefit from *not* being legally binding. While the above suggestions still are controversial it would be strategic to introduce them in a new policy similar to the form of the EU plan, which in turn can build the ground for future legally binding policies.

## 6 Conclusion

This thesis has focused on the phenomenon, and long lasting problem, of trafficking in women for sexual exploitation in the EU. The main assignment has been to answer the research question:

- What can the EU do to combat trafficking effectively?

This thesis has shown that trafficking policy should take prostitution into consideration, for its ability to be effective. This argument has been built on a constructive method which has taken both the normative and the empirical dimension, of the problem of trafficking in the EU, into consideration. This has been backed up with a theoretical gender- and feminist perspective, which has been used as a tool to describe the contemporary scholarly debate around trafficking and prostitution. The main result that this thesis can contribute with is two folded.

First, the constructive methodological angle has made it possible to illustrate why the EU has to fight trafficking effectively. The normative part emphasises that the EU is normatively obligated to fight trafficking because it is an oppressive practice, which the union condemns both legally and politically. Combining this normative dimension with the existing empirical reality of the EU context of today clearly shows that the union is not living up to its normative standards; hence, trafficking in women for sexual exploitation is a major problem in the EU. This inconsistency, between the EU's normative ideals and existing reality, was possible to establish through this thesis constructive approach. This could, in turn, to some extent explain the EU's ineffective fight against trafficking.

Secondly, the constructive analysis contributes with a policy proposal for effective European anti-trafficking actions. While this thesis has striven to contribute with a realistic constructive proposal, the policy suggestion builds on already existing common EU anti-trafficking policies (and neglected factors recognized within those). For the EU's ability to combat trafficking effectively, three concrete measures are suggested to be incorporated into a new policy. First, for the possibility for the policy to be effective an EU definition of trafficking is needed, which frames the phenomenon of trafficking for the EU context. A definition that considers the specific conditions that is apparent within the problem of trafficking in the union is argued to be able to tackle the problem effectively. Hence, a problem has to be defined correctly, in relation to its context, for the possibility of fighting it successfully. Reframing the problem in the EU context implies that; the demand for prostitution has to be connected with the demand for trafficking. The second proposed measure is that the objectives of a new policy have to be clearer. In line with this an alternative is to develop on

practical goals for the member states, as well as fees if those goals are not realized. Thirdly and last, a new policy has to incorporate the new research concerning that legalised prostitution seems to increase trafficking. This is stressed to be of major importance to be able to include the discussion of prostitution in future anti-trafficking policy.

The methodological choice of this thesis has guided the entire aim of the study. Has it been fruitful? Despite the delimitation to focus on policy, this thesis is still believed to be a valid contribution of an alternative way to develop more seriously on long term anti-trafficking methods. When the research question asked about something typically empirical (effectiveness), but at the same time wanted to study a much normative subject (the oppressive nature of trafficking), the constructive method was considered the only valid option. While the EU does not seem to be able to tackle the phenomenon of trafficking in the union effectively at all, through existing anti-trafficking policies, development of alternative policy suggestions was, and still is, needed. The policy proposal developed here is believed to be scientifically valid because of its constructive methodological approach. Furthermore, while this method is very uncommon within political science, this thesis will contribute as an example of how one can tackle a political science policy-related problem constructively.

Nevertheless, as within most of the research on trafficking, this contribution also emphasises the need for further research. Important, in the context of prostitution's connection to trafficking in the EU, is further research on the legal dimension. Most of the legal theoretical literature used here, was produced before the union ratified the Lisbon Treaty. First, within this specific treaty, the union prohibited trafficking, through its Charter of fundamental rights. It would be very interesting to legally investigate, against a normative or constructive background, as the one established here, if the union through for example the ECJ, possibly has competence to engage within prostitution legislation. Even though the EU officially does not have this competence, this thesis calls for more studies on the ECJ's influence on member states prostitution legislation. It is out of reach here to suggest if and how the ECJ could approach this type of possible influence. Nonetheless, one argument in favour of this could be that; the EU has to put efforts into this type of serious anti-trafficking actions (through tackling the demand for prostitution), when trafficking is prohibited in the Lisbon Treaty, but still exists on a major scale in the union.

To conclude, anti-trafficking actions within the EU do not seem to be effective if the inconsistency, between norm and reality, is not addressed properly. It is well known that political issues connected to sex are always sensitive. Not discussing prostitution in relation to trafficking in women for sexual exploitation is, however, considered counterproductive. Framing the phenomenon as an organised crime in the EU has here been argued to be a reason for the ineffective handling of the problem.

The EU's human rights profile stands as a paradox in relation to that the EU cannot fight female slavery within its own borders. The fact that trafficking is

oppression, established in this constructive thesis, makes the EU obligated to effectively fight the unresolved problem of trafficking in women for sexual exploitation. An alternative way for a new effective policy is to connect trafficking with prostitution.

# 7 Executive Summary

## 7.1 Research Problem and Aim of the Study

The global problem of trafficking, with millions of victims every year, is here considered in the specific context of the EU. Contemporary estimates state that over 100 000 women are trafficked into the union each year. Trafficking in women and children for sexual exploitation (i.e. for forced prostitution) is the most common form of trafficking in the union. Several sources, academics and NGOs as well as the European Parliament, stress that trafficking can be connected to prostitution. In the EU this is a very sensitive question for several reasons. A majority of prostitutes in the EU are non-EU nationals, and a large part of those might be trafficking victims. Furthermore trafficking is prohibited through EU law, but prostitution is regulated differently in different EU member states, prostitution being legal in most of them.

Since the 1990s the EU has developed an extensive anti-trafficking framework and in the last ten years several common policies, some legally binding, have been adopted. Despite the union's priority of the question, as a foremost organised crime, Europol's latest report from 2011 makes a clear statement: Trafficking in human beings in the EU does not show any tendencies of decreasing. Against this background this thesis aims to examine what the EU can do to combat trafficking effectively. The point of departure theoretically, is a gender- and feminist perspective on the issue, which is considered very appropriate for studies of this particular type of trafficking. It will be promoted that; for trafficking policy to be effective, trafficking has to be connected to prostitution. The methodological aim is constructive, which will be illustrated throughout the whole study, which is divided into three parts; a normative dimension, an empirical dimension and a constructive analysis.

## 7.2 Methodology

The entire aim of this study will, from the methodological perspective, be constructive. This can be explained through the study's overarching objective and the nature of the research question. The study's ambition is to contribute realistically to the policy debate, hence the research question asks about what can be achieved under the circumstances that exists. This implies a constructive

approach, which in turn demands its own method for its ability to be scientifically valid. For the possibility to examine questions that aims at answering how to contribute with feasible suggestions of the desirable, both normative and empirical standpoints have to be considered. Those are then related and analysed in relation to the each other in a constructive analysis, which goal is to come up with a constructive proposal. The proposal will then be a compromise between idealism and realism, through its suggestion of how the context of the reality can reach closer, and better connects, to the normative standards.

The constructive method is not common within political science. A couple of scholars have however, stressed the need for this kind of method, which combines normative and empirical studies. It is argued that the combination of normative and empirical research can complement and strengthen the study, and that constructive studies can contribute with greater societal value.

The motivation for the choice of a constructive method for this particular thesis, is based around the following; the complex phenomenon and unresolved problem of trafficking, could gain from being considered from a constructive angle; furthermore the method is suitable when the research question asks about an empirical condition (effectiveness) in the context of a normative sensitive issue (trafficking for sexual exploitation in the EU); finally, trafficking is a phenomenon which is much affected by broader changes in society, as for example globalisation, and research problems like this can benefit from being tackled from a constructive angle. The research design can briefly be described as; to formulate (the normative part), to study (the empirical part) and to contribute to (the constructive analysis) the desirable.

### 7.3 The Normative Dimension

The function of the normative dimension will be to justify that trafficking has to be combated in the EU context. The EU context implies that the union condemns oppressive practices, through an extensive amount of policy documents, as for example the member states ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

To be able to establish that trafficking has to be combated the general norm “trafficking is oppression” is developed, with the aim to illustrate what trafficking in fact is in normative terms. The construction of the norm is based around the value of freedom. Hence, trafficking can be described as in itself a phenomenon of the opposite to freedom. To be able to illustrate why trafficking is a form of oppression three freedom-related values are considered; the right to life, the prohibition of torture, and the prohibition of slavery.

The normative construction establishes that the phenomenon of trafficking constitutes a crucial oppression of a person’s most fundamental freedom and her rights connected to this value. Furthermore, trafficking is oppression because it violates some of the most vital rights of a person’s freedom, through the coercive,

abusive and slavery-like practice that trafficking is. The norm “trafficking is oppression” strengthens this thesis objective of the importance of developing on effective anti-trafficking policies. The norm is a clear example of why the union has to find ways of fighting trafficking effectively, while the problem represents a morally intolerable phenomenon in the context of the EU.

## 7.4 The Empirical Dimension

The empirical part will be two folded through a theoretical element and an empirical element. One of the major theoretical debates about trafficking concerns the definition of the problem. The focus on trafficking in women for sexual exploitation in this thesis implies a gendered understanding of trafficking. This stands in contrast to the contemporary discourse in both the UN and the EU. Hence, many of the international and European anti-trafficking policy documents frames the problem of trafficking as a form of transnational organised crime. The phenomenon of trafficking, and the debate that surrounds it, circulates around the visible nexus of migration and prostitution. The development of the EU’s common anti-trafficking actions has focused to a large extent on the migration side of the spectrum.

The contemporary research debate about the EU’s anti-trafficking actions focus on that better, and new measures, are needed to be able to tackle the long lasting problem of trafficking in women for sexual exploitation. Many legal and feminist scholars stress that trafficking in the EU has to be connected to prostitution, for the possibility of targeting the specific problem that trafficking for sexual exploitation implies. The concept of feminization of poverty gives a good illustration of prostitution’s connection to trafficking, in the context of the EU; the European male demand for sexual services is one of the main reasons for the existence of this type of trafficking. Furthermore, sexual services in the EU today, are to a large extent supplied by non-EU national, often underprivileged, women. From a theoretical gender- and feminist perspective, this unbalance can be explained by structural inequalities within the EU’s Internal Market. Several scholars mean that EU would take more own responsibility, if the union would tackle trafficking through tackling the European demand side of sexual services.

The situation within the EU points to that the problem of trafficking in women for sexual exploitation is long lasting and do not show any tendencies of decreasing. The supply foremost consists of women and the demand foremost consists of men. Important in this context is the argument that stresses that; for the possibility of tackling the root causes of trafficking, both sides of the problem have to be addressed. Europol, together with legal and feminist academic scholars, stand behind this statement. The sensitive issue within this is the question of if the demand side of trafficking can be connected to the demand for prostitution. This namely touches upon the EU member states prostitution legislation, which is a highly controversial subject in the union. Prostitution is legal in most member states with some exceptions. Noteworthy in this context, is new empirical

statistical research, which states that legalised prostitution seems to increase the inflow of trafficking.

Against this background, some connections are interesting to highlight in the context. Current European anti-trafficking actions focus mainly on repressive measures, as for example restricted immigration policies. The latest common policies do, however, mention the problem of the demand within this question. On the European institutional level, the European Parliament is a driving actor within the question of connecting trafficking to prostitution. The European Court of Justice on the other hand, rather acts in the opposite direction.

## 7.5 The Constructive Analysis – A Constructive Proposal

The analytical dimension connects the two previous parts, by analysing the European reality of trafficking in women for sexual exploitation, in relation to the norm “trafficking is oppression”. It establishes that the two are disconnected today in the EU. One explanation for this is the union’s negative understanding of freedom. This is fortunate for the customers on the EU’s market for sexual services (on the Internal Market), who are free from barriers to choice and not much affected by the union’s anti-trafficking policies. It is however unfortunate, for those who already are banned from entering the EU; immigrants positive freedom, to escape poverty for the possibility of improved individual human rights, is threatened. The lack of a positive understanding of freedom in the EU, opens up for oppressive practices within the union. The EU’s negative understanding of freedom, which in turn is illustrated through the union’s focus on just one side of the trafficking nexus (migration), can explain the broader reason for the ineffectiveness of the union’s anti-trafficking policies.

Through analysing two of the current common EU policies on trafficking, the EU Plan from 2005 and the EU Directive from 2011, more specific neglected factors can be appointed. It should be mentioned that both policies, compared to older policies, shows a tendency of discussing the gender dimension of trafficking to some extent. Nevertheless, they both fail to realistically address the discussion of the demand for sexual exploitation, which recognise both the demand for trafficking and the demand for prostitution. Another neglected factor can be illustrated through how the policies are framing the problem of trafficking. The current definition of trafficking in the EU does not recognise the whole picture (migration and prostitution) of trafficking in women for sexual exploitation in the union.

The constructive proposal suggests three new measures for a new effective European anti-trafficking policy. A “frame change” through a new European definition of trafficking has to be developed and incorporated in a new policy. A definition that fits the specific conditions of trafficking in the EU context can

constructively address the problem. In the spirit of more concrete measures, demanded by several scholars as well as the European Parliament, a new policy should have clearer, and more practical, objectives. This opens up for more direct actions. Finally, the new research concerning legalised prostitution's presumable affect on increased trafficking inflows should be incorporated into a new policy. It is of importance to recognise this type of research for the possibility of a changed European discourse on trafficking and the development of alternative ways of tackling the problem effectively.

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